

(2016) 03 SC CK 0035

In the Supreme Court Of India

Case No : Criminal Appeal No. 1984 of 2009 with Crl. No. 1973 of 2009

Kulwant Rai Sharma

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2016) 3 Scale 410 : (2016) 13 SCC 228

Hon'ble Judges : Pinaki Chandra Ghose; Amitava Roy, JJ.

Bench : Division Bench

Advocate : Dr. Sandeep Singh, Pulkit Manuja, Sanchit Garga, Advocates Pahlad Singh Sharma, AOR and P.N. Puri, AOR, for the Appellant; Sanchar Anand, AAG, Jagjit Singh Chhabra, Saksham Maheshwari, Advocates Kuldip Singh, AOR, P.N. Puri, AOR and Jitendra Mohan Sharma, AOR, for the Respondent

Final Decision : Dismissed

Judgement

1. These appeals are directed against the common judgment and order dated 20.01.2009 passed by the Division Bench of the High Court of Punjab and Haryana, whereby the High Court while modifying the order of the trial Court dismissed the appeals insofar as accused Jarnail Singh alias Chaudhary and Veer Singh alias Gola are concerned and partly allowed the appeals qua accused namely, Dalbir Singh, Jarnail Singh son of Thoru Ram, Joginder Singh, Bakshish Singh alias Chamkila, Bachittar Singh Shinda and Karnail Singh thereby acquitting them under Section 302/149 of the Indian Penal Code, 1860 (in short "the Code") but directed them to undergo imprisonment for the offences punishable under Sections 148, 449, 326, 324 and 382 of the Code. They have been further directed to pay RS. 20,000 each as fine and the amount recovered has been directed to be paid as compensation to the widow of Nirmal Kumar, the deceased.

2. The relevant facts which are necessary for the purpose of deciding these appeals are narrated hereunder:

i) Kulwant Rai Sharma, the appellant/Complainant, who is the owner of a truck, is the resident of Machhi Chowk, Kapurthala. His brothers Nirmal Kumar (the deceased), Mohal Lal and his nephews were also owning trucks and they had started Truck Union in the name of Local Mandi Truck Operators Union. The office of the Truck Union was in the shop of one Rajinder Singh @ Pala, in the area of Kapurthala.

ii) On 25.02.2004, a special train, for transporting rice, was stationed at the railway station. The drivers of the Local Mandi Truck Operators Union (including the Complainant) were busy transporting the rice for loading in the train. The officials of the Janta Truck Operators Union, Kapurthala, however, stopped the trucks of Local Mandi Truck Operators Union,

iii) On 25.02.2004, at about 5.30 p.m., Kulwant Rai, the Complainant, his brother Nirmal Kumar (the deceased), Balwinder Singh, Kans Raj, Gurnam Singh and Mangi @ Anil Kumar were present in the office. At that time, Jarnail Singh @ Chaudhary, son of Joginder Singh, one of the accused persons, armed with a kirpan came in front of the office of Truck Union of the Complainant and exhorted his companions not to allow the complainant's party to escape alive. On hearing the exhortation of Jarnail Singh @ Chaudhary, 8/9 persons armed with different weapons attacked the complainant party with an intention to kill them. Jarnail Singh @ Chaudhary gave kirpan blow on the head of Nirmal Kumar. Veer Singh @ Gola gave a gandasi blow to Nirmal Kumar on his head. On receipt of these injuries, Nirmal Kumar fell down inside the office. Then, Karnail Singh, son of Thoru Ram gave a datar blow on the head of the Complainant. When Jarnail Singh son of Thoru Ram aimed a barchha blow, the complainant raised his hand to ward off the same and as a result whereof, the same fell on the upper side of his right head. As soon as Balwinder Singh tried to come outside the office, Dalbir Singh @ Kala gave a datar blow, which hit his head and he fell down outside the office. As Gurnam Singh also tried to come outside the office, Shinder Singh gave blow with an iron rod on his forehead. Bachittar Singh gave a gandasi blow on the head of the Complainant. Bakshish Singh @ Chamkila gave a dang blow on the right shoulder of complainant. Jarnail Singh @ Chaudhary gave another kirpan blow on the head of Nirmal Kumar. Nirmal Kumar became unconscious. Joginder Singh gave gandasi blows to Balwinder Singh and Gurnam Singh. Accused also gave more blows to the complainant party. Mangi @ Anil Kumar and Kans Raj raised an alarm when Bakshish Singh snatched gold chain from the neck of the complainant. Jarnail Singh had also snatched gold chain from the neck of Nirmal Kumar. Jarnail Singh and Karnail Singh removed RS. 8050/- from the cash box of the Union. On hearing raula, a number of persons from the surrounding locality gathered. On seeing them, accused persons fled away from the spot with their respective weapons. Vehicles were arranged by Mangi @ Anil Kumar, Kans Raj and Sonu. All the injured were shifted to Civil Hospital, Kapurthala. Kulwant Rai and Nirmal Kumar were referred to Hospital at Jalandhar, as their condition was serious. Occurrence was witnessed by Pappu, Mangi @ Anil Kumar, Kans Raj and Sonu. It was stated that the trucks of local

