
(1970) 02 SC CK 0076

In the Supreme Court Of India

Case No : Criminal Appeal No. 237 Of 1969

Kundan Singh and Others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 04-02-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 324, 354, 379

Citation : (1971) 3 SCC 900 : (1972) SCC(Cri) 148

Hon'ble Judges : J. M. Shelat, J; C. A. Vaidyalingam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.M. SHELAT, J.-Prior to July, 1967, one Koer Singh, Mohar Singh and Surjit Singh were the tenants of certain lands belonging to one Mukat Mohan Lal and Brij Mohan Lal. In July 1967, the three tenants filed a suit against their two landlords impleading Wazir Singh, his two sons. Sham Singh (the appellant) and Zora Singh, Kundan Singh (the appellant), Gurdip Singh and certain other persons as party defendants. In the suit they claimed a permanent injunction restraining the defendants from interfering with their possession. Pending the suit, the tenants obtained a temporary injunction from the court. It appears that in spite of the temporary injunction some of the defendants took over possession of the said lands. Consequently, on August 5, 1967, Koer Singh, one of the plaintiffs, took out contempt proceedings against the said Brij Mohan Lal, the said Wazir Singh, Sham Singh, Zora Singh, Kundan Singh and certain other persons complaining that the latter had taken forcible possession of the said lands in breach of the said temporary injunction. The defence of Brij Mohan Lal and the other respondents in that application was that the tenants had surrendered the said lands to the landlords under a writing, dated April 4, 1967, and that thereupon Kundan Singh (the appellant) was put in possession thereof as the special attorney of the landlords. In the diverse proceedings which the parties thereafter took out over the question of possession of the said lands, it appears that

Kundan Singh (the appellant) and Jita Singh, PW 8, the father of the deceased Tara Singh, played dominant part for the rival parties. The case of Jita Singh and the tenants in whose favour he gave evidence in those proceedings was that the said document of surrender had been obtained by misrepresentation and that possession was never abandoned or surrendered by the tenants. Allegations and counter-allegations were thereafter made by Shavinder Singh (the appellant) on the one hand and by Jita Singh on the other of the deceased Tara Singh and Shavinder Singh having had altercations with each other and each of them having fired his gun in the air to frighten the other. This was in brief the background in which the incident out of which this appeal arises took place on July 29, 1968.

2. On that day the construction of Jita Singh's house was under way. In the morning, his son, the deceased Tara Singh, had brought a cart load of sand for use in the said construction work. That having been almost exhausted Tara Singh with his relations Ruldu Singh, PW 2, Gurnam Singh, PW 3, and Kapur Singh, PW 4, set out with the cart to fetch some more sand at about 4.15 p.m. It would appear that anticipating trouble Tara Singh and Kapur Singh carried with them their guns, Exts. PO 1 and PO 3. While Tara Singh and his companions were thus on their way to bring sand, the four appellants, Kundan Singh, Shavinder Singh, Karam Singh and Sham Singh, suddenly emerged from a cluster of trees. Appellant Kundan Singh fired his gun hitting Tara Singh on his left side. As a result of that gunshot the gun from Tara Singh's hands fell down and Tara Singh ran for safety. Appellants Shavinder Singh and Karam Singh, however, pursued him. Appellant Kundan Singh picked up Tara Singh's gun and he and appellant Sham Singh also joined in the pursuit. Appellants Shavinder Singh and Karam Singh overtook Tara Singh and attacked him with the gandasas with which they were armed. In the meantime Kapur Singh, PW 4, who apprehended that he and Gurnam Singh, PW 3, would also be attacked, fired his gun injuring appellant Shavinder Singh in his face. Kapur Singh was, however, overpowered and he and Gurnam Singh, PW 3, were attacked by Karam Singh and Sham Singh. Kapur Singh's gun was taken away by appellant Shavinder Singh. In this incident Tara Singh died and Gurnam Singh and Kapur Singh, PWs 3 and 4, received a number of injuries. The post-mortem examination on the dead body of Tara Singh showed that he had received both gunshot injuries as well as incised wounds which could be caused by gandasas, both categories of the injuries on him being respectively fatal. On the side of the appellants only appellant Shavinder Singh had gunshot injuries on his face as a result of Kapur Singh (PW 4) having fired his gun, Ext. PO 3. These injuries, as deposed to by Dr Gill who examined him, were simple in nature. The appellants were rounded up by the police within a day or two and arrested. At the time of his arrest appellant Kundan Singh had with him his gun, Ext. PO 5, which the police took charge of. On the 3rd and 4th of August, 1968, appellants Kundan Singh and Shavinder Singh discovered the two guns of Tara Singh, Ext. PO 1 and of Kapur Singh, Ext. PO 3, which they had seized during the said incident.

