
(1992) 12 SC CK 0046
In the Supreme Court Of India
Case No : Criminal Appeal No. 338 of 1990

Hawa Singh and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-12-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307, 323

Citation : (1993) 41 BLJR 271 : (1993) 1 Crimes 213 : (1992) JT 439 Supp : (1992) 3 SCALE 474 : (1993) 2 SCC 527 Supp

Hon'ble Judges : N. M. Kasliwal, J;Kuldip Singh, J

Bench : Division Bench

Advocate : Prem Malhotra, for the Appellant;

Final Decision : Partly Allowed

Judgement

Kuldip Singh, J.—The appellants were tried for the murder of Jang Singh and Ram Sarup by the Designated Court, Bhiwani at Hissar. Hawa Singh was convicted under Sections 148, 302, 307 and 323/149, Indian Penal Code (IPC). He was further convicted u/s 27 Arms Act read with Section 6(1) of the Terrorists and Disruptive Activities (Prevention) Act, 1985. He was sentenced to life imprisonment and other sentences on different counts. Uday Singh was convicted u/s 302 read with Section 149 IPC and was sentenced to imprisonment for life and a fine of Rs. 1,000/- with usual default clause. He was also convicted under Sections 307/149 and 323/149 IPC. Rai Singh was convicted under Sections 302/149, 307/149 and 323/149 IPC and was sentenced to life imprisonment. Ram Kumar was convicted under Sections 302/149, 307/149 and 323 IPC. He was sentenced to life imprisonment. Pala was convicted under Sections 302/149, 307/149 and 323 IPC. He was also sentenced to imprisonment for life. This appeal by the appellants is u/s 19 of the Terrorists and Disruptive Activities (Prevention) Act, 1985.

2. According to the prosecution story Balraj alongwith his wife and brother Sat Narain were returning from their fields on September 9, 1986 at about sun-set.

As they reached near the house of Pala, appellant Ram Kumar armed with an axe and Pala with a lathi came running towards Balraj and Sat Narain wielding their weapons. Both the brothers tried to run away but in the process appellant Ram Kumar gave an axe blow on the head of Balraj and Pala gave a lathi blow on his back. They raised an alarm which attracted Jang Singh deceased, who was going ahead in the street. Jang Singh turned back when appellant Hawa Singh fired gun shot while standing on the roof of his house which hit Jang Singh. In the meantime Ram Sarup and Inder came in the street. Hawa Singh fired another shot which hit Ram Sarup and some of the pellets also hit Inder Singh. Appellant Uday Singh was handing over the cartridges to Hawa Singh who was firing the gun. Hawa Singh fired three more shots to scare those who were present at the spot. When Balraj and Sat Narain tried to run towards their house they found appellant Rai Singh blocking the street with a gandasa in his hand. After receiving the gun shot Jang Singh walked few steps and finally fell in the street. Jang Singh and Ram Sarup succumbed to the gun shot injuries.

3. The prosecution primarily relied on the eye-witness testimony of Balraj PW 11, Inder PW 12 and Sat Narain PW 13.

4. Mr. Prem Malhotra, learned Counsel for the appellants vehemently argued that the designated court acted illegally in applying Section 149 IPC to the facts of this case. According to him even if the prosecution story is accepted in toto no offence can be made out under Sections 148 and 149 IPC. This contention was also raised before the designated court and it rejected the same on the following reasoning:

The accused are five in number. One of them was armed with a DBBL gun and the other was assisting him by handing over the cartridges. One of them was armed with an axe and another one with lathi. The last one was armed with a gandasa keeping a guide at the end of the street. Simply because the accused were positioned at different places will not go to show that their object was not common. There is no gainsaying the fact that mere presence in an assembly does not make a person to be member of an unlawful assembly unless it is shown that he has done something or omitted to do something which would make him a member of an unlawful assembly. In the present case all the five accused did some act in furtherance of their common object. So, the contention of learned defence counsel that there was no common object of the alleged unlawful assembly, does not find favour with this Court.

5. After giving our thoughtful consideration to the prosecution story and the evidence on the record, we are inclined to agree with the contention of Mr. Prem Malhotra. Had there been common object to commit the murder of Jang Singh and Ram Samp or to cause fatal injuries to any member of the complainant party then in all probability Hawa Singh who was carrying the gun should have opened the attack. At the first instance only Ram Kumar and Pala attacked Balraj and his brother Sat Narain. Jang Singh who was going ahead of them was not attacked by anybody in the first instance. It was only when Jang Singh turned back, Hawa

Singh fired gun shot at him from the roof of his house. There is no evidence to show that Ram Kumar and Pala knew that Hawa Singh and Uday Singh were standing on the roof of the house. The possibility of their coming on the spot after hearing the shouts of Balraj and Sat Narain cannot be ruled out. There is no evidence - not even a circumstance - to show that the appellants had the common object to commit the crime.

6. The motive is almost non-existent. Ram Kumar appellant had some altercation with one Sunder two days earlier. Sat Narain was also present there and he tried to pacify them. The alleged motive is that Ram Kumar did not like it and he left the place while giving threats to Sat Narain. It is difficult to believe that such a minor incident can be the motive for committing the double murder two days later. We are of the view that the prosecution has not been able to show the existence of any motive for the appellants to commit the crime. The absence of motive lends further support to the contention of the learned Counsel for the appellants that there was no common object on the part of the appellants to commit the crime.

7. We, therefore, hold that the conviction of the appellants under Sections 148 and 149 is not justified and as such cannot be sustained. We acquit the appellants of the offences under these sections.

8. Hawa Singh fired the gun shots which killed Jang Singh and Ram Sarup. His conviction u/s 302 Indian Penal Code is maintained. He is sentenced to undergo imprisonment for life and to pay fine of Rs. 2,000/- and in default of payment of fine to undergo rigorous imprisonment for one year.

9. He is further convicted u/s 27 of the Arms Act read with Section 6(1) of the Terrorists and Disruptive Activities (Prevention) Act, 1985 and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 500/- and in default of payment of fine to undergo further rigorous imprisonment for six months. He is also convicted u/s 307 IPC and sentenced to rigorous imprisonment for ten years and to pay a fine of Rs. 1000/- and in default of payment of fine to undergo rigorous imprisonment for six months. The sentences to run concurrently.

10. The only part played by Uday Singh appellant is that he was handing over the cartridges to Hawa Singh. This part of the story is highly improbable and we are not inclined to believe the same. We give benefit of doubt to Uday Singh and acquit him.

11. No overt act has been imputed to Rai Singh though he was armed with gandas. We, therefore, acquit him.

12. Ram Kumar and Pala are convicted u/s 323 IPC for causing simple injuries to Balraj and Sat Narain. They are sentenced to rigorous imprisonment for six months.

13. Uday Singh, Rai Singh and Pala have already undergone more than four

years of rigorous imprisonment and they are on bail. Their bail-bonds are cancelled. Ram Kumar has already undergone the sentence awarded to him by us. He be released. The appeal is partly allowed to the extent indicated above.