
(1987) 09 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 390 DB of 1986

Bhajan Singh and anr.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 24-09-1987

Acts Referred:

Citation : (1988) 1 RCR(Criminal) 108

Hon'ble Judges : S.S.Dewan, J and S.D.Bajaj, J

Advocate : S.K. Syal, A.S. Khaira, Advocates for appearing Parties

Judgement

S.S. Dewan, J.

1. Bhajan Singh and Shangara Singh appellants were brought to trial before the Court of Additional Sessions Judge, Amritsar, on the charge under Section 302 read with Section 34, Indian Penal Code. By the judgment under appeal, both the appellants were held guilty under the said offence and were sentenced to life imprisonment each. They appeal.

2. Kartar Singh deceased was the brother of Bachan Singh and Sardul Singh PWs and he used to live in the Dera of Hari Nath in village Jhanjoti and was the chela of said Hari Nath. In short, the prosecution case is that on 31.7.1984, Kaka Singh came to village Chaba and informed the said two witnesses that their brother Kartar Singh was lying ill and that some evil spirits has visited him and they should accompany him to the Dera in village Jhanjoti. Bachan Singh and Sardul Singh then accompanied Kaka Singh to the Dera at village Jhanjoti and they found that Shangara Singh had piled up some cowdung cakes wherein fire was burning and Kartar Singh was made to sit near that fire; that Shangara Singh accused was holding Kartar Singh from his long hair and Bhajan Singh accused was giving blows with a red hot Chimta to him.

3. Bachan Singh and Sardul Singh PWs separated Kartar Singh from the accused and made him lie down on a gunny bag. It is alleged that since Mahant hari Nath was not present in the Dera Bachan Singh and Sardul Singh waited for him

during the night. Kartar Singh died due to burn injuries on 1.8.1984 at 3 P.M.. Mahant Hari Nath returned to his Dera on 2.8.1984 at about 12 noon. Leaving Mahant Hari Nath and Sardul Singh near the dead body. Bachan Singh set out for the Police Station to lodge the report but on the way, he met Sub Inspector Gurmit Chand at the Bus Stand, Kikranwala and made a statement Ex. PF/2 was registered at Police Station Ajnala at 2.45 P.M. Sub Inspector Gurmit Chand went to the Dera at village Jhanjoti, held inquest Ex. PD and sent the dead body of Kartar Singh to the mortuary for autopsy. On 3.8.1984, Mahant Hari Nath produced Bhajan Singh accused along with a Chimta Ex. P.1 before Sub Inspector Gurmit Chand who formally arrested him. Shangara Singh accused as arrested by Dalip Singh, Assistant SubInspector on 5.8.1984.

4. Dr. Jaswant Singh PW 1 conducted autopsy on the dead body of Kartar Singh on 3.8.1984 at 1.30 P.M. and found 16 first degree burns on different parts of the body of the deceased as detailed in the postmortem report Ex PA. Death was opined to be due to shock as a result of extensive burns. After necessary investigation, the accused were challaned and committed.

5. The ocular account consists of the testimony of Bachan Singh PW 4 and Sardul Singh PW 5, both brothers of the deceased. Sub Inspector Gurmit Chand PW 6 is the Investigating Officer. When examined under Section 313, Criminal Procedure Code, the accused denied the prosecution allegations and pleaded false implication in the case. Hari Nath was, however, examined by them in defence.

6. The unimpeachable and disinterested nature of the prosecution evidence in the case is manifest on this record. Both Bachan Singh PW 4 and Sardul Singh PW 5 have given consistent account of the mode and manner of the assault launched by the appellants upon the deceased. The occurrence having taken place in the day light and the parties being well known to each other, there is thus not a shadow of doubt about the identity of the assailants. Nothing whatsoever has been elicited in the cross-examination of either of these two eyewitnesses which may detract from the weight of their testimony. No animus is suggested qua either of the two eyewitnesses which could remotely motivate them to level so serious a charge as murder without patently good cause to do so. We accept the direct testimony of both these witnesses. They have forthrightly stated that Shangara Singh appellant caught the deceased by his long hair and Bhajan Singh appellant gave 4/5 blows to him with a red hot Chimta. Dr. Jaswant Singh PW 1 found as many as 16 first degree burns on the dead body of Kartar Singh deceased and he had opined that death was due to shock as a result of extensive burns. The medical testimony in the case is thus entirely corroborative of the ocular account. Indeed, the learned counsel for the appellants raised no arguments based thereon in support of his client's case. The prosecution case as alleged against the appellants is, therefore, more than amply proved on the record.

7. Probably unable to lay any serious challenge to the prosecution case, Mr. A.S. Khaira had not offered any serious or detailed criticism to the testimony.

However, he had argued that even accepting the prosecution case, the intention to kill may not be attributed to the appellants. There appears to be substance in his contention. Upon a careful consideration of the evidence and the probabilities, particularly the data furnished in the medical evidence, we are of the view that the appellants should be properly convicted under Section 304 Part II, Indian Penal Code. Two decisions to which our attention has been drawn, related to almost identical situations are *Haku v. Crown* AIR 1928 Lahore 917 and *Nga Po Tha v. Emperor*, AIR 1918 UB 24, both these were of attempted on an evil spirit, by means of some external violence administered to the victim, in the hope of driving away the evil spirit. In both cases the offences were held to be punishable under Section 304 Part II Indian Penal Code. It is true that both these decisions relate to blows administered to the victim. Similarly, in the present case also the appellants had caused blows to the deceased with a red hot Chimta. The question whether they intended to cause such injuries is not so easy to answer. Assuming that they did believe that the deceased was possessed of an evil spirit, the appellants' primary intention no doubt was not to cause the patient's death but to drive the spirit out. Accordingly, we alter the conviction of the appellants from under Sections 302/34 Indian Penal Code to one under Section 304 Part II read with Section 34, Indian Penal Code. Taking all the circumstances of the matter into account, we sentence the appellants to undergo rigorous imprisonment for four years. The appeal is allowed to this extent only.