3. The appellants admitted that there was hostility between the parties in the matter of possession over the aforesaid lands. The defence taken by appellants, Kundan Singh, Karam Singh and Sham Singh, was one of total denial of any participation by them in the said incident. Such a defence was, however, not available to appellant Shavinder Singh as he had received gunshot injuries on his face. His defence was that in the evening of July 29, 1968, he was ploughing his land with the help of two siris when the deceased Tara Singh, Gurnam Singh, PW 3, and one more person unknown to him attacked him causing him injuries on his face. Seeing him so attacked the said two siris in exercise of the right of private defence attacked Tara Singh with their gandasas and caused him injuries. No explanation was given by him in respect of the gunshot injuries found on the dead body of Tara Singh.

4. The prosecution relied in the main on the testimony of Ruldu Singh, Gurnam Singh and Kapur Singh, PWs 2, 3 and 4, as eye witnesses. The learned Sessions Judge accepted their evidence as the account of eyewitnesses, the last two having received injuries and rejected the defence version and convicted all the four appellants under Section 302, read with Section 34 and Sections 324 and 379 of the Penal Code holding that all of them had acted in concert in attacking Tara Singh and the two witnesses, Gurnam Singh and Kapur Singh, and sentenced appellants Kundan Singh and Karam Singh to death and appellants Shavinder Singh and Sham Singh to life imprisonment.

5. Two appeals, one by appellants Kundan Singh and Shavinder Singh and the other by appellants Karam Singh and Sham Singh, were filed in the High Court. These two appeals as also the usual reference made by the Sessions Judge for confirmation of the death sentence, be imposed on appellants Kundan Singh and Karam Singh, were heard together by the High Court. The High Court on a reappraisal of the evidence accepted the evidence as to motive, namely, that the appellants were highly inflamed against Jita Singh, PW 8, for the prominent role played by him against them in the matter of the dispute over the said lands. The High Court also accepted the evidence of the three eye witnesses holding that witness Ruldu Singh's first information report corroborated their testimony particularly as that document had been filed without any undue loss of time. The presence of Gurnam Singh and Kapur Singh, PWs 3 and 4, could not be controverted as each of them had received injuries. In this view of the evidence the High Court also came to the conclusion that the defence of denial by appellants Kundan Singh, Karam Singh and Sham Singh and the right of private defence claimed by appellant Shavinder Singh could not be accepted and was in fact "palpably false". The High Court, therefore, held that the appellants were rightly convicted by the Sessions Judge and upheld his order of conviction and sentences imposed upon all the appellants.

6. The appellants then obtained special leave from this Court and hence this appeal. By its order, dated November 24, 1969, this Court, however, granted a limited special leave confirming it only against the order of sentence.

7. Since the conviction of appellants Shavinder Singh and Sham Singh under Section 302, read with Section 34 is no longer under challenge and the two of them were awarded the sentence of life imprisonment only, no question of any interference with the order of sentence against them can arise. The only question, therefore, which we have to consider is in regard to the death sentence imposed on appellants Kundan Singh and Karam Singh.

8. Both the Sessions Judge and the High Court were of the view that the attack on the deceased Tara Singh and PWs 3 and 4 was preplanned and brutal. Not content with shooting at the deceased Tara Singh, the appellants pursued him and when overtaken, appellants Shavinder Singh and Karam Singh fell upon him causing several injuries on his head and neck with such deadly weapons as gandasas with which they were armed. Such an assault, first by a gunshot rendering him incapable of any defence of his person and then by gandasas after he was so incapacitated clearly showed that the intention of the appellants was none other than to kill him outright. The Sessions Judge and the High Court were, therefore, right in condemning the offence as preplanned and brutal, not demanding any leniency.

9. The strategy employed by the appellant for the attack was first to ambush themselves behind a cluster of trees and then make a surprise attack on Tara Singh and his companions. The evidence leaves no doubt that in that attack appellant Kundan Singh was the leader, as the High Court has characterised him. It was he who initiated the attack by firing at the deceased Tara Singh in consequence of which the gun held by Tara Singh fell from his hands. Having thus rendered him helpless both by the loss of the gun and the injuries caused to him, he was pounced upon by appellants Shavinder Singh and Karam Singh when he was fleeing for his life. In view of these facts and no extenuating circumstance having been pointed out to us in regard to appellant Kundan Singh, we do not find any reason which would justify us to interfere with the sentence imposed upon him by the Sessions Judge and confirmed by the High Court after a full and elaborate assessment of the evidence against him.

