
(1969) 04 SC CK 0053

In the Supreme Court Of India

Case No : Criminal Appeal No. 202 Of 1967

Harwant Singh and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-04-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 396

Citation : (1969) 3 SCC 717

Hon'ble Judges : S. M. Sikri, J; R. S. Bachawat, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

R.S. BACHAWAT, J.-Joginder Singh, Harwant Singh, Jagjit Singh, Copal Singh, Harnam Singh, Piara Singh, Kulwant Singh and Anokh Singh were charged with offences under Section 148 and Section 302 read with Section 149 and Section 325 read with Section 149 of the Indian Penal Code for the offence of rioting and murdering Arur Singh and Man Singh and causing grievous hurt to Nishan Singh. The first six accused persons are sons of Nishal. Kulwant Singh is Gopal Singh's son. Anokh is Gopal's son-in-law. The Sessions Judge, Ambala, acquitted them of all the charges. The State filed an appeal. The High court convicted Joginder, Harwant, Kulwant and Piara under Section 302 read with Section 34 of the Indian Penal Code for the murder of Arur Singh and sentenced them to imprisonment for life. The High court also convicted all the four accused under Section 325 read with Section 34 of the Indian Penal Code for causing grievous hurt to Nishan Singh and sentenced each of them to three years' rigorous imprisonment and a fine of Rs. 50.00 or in default to suffer one months' further rigorous imprisonment, the sentence on both counts to run concurrently. The High court affirmed the order of acquittal of Harnam, Gopal, Jagjit and Anokh.

2. The prosecution case is that on 6/11/1963 eight persons of village Panori and eight persons of village Gharaunda ploughed the field of PW4 Jagjit Singh son of Teja Singh between 7 a.m. to 1. 30 p. m., took their meals at Jagjit's house and

after finishing their meals 5 persons of village Panori and 3 persons of village Gharaunda left for their respective homes. At about 4 p. m. Arur, Man, Nishan, Gurbachan and Mohinder of Gharaunda village came out of Public Witness 4 Jagjit's house for going to their village and were accompanied by Public Witness 4 Jagjit, Jaswant and Ram Chandra of village Panori. Near Harnam Singh's well which is about 50 paces away from Public Witness 4 Jagjit Singh's house they were attacked by Kulwant carrying a kripa, Joginder carrying a kripa, Harwant carrying a spear, Jagjit carrying a spear, Gopal carrying a lathi, Harnam carrying a spear, Piara carrying a gadasa and Anokh carrying a kripa. Gopal gave a Lalkara. Harwant and Jagjit struck Arur on his abdomen and chest with their spears. Joginder and Kulwant then hit Arur with their kripas and Arur died immediately. Harnam gave a blow of spear thrust at the chest of Man Singh. On the receipt of the blow Man came running inside the main gate of PW 4 Jagjit's house and on reaching there fell to the ground and died. Piara hit Nishan on the head with the wrong end of the Gadasa and Anokh gave a kripa blow on Nishan's back. Kulwant gave a kripa blow on Jaswant's abdomen. In self-defence Nishan wielded a lathi and struck Harwant and Piara. As accused Joginder, Jagjit and Kulwant remained near the well with the weapons in their hands, none of the prosecution witnesses dared to go to the police station for lodging a report.

3. At about 4.55 p. m. accused Harnam gave a report at police station Gharaunda that several persons of villages Panori and Gharaunda having taken liquor were growling and making noises in the street of village Panori and were abusing the villagers in the names of their daughters and wives. Ram Labhaya, Muharrir head constable, recorded the report. On receipt of the report Joginder Singh, head constable left for village Panori. On reaching the village at about 6.15 p.m. Joginder Singh, head constable recorded the statement of Public Witness 4 Jagjit, and on the basis of this statement, the first information report was lodged at the police station at 8.30 p. m.

