
(1997) 02 P&H CK 0115

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 110-DBA of 1993

State of Punjab

APPELLANT

Vs

Fauja Singh and others

RESPONDENT

Date of Decision : 06-02-1997

Acts Referred:

Citation : (1997) 2 RCR(Criminal) 95

Hon'ble Judges : M.L.Koul, J and Amarjeet Chaudhary, J

Advocate : D.D. Sharma, Randhir Singh, Advocates for appearing Parties

Judgement

Amarjeet Chaudhary, J.

1. Fauja Singh, Joginder Singh and Naranjan Singh were tried by the Sessions Judge, Ferozepur for having committed murder of Mukhtiar Singh on 15.5.1988 in the area of village Sawayia Rai, in furtherance of their common intention. After conclusion of trial, the Sessions Judge acquitted Naranjan Singh vide his judgment dated August 27, 1992 but convicted Fauja Singh and Joginder Singh for an offence punishable under Section 325 read with Section 34 of the Indian Penal Code for causing grievous injuries to Mukhtiar Singh and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000/ each or in default of payment of fine, to undergo further rigorous imprisonment for six months. The fine, if realised, was ordered to be paid to the heirs of the deceased as compensation.

2. Feeling aggrieved, State of Punjab has filed Criminal Appeal No. 110 DBA of 1993 against the said judgment and Fauja Singh and Joginder Singh filed Criminal Appeal No. 333SB of 1992. Since both these appeals have arisen out of same judgment, the same are being disposed of by this judgment.

3. The facts, material for the purpose of these appeals may, however, be briefly indicated :

4. Ramesh Singh PW has two brothers. On the evening of 15.8.1988, all the

three brothers had irrigated their land across the rivulet. The sun had just set when from the side of village towards the rivulet, Joginder Singh son of Shri Bainka Singh, resident of Sawayia Rai Uttar called his brother Mukhtiar Singh. Mukhtiar Singh was on visiting terms with Joginder Singh, Mukhtiar Singh replied that he would come after a short while. After about half an hour, Mukhtiar Singh went to Joginder Singh. He asked his brothers to follow him after stopping the Engine. After half an hour, Ramesh Singh and Jagtar Singh followed the path taken by Joginder Singh and Mukhtiar Singh. As soon as they crossed the rivulet, they heard Raula "Bachao Bachao Mar Ditta Mar Ditta". Ramesh Singh and Jagtar Singh ran towards the side from which Raula was coming. In the torch light, they had seen that Naranjan Singh had caught hold of Mukhtiar Singh while Fauja Singh who was armed with a Kharpal and Joginder Singh who had a Tamba were giving blows to Mukhtiar Singh on his legs. It was about 9 p.m. In the meantime, Dial Singh had also come to the spot and witnessed the occurrence. On seeing Ramesh Singh and Jagtar Singh, the respondents ran away towards their fields. While leaving Jagtar Singh at the spot in order to look after Mukhtiar Singh, Ramesh Singh went to the village and informed his parents and other covillagers and brought them to the spot. They then arranged a tractor trolley and removed Mukhtiar Singh to the hospital at Jalalabad. On the way, Mukhtiar Singh became unconscious and after examining Mukhtiar Singh, the doctor declared him dead.

5. The motive for the crime as alleged is that 3 or 4 months prior to the occurrence, the house of Fauja Singh had been raided by the officials from the Excise Staff. Fauja Singh suspected that the raid had been conducted at the instance of Mukhtiar Singh .

6. Respondents Fauja Singh and Joginder Singh in their statements recorded under section 313 Cr.P.C. took the following stand ;

"Both the eye witnesses are brothers of the deceased and are made up witnesses in order to show a blind crime to have been traced.

One Bura Singh was given injuries and for those injuries, Mukhtiar Singh deceased, Jagtar Singh P.W. and Malkiat Singh were challaned and the case is pending in the court of Illaqa Magistrate under Section 326 IPC. Some unknown persons had given injuries to Mukhtiar Singh deceased during night time and nobody had witnessed the occurrence and when he did not turn up, his relations continued searching for him, and found him lying unconscious and thereafter he was removed to C.H. Jalalabad where he was declared dead by the doctor. I have been falsely implicated in this case."

Accusedrespondent Naranjan Singh stated as under :

"Joginder Singh resides in the fields and I reside separately in the village. I had three more brothers and we have 34 killas of land. My real brother Surjit Singh had agreed to sell some land to Dilawar Singh Sarpanch but I objected to it and that agreement was cancelled and Dilawar Singh Sarpanch had a grudge against me and I have been falsely implicated in this case at the instance of Sarpanch

Dilawar Singh."