10. As regards appellant Karam Singh, the Sessions Judge expressed the view that both he and appellant Shavinder Singh "showed great criminal arrogance" in chasing Tara Singh and causing him fatal blows on vital parts of his body such as the neck and the head. He also observed that Shavinder Singh was no less brutal in his attack than appellant Karam Singh and that in his case i.e. appellant Shavinder Singh's case, the appropriate sentence would be the extreme sentence which be imposed upon appellant Karam Singh. The Sessions Judge, however, drew a distinction between Shavinder Singh's case and that of Karam Singh, in that, the former by having been shot at by Kapur Singh, PW 4, on his face had received punishment making him realise that his "uninhibited aggression is not free from peril", and on that ground alone imposed upon appellant Shavinder Singh the lesser sentence of life imprisonment.

11. It is clear from the judgment of the High Court that it did not agree with the

distinction drawn by the Sessions Judge between appellant Shavinder Singh and appellant Karam Singh. The High Court observed in clear terms that left to itself, it would not have considered the fact of the injuries received by Shavinder Singh to be a sufficient reason for not awarding him also the sentence of death imposed on Karam Singh. The High Court, however, felt that it would not be justified in interfering with the lesser sentence awarded to Shavinder Singh as it could not say that the discretion exercised by the Sessions Judge in passing the order of sentence against Shavinder Singh was either arbitrary or capricious. The High Court at the same time refused to reduce the sentence on Karam Singh though a submission was made before it that Karam Singh and Shavinder Singh being equally guilty, Karam Singh's sentence should be reduced to life imprisonment.

12. The same argument in regard to Karam Singh's sentence was repeated before us. There is no doubt that both Shavinder Singh and Karam Singh were equally guilty in the matter of the murder of Tara Singh and in sharing the common intention with appellants Kundan Singh and Sham Singh and in attacking him with gandasas in pursuance of that common intention. There is not and can be no distinction between their acts inasmuch as both of them used the same kind of weapon and struck the deceased on vital parts of his body, namely, the head and the neck, the injuries so caused on those parts being fatal. It is true that appellant Shavinder Singh received injuries on his face with a shot fired at him by witness Kapur Singh, but that was after Tara Singh had been killed and when Shavinder Singh shouted that witnesses Kapur Singh and Gurnam Singh also should be attacked. The injuries received by appellant Shavinder Singh were thus not as if they were received during any scuffle or fight between him and Tara Singh but after he and appellant Karam Singh had struck down Tara Singh. It is, therefore, difficult to find any logical ground for making a distinction between appellants Shavinder Singh and Karam Singh and to impose upon appellant Shavinder Singh a sentence different from that imposed on Karam Singh in the matter of causing the death of Tara Singh.

13. It is true that appellant Karam Singh, after Tara Singh was killed, also attacked Kapur Singh and Gurnam Singh, PWs 3 and 4. In that attack appellant Shavinder Singh did not participate, but that was because Shavinder Singh had by that time been shot at by Kapur Singh when Kapur Singh found that he and PW 3 also would be attacked by appellants Shavinder Singh and Karam Singh after Shavinder Singh had said that they too should be attacked. There is thus no reason to draw any distinction between the case of appellant Shavinder Singh and that of appellant Karam Singh as the High Court has rightly observed. The question then is whether the sentence imposed on appellant Karam Singh should be altered on the ground that though appellants Karam Singh and Shavinder Singh were equally guilty, the latter has been given life imprisonment and not the extreme penalty. As already stated, both of them were equally guilty in the matter of Tara Singh's murder. The fact that the Sessions Judge drew a distinction between the two on the ground that appellant Shavinder Singh had

met his retribution and on that ground gave the lesser sentence to him does not make the offence committed by appellant Karam Singh any the less brutal or the degree of his guilt any the lesser. In our view the High Court was right when it observed that both of them were equally situated in the matter of punishment. But the fact that the Sessions Judge drew such a distinction on a ground which cannot be said to be either logical or in consonance with the evidence on record can hardly be a reason for us to interfere with the sentence imposed on appellant Karam Singh, confirmed as it is by the High Court after a full reappraisal of all the facts and circumstances of the case.

14. In this view, the appeal must fail and is dismissed.