4. The defence version was that the members of the prosecution party get dead drunk and went about the village up turning bullock carts, challenging the inmates of the houses and posing a danger to the honour of their women folk. In his examination under Section 342 Harnam said that on being informed about a row in the village while he was working in the field, he went to the police station and lodged the report and DW 2 Lakhpat then came there and reported that murders had taken place in the village. Jagjit said that he was working in his field and came to the village after the occurrence. Gopal said that at the time of the occurrence he was sitting in his Dera and could not easily move about on account of rheumatic pains in the legs. Anokh said that he was in village Ror and knew nothing about the occurrence. Piara said that Man, Arur and others came to his well while he was working, raised shouts and beat him and that on his raising an alarm his brother Harwant came there and was also beaten. Harwant gave a similar version. Kulwant said that he was informed of the row while he was working at his poultry farm and that on reaching the spot after the occurrence he

heard that there was a fight in which Harwant and Piara were beaten and Man and Arur were killed. Joginder said that he was working in hi;; field and that when he reached the spot the occurrence was over.

5. Public Witness 4 Jagjit, Public Witness 5 Nishan, Public Witness 6 Mohinder, PW 7 Gurbachan and Public Witness 8 Jaswant were eye-witnesses to the occurrence. Nishan and Joginder had received injuries. There is no doubt that the other eye- witnesses also were present. The High court accepted their testimony generally. But considering that they were partisan witnesses the High court thought it safe to convict only those accused persons whose presence at the spot could not be doubted. The evidence of Public Witness 11 RamLabhya, DW5 Jagram, DW 2 Lakhpatt and DW 1 Hari Singh shows that accused Harnam lodged his report at the Gharaunda police station at about 4.45 p. m. and while he was at the polica station Lakhpatt came there and reported that Sikhs had died in the village. Accused Gopal was about 70 years old. He did not causa any injury to anybody and the story that he gave a Lalkara, was not very convincing. There was no incised wound on Nishan's back attributable to a kripaan thrust by accused Anokh. Accordingly, the High Court did not think it safe to convict Gopal, Anokh and Harnam. The High court also gave the benefit of doubt to accused Jagjit because there was no injury on his person. The High court found that the participation of the appellants in the occurrence could not be doubted. Accused Harwant and Piara had received injuries and their presence at the spot is admitted. In their examination under Section 342 accused Kulwant and Joginder denied their presence at the time of the occurrence but it was not suggested to the prosecution witnesses that Kulwant and Joginder took no part in the occurrence. On the contrary Sri Diwan Chand counsel for Kulwant sugges- ted to Public Witness 8 Jaswant in cross-examination that Kulwant and Joginder intervened while Harwant was being beaten.

6. The eight members of the prosecution party who had emerged from the house of Public Witness 4 Jagjit at about 4 p. m. had taken liquor and were drunk. It is likely that they had upturned some carts and were creating a nuisance in the streets. But the members of the prosecution party were all unarmed. Only Nishan -had a lathi. The High court rightly found that the appel- lants had no right of private defence, and this finding is not challenged.

7. The Trial court gave other reasons for discarding the entire pro- secution case. Public Witness 9 Ram Chandra was falsely set up as an eye-witness and his evidence was rightly rejected. The prosecution case of recovery of weapons from accused Kulwant and Jagjit is disproved by the testimony of Public Witness 10 Dharam and was rightly rejected. The Trial court thought that the prosecution case was hatched after a Baithak in Public Witness 4 Jagjit's house at about 10 a. m. But the High court rightly pointed out that the first information report had been registered at 8.30 p. m. This report set out the prosecution case in all the essential details and strongly corroborated the evidence ofPW 4 Jagjit. The Trial court observed that the prosecution had not called several material witnesses.

The investigating officer had taken down their statements. One of them had been examined in the court of the committing magistrate and all of them were present in the Trial Court. The Public Prosecutor did not examine them on the ground that their evidence was necessary. We are not satisfied that the non-examination of these witnesses was due to any oblique motive. The prosecution has examined the witnesses essential to the unfolding of the narrative on which the prosecution is based. The Trial court did not give convincing reasons for discarding the entire prosecution case. The High court has rightly accepted the testimony of Public Witness 4, Public Witness 5, Public Witness 6, Public Witness 7 and Public Witness 8 against the appellants.