We have heard Shri Randhir Singh, Deputy A.G. Punjab and Mr. D.D. Sharma, Advocate and perused the entire record.

7. The time and place of occurrence is not in dispute. The Sessions Judge Ferozepur has accepted the prosecution case. We have gone through the statements of both the eye witnesses. Their statements are quite impeccable. They were subjected to lengthy cross-examination but nothing material could be elicited which can shake the entire prosecution case. Although there are some contradictions and inconsistencies in the statements of the eye witnesses but we are not to forget that distortions and embellishments are invariably to be found even in the testimony of most truthful witnesses. We are not oblivious of the fact that the faculties of perception, retention and reproduction vary from individual to individual. We are, therefore, of the firm view that Ramesh Singh P.W. 3 and Jagtar Singh P.W. 4 were present at the spot at the time of occurrence and had witnessed the entire occurrence. There is no plausible ground to discard their sworn testimony.

8. The Sessions Judge Ferozepur while acquitting Naranjan Singh has observed as under :

"It has next been submitted that Naranjan Singh accused is not attributed any injury but is simply alleged to have caught hold of the deceased when the injuries were inflicted and the facts narrated above do not suggest his involvement in the offence inasmuch as if he had caught hold of the deceased, it was not possible to have inflicted the injuries on the person in deceased of the manner suggested by the prosecution. I find force in this. If the deceased had been caught hold of by Naranjan Singh, it is not possible to cause him the injuries as narrated above, I therefore, acquit him of the charge."

9. It passes our comprehension, how the Sessions Judge had arrived at such a palpably wrong conclusion. It is not essential that every culprit should cause injuries as to make himself liable for any act. The trial Court was required to see whether Naranjan Singh did any act in furtherance of common intention with his co-accused. It has come in the evidence that Naranjan Singh caught hold of deceased facilitating his co-accused to cause injuries to the deceased with their respective weapons. Naranjan Singh had actively participated in the occurrence. We are not oblivious of the fact that even the persons who had simply raised Lalkaras have been convicted and sentenced with the aid of Section 34 or Section 149 of the Indian Penal Code, whatever the case may be. The trial Court had erred in holding that as Naranjan Singh respondent did not cause any injury, he is not involved in the commission of the offence. The wording of Section 34 envisages that when a criminal act is done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. It is amply clear that actual causing of hurt is not necessary. If some fact is done by the accused person in furtherance

of common intention of his coaccused, he is equally liable like his coaccused. By catching hold of Mukhtiar Singh, Naranjan Singh had assisted his coaccused to cause injuries to Mukhtiar Singh which proved fatal. In such circumstances, we hold that Naranjan Singh had actively participated in the commission of the crime and he is vicariously liable for that Act. Accordingly, we set aside the acquittal of Naranjan Singh by upsetting the finding of the trial Court to the contrary.

10. Describing the injuries found on the person of deceased Mukhtiar Singh at 3.25 p.m. on 16.8.1988 while conducting postmortem examination of his dead body, Dr. Vikas Priya P.W. 2, states :

"This was a dead body of moderately built and nourished male, with mouth and eyes closed. Postmortem staining was present at the back. Rigor mortis was present in all the limbs. Dead body was wearing red underwear. Following injuries were found on the dead body :

1. A lacerated wound 7 cms. x 3 cm. bone deep on the front and upper half of left leg with a lacerated wound 1 cm x 1 cm just above it. On dissection, the bone was healthy.
2. Lacerated wound 1 cm x 1/2 cm. on the front of right leg just below knee. Leg was deformed. There was fracture of both bones.
3. Reddish contusion 6 cms x 4 cms. on the outer side of left thigh. The underlying bone was healthy.
4. There was swelling of dorsum of left hand with lacerated wound 1 cm x 1/2 cm. overlying. On dissection, there was fracture of left third metacarpal.
5. Superficial lacerated wound 2 cms. x 1 cm. on the lateral side of left elbow.
6. Upper lip was swollen and mucosa was lacerated.
7. Reddish abrasion 1/2 cm x 1 cm on the left hypochondrium. On dissection of the abdomen, peritoneal cavity was full of blood. A laceration measuring 2.5 x 1 x 1 cm was found on the spleen.

In my opinion, the cause of death is shock, hemorrhage, and injury to vital organs as a result of injury No. 7 which is sufficient to have caused death in ordinary course of nature. All injuries are ante mortem."