Mandi Truck Operators Union were transporting the rice for loading the same in special train, but the accused were stopping them. Earlier too, a criminal case was got registered against the accused, by the complainant and others and on account of this grudge, with an intention to kill, the accused caused injuries on the persons, in connivance with each other.

iv) On 25.02.2004 from Control Room, Kapurthala, a message was given on telephone by ASI Prem Kumar regarding admission of Kulwant Rai and Nirmal Kumar in Vasal Hospital, Jalandhar. Police party had gone to Vasal Hospital, Jalandhar but the injured were declared unfit to make a statement. An entry was made in the Roznamcha.

v) On 27.02.2004, the Police party had gone to Vasal Hospital, Jalandhar and doctor opined that Kulwant Rai was fit to make a statement but Nirmal Kumar was unfit to make his statement and Statement of Kulwant Rai was recorded. Police recorded the statement of Kulwant Rai (PW-5) and Gurnam Singh (PW-6), eye witnesses of the occurrence on the basis of which formal FIR was registered under Sections 148, 302, 302/149, 326, 326/149, 449 and 382 of the Code at P.S. Kapurthala against accused persons. Kulwant Rai, the injured, produced the clothes of self and Nimal Kumar stained with blood to the police which were sealed by the police vide separate memos duly attested by the witnesses. On 27.02.2004, police went to the scene of occurrence and lifted blood stained earth and a rough sketch of the site plan was prepared.

vi) All the eight accused, namely, Dalbir Singh @ Kala, Jarnail Singh alias Chaudhary, Jarnail Singh, Joginder Singh and Bakshish Singh, Veer Singh, Bachittar Singh and Karnail Singh were taken into police custody and in pursuance of their disclosure statement, different weapons used in the commission of offence along with cash and gold chain were recovered. By supplementary challan, Shinder Singh was also arrested. After completion of investigation, case was committed to the Court of Sessions. Charge under Sections 302, 326, 324, 449 read with Section 149 of the Code was framed against the accused persons to which they pleaded not guilty and claimed trial. After the closure of prosecution evidence, statement of the accused persons was recorded under Section 313 Cr.P.C. Accused denied all the allegations of the prosecution and pleaded to be innocent.

vii) In order to substantiate the charge, prosecution examined as many as 19 witnesses out of which PWs 5, 6 and 7 are the eye witnesses.

viii) The trial Court, after taking into consideration the evidence held that the prosecution had been able to prove the charge levelled against the accused persons and convicted them under Sections 302, 302/149, 326, 326/149, 324, 324/149, 449, 148, 382 of the Code and sentenced them to undergo imprisonment for life and shorter durations, offence wise and also to pay a fine of RS. 2000/- each, in default, to suffer RI for one month. All the substantive sentences were to run concurrently.

ix) Being aggrieved, the accused persons and the Complainant preferred appeals before the High Court and the Division Bench of the High Court, after hearing the parties dismissed the appeals insofar as accused Jarnail Singh alias Chaudhary and Veer Singh alias Gola are concerned and partly allowed appeals of accused namely, Dalbir Singh, Jarnail Singh son of Thoru Ram, Joginder Singh, Bakshish Singh alias Chamkila, Bachittar Singh Shinda and Karnail Singh by acquitting them under Section 302/149 of the Code but directed them to undergo imprisonment for the offences punishable under Sections 148, 449, 326, 324 and 382 of the Code. They were further directed to pay RS. 20,000 each as fine and the amount recovered was ordered to be paid as compensation to the widow of Nirmal Kumar the deceased.

3. We have heard learned counsel appearing for the parties at considerable length.

4. Learned counsel appearing for the appellant-accused contended that the conviction and sentence of the appellant is untenable being against the evidence on record and the Courts below have erred in not properly appreciating the evidence and arrived at a wrong finding and thus the conviction and sentence is liable to be set aside. He also contended that there is a delay in lodging the FIR, which is fatal. Further, some injuries on the person of the complainant were found to be simple in nature and presence of witnesses at the time of occurrence as well is unnatural and unbelievable.

5. On the other hand, learned counsel for the respondents argued that the delay was fully explained and that the accused persons with an intention to eliminate the complainant-party came to the office fully armed and had caused injuries with their respective weapons and contended that the judgment of the High Court does not suffer from any infirmity.

6. After hearing the contentions of learned counsel appearing for the parties and carefully considering the materials available on record and after going through the judgments of both the trial Court as well as the High Court, it appears to us that the High Court has elaborately dealt with the matter and properly appreciated the facts and the evidence placed before it. The High Court, after examining the evidence led before it and after taking into consideration the testimony of the eye-witnesses, in particular, PW Nos. 5 and 6 has rendered the decision impugned.

7. In our considered opinion, the High Court came to the right conclusions and we do not have any doubt in our mind with regard to the same.

8. In view of the above, we find no merit in the criminal appeals and same are dismissed.