8. The prosecution suggested that the accused persons had a grudge against the members of the prosecution party. One Bhagat Singh was the Granthi of the local Gurdwara and was said to be a man of bad character. PW 4 Jagjit wanted to drive away the Granthi from the village but the accused persons wanted him to stay on. One day Public Witness 4 Jagjit along with Arur, Man and Nishan forcibly put the Granthi on a mare in order to scare him away from the village. Accused Jagjit, Harnam, Kulwant and Harwant supported the Granthi and a fight took place in the course of which the Granthi sustained injuries. Public Witness 4 Jagjit, Man and Arur were challenged under Section 307/364 of the Indian Penal Code. During the pendency of the case there was a compromise and Public Witness 4 Jagjit, Man and Arur were acquitted. In that case Kulwant, Jagjit, Harnam and Harwant made statements, denying all knowledge of the occurrence. On behalf of the appellants it was therefore suggested that the parties had buried their past and Man, Arur and Public Witness 4 Jagjit had reasons to be grateful to the appellants. But the fact remains that three or four months before the present occurrence the Granthi was compelled to leave the village. The appellants felt humiliated because the Granthi was driven away and had a grievance against Public Witness 4 Jagjit and other members of the prosecution party. In spite of this grudge Public Witness 4 Jagjit who was in the front line did not receive any injury at the occurrence. The reason was that Public Witness 4 Jagjit, Gurbachan and Mohinder folded their hands and implored the accused persons not to fight with them.

9. The charge against the appellants was under Section 302/149 and 325/149. They were charged with being members of an unlawful assembly whose common object was to murder Arur and Man and to cause grievous hurt to Nishan. Only Harnam was said to have injured Man in the chest by a spear thrust. As Harnam was acquitted, the charge against the appellants under Section 302 read with Section 149 for murdering Man could not be sustained.

NISHAN sustained the following injuries :

"1. Abrasion about 6," long in the line of spine soapula on the left side of the back about 1", from the middle of back in curved shape.

2. Lacerated wound 14 x 1/21 x "on the left side of the back 5 " " from the

midline of the back on left side, on the same curved line as injury No. 1.

3. Lacerated wound 1" x 1" x 1" on the left side of the back 3" from the midline and 1", below injury No. 1.

4. Lacerated wound on the left side of the head 6"x1", in the beginning and 1" in the end, 1" depth about 5" away from the upper end of the left ear. Bone parital fractured. Feeling of crepitus present. Marginals irregular.

5. Lacerated wound on the middle of right side of the neck. 1" x 1/6" x 1/6".

6. Abrasion on the joint of index finger right hand."

10. Injuries 2, 3, 5 and 6 were simple in nature caused by a blunt weapon. With regard to injury No. 2 an x-ray examination revealed that his left periosteal bone was fractured. Only Piara and Anokh are said to have struck Nishan. Anokh was said to have struck Nishan's back with a Kripan. As no kripan injury was found on Nishan's back, Anokh was acquitted. Piara struck Nishan on the head with the wrong side of a Gandasa. As a result of this blow Nishan sustained injury No. 2 which was a grievous hurt. Piara is therefore liable to be convicted under Section 325.

ARUR sustained the following twelve injuries :

"1. Incised wound 3/4"x 1/2" skin deep on the front of nose near tip.

2. Incised wound 1" x 1/2" skin deep transverse 1" above tip of skin.

3. Incised wound 2" x 1" bone deep transverse on the top of the head middle the bone underneath was cut through.

4. Incised wound 2" x 1" transverse bone deep 1" to the left of injury No. 3.

5. Incised wound 1" x 1" on the front right shoulder joint.

6. Incised wound 1" x 3/4" vertical on the right of front chest on the upper and outer end.

7. Penetrating incised wound 1 1/2" x 1/2" transverse on the right side of the abdomen near middle line 1" above umbilicus. Direction of penetration was upward, inward and backward.

8. Penetrating wound 1 1/2"x1/2" left side of abdomen near middle line 1" above umbilicus. Direction of penetrating was downward, inward and backward.

9. Incised wound 3" x 1" transverse bone deep on the back of left wrist. All the bones at wrist were cut through.

10. Incised wound 1" x 1/2" bone deep transverse 1", above the injury No. 9.

11. Incised wound 1" x 1/2" skin deep transverse 1" below injury No. 9.

12. Incised wound 2" x 1" skin deep transverse on the back of right side of the

chest middle."