11. In this case, the death of Mukhtiar Singh had occurred due to injury to vital organ i.e. spleen which was sufficient to cause death in the ordinary course of nature. Our attention has been drawn to the following passage found in Taylor's Principles and Practice of Medical Jurisprudence, Volume I (1965 Edition) at page 253 reading :

"Ruptures of the spleen most commonly occur from violence, and it is clear from the following that only a slight degree of violence may be sufficient to rupture this organ and there may be no marks of injury externally."

12. Injury No. 7 to the spleen was caused by Fauja Singh and Joginder Singh accused in furtherance of their common intention with Naranjan Singh accused. The medical evidence reveals that the life of Mukhtiar Singh deceased had been put to an end on account of injury to the spleen. The trial Court had erred in convicting and sentencing Fauja Singh and Joginder Singh under Section 325 read with Section 34 of the Indian Penal Code.

13. Now coming to the offence made out against the accused, it is to be noticed that although Fauja Singh and Joginder Singh had caused seven injuries on the person of Mukhtiar Singh deceased yet six of them are on nonvital parts of body of Mukhtiar Singh. Injury No. 7 which was on the spleen proved fatal. As noticed above, only a slight degree of violence may be sufficient to rupture this organ and there may be no marks of injury externally. The dimensions of the injuries also show that the weapons of offence were not used with force. It is also pertinent to note that the weapons of offence i.e. Kharpal (a sawed piece of long wood) and Tamba are also not dangerous weapons. The only plausible inference to be drawn is that Fauja Singh and Joginder Singh had caused injuries to Mukhtiar Singh, deceased in furtherance of their common intention with Naranjan Singh with the knowledge that their act was likely to cause death, but without any intention to cause death or to cause such bodily injury as was likely to cause death. Had the intention of the accused been to cause death of Mukhtiar Singh, they would have caused injuries to him on the vital parts of his body. Accordingly, we hold that Fauja Singh, Joginder Singh and Naranjan Singh accused have committed an offence punishable under Section 304 read with Section 34 of the Indian Penal Code. They are accordingly held guilty, convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 2000/, under Section 304 read with Section 34 of the Indian Penal Code. In default of payment of fine, each one of them will further undergo rigorous imprisonment for one year.

14. We cannot restrain ourselves from observing that quite often it has been found that the investigation in very important cases like murders is being entrusted to junior police officials, who generally have been promoted from the ranks of Constables and are not familiar with thorough investigation due to lack of experience and intelligence and they do not know much about the law and procedure as a result of which they are unaware as to how the investigation is to be conducted in such criminal matters with the result cases are weakned which lead to acquittal. As such, investigation is conducted in a callous and irresponsible manner.

15. The Director General of Police, Punjab, Haryana and Inspector General of Police Union Territory, Chandigarh shall ensure that investigation is conducted by the officers not below the rank of Inspectors. It is generally seen that the Investigating officers do not record the statements forming basis of the First Information Reports at the Police Stations but they record such statements at the police of occurrence by twisting facts after inspecting the spot which weakens the

case of the prosecution. They also introduce some improbabilities and distortions on material aspects of the case leading to the acquittal of accused persons.

16. We also convey our displeasure to the Prosecuting Agency regarding the manner in which trials are conducted. We have observed from the records of various criminal appeals that important witnesses like complainants/eye witnesses are given up without assigning any reasons whatsoever. In one case, even the complainant, who had lodged the First Information Report was not produced as a prosecution witness. Due to lack of experience of Prosecuting Agency in not producing material evidence, the accused persons go scot free. This must be causing bitterness/anguish to the persons whose relation is killed. We understand that there are Directors of Prosecution in Punjab, Haryana and Union Territory Chandigarh who are to supervise the working of the Prosecuting Agency.

17. In view of the above, it is directed that the Director, General of Police, Punjab and Haryana and the Inspector General of Police, Union Territory Chandigarh shall ensure that the investigation is conducted in a proper manner so that real culprits do not escape from the clutches of law. We also direct the Directors of Prosecution in the States of Punjab, Haryana and the Union Territory Chandigarh to supervise the working of the Prosecuting Agency and to take stern action against the defaulting officials. Copies of this judgment be sent to the quarters concerned.

18. In the light of the above discussion, Criminal Appeal No. 110DBA is allowed to the extent indicated above and the Criminal Appeal No. 333SB of 1992 is dismissed. The bail bonds and surety bonds of Fauja Singh, Joginder Singh and Naranjan Singh are cancelled. They be taken into custody to serve the remaining sentence of imprisonment awarded to them.