11. Injuries 7 and 8 on the abdomen and injury No. 3 on the head were dangerous to life and could prove individually fatal. They were sufficient to cause death in the ordinary course of nature. Injury No. 3 was an incised wound and could be caused by a kripān. Injury No. 7 a penetrating wound and injury No. 8 a penetrating incised wound. Could be caused by a spear. Injuries 6 and 12 were incised wounds on the chest. The consistent evidence of the prosecution witnesses is that accused Harwant and Jagjit with their spears struck Arur on his abdomen and chest. On receipt of the injuries Arur fell down. Accused Joginder and Kulwant then gave Kripān blows to Arur while he was lying on the ground. Now accused Jagjit has been acquitted. It cannot be said with certainty whether he or Harwant caused the fatal injuries on the abdomen. We shall give the appellants the benefit of the doubt that Harwant did not cause the fatal injuries on the abdomen. But the fatal injury No. 3 on the head was caused by kripān blow after Arur fell to the ground. Kulwant and Joginder wielded the kripāns and were responsible for this injury. Harwant, Kulwant, Joginder made a concerted attack on Arur. Harwant attacked him with spear, Kulwant and Joginder attacked him with kripāns. The concerted attack and the number of injuries sustained by Arur show that Harwant, Kulwant and Joginder had the common intention to kill Arur. To prove common intention it is not necessary to establish a pre-concerted plan. The common intention may develop on the spot. We are satisfied that at the time of striking Arur all of them had developed the common intention of killing him and each is responsible for the acts of the others. In our opinion, Harwant, Kulwant and Joginder are liable to be convicted under Section 302 read with Section 34 of the Indian Penal Code.

12. It is true that the charge against the appellants was under Section 302 read with Section 149. But the charges clearly stated that the common object of the unlawful assembly was to murder Arur. The absence of a specific charge under Section 302 read with Section 34 did not cause them any prejudice. The evidence clearly established that they are guilty of an offence under Section 302 read with Section 34. In these circumstances, they can be convicted of the offence under Section 302 read with Section 34 in spite of the absence of a specific charge to that effect, see *Karnail Singh v. State of Punjab*. The decision in *Chikkarange Gowda v. State of Mysore*," is distinguishable. In that case the appellants were charged with being members of an unlawful assembly the common object of which was stated to be the killing of Putte Gowda and of committing offences under Section 302 read with S. 149 and 34. The court found that the common object was to give the victim a severe and open chastisement only. None of the members of the unlawful assembly had the intention to kill him nor did any of them know that he was likely to be killed in prosecution of the common object of chastisement. None of the appellants in that case caused any fatal injury to Putte Gowda. In these circumstances, the court quashed their convictions under Section 302 read with Section 34. In the present case clearly the common object of the assembly was to murder Arur. The appellants Harwant,

Kulwant and Joginder were responsible for at least one fatal injury. As their number is less than five, they cannot be convicted under Section 302 read with Section 149) but. they can be convicted under Section 302 read with Section 34.

13. It may be doubted whether the High court rightly acquitted Jagjit. All the witnesses proved that he and Harwant struck Arur with spears. The absence of any injury on Jagjit was not a very convincing reason for acquitting him. However, the State has not appealed from the order acquitting him. We must therefore maintain the order of acquittal. We also proceed on the footing that Jagjit did not participate in the assault on Arur. Nevertheless, we find that Harwant, Kulwant and Joginder made a concerted attack on Arur with the common intention of murdering him and fatally injured him. They are therefore liable to be convicted under Section 302 read with Section 34,

14. As Harwant, Kulwant and Joginder did not cause any injury to Nishan, we do not think it safe to convict them under Section 325 read with Section 34 for causing grievous hurt to Nishan. Piara did not cause any injury to Arur and we do not think it; safe to convict him under Section 302 read with Section 34 for murdering Arur.

15. In the result, the appeal is allowed in part. The conviction and sentence of Piara Singh under Section 302 read with Section 34 of the Indian Penal Code are set aside. The conviction of Harwant Singh, Joginder Singh and Kulwant Singh under Section 325 read with Section 34 of the Indian Penal Code are set aside. The conviction and sentence of Harwant Singh, Joginder Singh and Kulwant Singh under Section 302 read with Section 34 of the Indian Penal Code are affirmed. The conviction of Piara Singh under Section 325 read with Section 34 is altered to one under Section 325 of the Indian Penal Code and the sentence of 3 years" rigorous imprisonment and a fine of Rs. 50.00, in default to suffer one months" further rigorous imprisonment imposed on him is affirmed.