
(1988) 09 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 175-DB of 1987

Vakil Chand and ors.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-09-1988

Acts Referred:

Citation : (1988) 2 RCR(Criminal) 629

Hon'ble Judges : Sukhdev Singh Kang, J and A.L.Bahri, J

Advocate : R.S. Kundu, K. S. Ahluwalia, Data Singh, Advocates for appearing Parties

Judgement

A.L. Bahri, J.—vakil Chand and eight others, the appellants, have challenged their conviction and sentence recorded by Additional Sessions Judge, Sirsa on March 0, 1987 in this appeal. They were sentenced to rigorous imprisonment for life and to pay a fine of R. 500/ each, in default to undergo rigorous imprisonment for three months under section 302 read with section 149, Indian Penal Code. Each of the nine appellants were further sentenced to rigorous imprisonment for one year under section 148 Indian Penal Code; rigorous imprisonment for two years and to pay a fine of R. 300/each, in default to undergo rigorous imprisonment for three months under section 457, Indian Penal Code; rigorous imprisonment for three years and to pay a fine of Rs. 300/ each, in default to undergo rigorous imprisonment for two months under section 436 read with section 149. Indian Penal Code; rigorous imprisonment for two years and to pay a fine of Rs. 200/ each, in default to undergo rigorous imprisonment for one month under section 325 read with section 149, Indian Penal Code and to undergo rigorous imprisonment for one year and six months each under sections 324 and 323 read with section 149, Indian Penal Code. Apart from the nine appellants, five other accused were also tried with them namely Mithu, Gulab, Vijay, Darshan and Lachhman who were acquitted by the Additional Sessions Judge. Yet there were two other persons against whom allegations were made in the first information report namely Sewa and Jagta. However, the police did not challan them.

2. The occurrence took place on the night of July 26/27, 1985 at about 10 P.M. in the house of Chanan Singh deceased. The accused party entered the house and attacked Chanan Singh and others. Out of them, Chanan Singh died on account of the injuries and the other injured were Ram Sarup, Ram Piari and Sohan. The accused also set on fire the house of Chanan Singh. The family members of Chanan Singh were locked in the room. On the side of the accused, some persons had injuries namely Gulab, Mithu, Vijay and Darshan. The report was lodged by Shanti Devi, widow of Chanan Singh deceased, on July 27, 1985 at about 6.30 A.M. at Police Station Rania, which is at a distance of about 16 kms. from village Kuttabadh where the occurrence took place,

3. In the first information report, Shanti Devi narrated the occurrence which is briefly as under :

4. Chanan Singh, his brother Ram Sarup and his wife Krishna, his mother Smt. Paro were residing in one house in the village. A day before the occurrence, they had returned to their house after working in the fields. On account of heavy rainfall, the water had accumulated in the street which started coming into their house. Chanan Singh went near the house of Satnam Singh at about 8 A.M. for preventing the water to enter his house. A quarrel took place with Satnam Singh and Rangu Ram. In the said quarrel, Teti son of Rupa gave a gandasi blow hitting Chanan Singh on his head. When Shanti Devi, her son Kuldeep, Sohan, Paro, Ram Sarup and Krishna were present in the house, noticing that the altercation was turning to a serious point brought Chanan Singh to the house. They bolted the door of their house. At about 10 P.M. Rangu Ram, Mohinder, Gulab, Toti, Roopa Pali, Satnam, Vakil Chand, Bhuru, Sema, armed with gandase and kirpian and Jagtar armed with a licensed Sun, having connived themselves came to the roof of the house of Chanan Singh. They started breaking the door. Their intention was to kill Chanan Singh. On the request made by Shanti Devi, she, her sons, motherinlaw and Krishna were allowed to go out of that room and they hid themselves in another kotha (room). From there, they saw the entire occurrence from the door of that room which was lying open. Electric bulb was burning in the street. In the other room remained Chanan Singh and Ram Sarup. The aforesaid assailants broke open the frame of the door and turned Chanan Singh and Ram Sarup out of the room. In the courtyard, injuries were inflicted. Rupa gave a gandasi blow on the Chanan Singh. Raghu Ram gave a kirpan blow hitting Chanan Singh on the other leg. All the accused started causing injuries with their respective weapons gandase and kirpan to Chanan Singh whereas Jagtar Singh and Sewa Singh kept on standing at the spot with their respective weapons pistol and gun, calling upon others to kill anybody coming in the way and that they would see to it. Chanan Singh died on the spot on account of the injuries. Later on, Gulab gave a gandasi blow hitting Ram Sarup on his leg. Vakil Chand, Bharu and Sema also inflicted injuries on him. Mohinder and Gulab gave gandasi blows from the reverse side to Paro hitting on her eye when she tried to separate them. Sohan Singh also sustained injuries caused with gandase on his head. When Shanti and others saw this occurrence, they continued raising hue and cry. The

assailants confined all of them in the room and bolted the door from outside so that they may not report to the police. After breaking the roof of the room the assailants set fire to the kotha after sprinkling kerosene oil. The dead body of Chanan Singh remained on the spot whereas injured were sent to hospital at Rania and Shanti Devi lodged the report at the police station. The motive was also given in the report that 20 or 25 days earlier, her husband Chanan Singh got recovered liquor from Rangu Ram accused from the fields. On that account as well as on account of preventing of water flow from the land the assailants in connivance with each other killed Chanan Singh and caused injuries to others. It was about 5 A.M. that Chowkidar Kheda Singh opened the door from outside that Shanti Devi and her son Kuldip went to the police station to lodge the report. The police investigated the case and submitted report against fourteen of the accused. The report was not submitted against Sewa and Jagta who were alleged to be armed with pistol and gun respectively.

5. Three witnesses were produced to support the prosecution case P.W. 5 Shanti Devi. P.W. 9 Ram Sarup and P.W. 10 Sohan. Dr. U. D. Sharma P.W. I medically examined Ram Sarup and found six injuries on his person, out of them two were incised wounds and others were contusions. Exhibit PA is the copy of the report. Ram Sarup was examined at 713 A.M on July 27, 1985. Ram Piari was examined at 740 A.M. and three injuries were found. There were two contusions and one abrasion. Exhibit PR is the copy of the report. Sohan was medically examined at 810 A.M. and three injuries were found on his person one contusion and two abrasions. Exhibit PC is the copy of the report. P.W. 2 Dr. S.B. Garg conducted postmortem on the dead body of Chanan Singh at 3 P.M. on July 27, 1985 and found twelve injuries as under

"1.Right foot was cut through and through from its middle, separated part lying with the body and coincides with rest foot. Clotted blood was present. All intervening structures, muscles, vessels and bones were cut.

2. Separated foot was also having incised wound 3" x 1/2" x bone deep lateral side of terminal 1/4the part of right foot on frontal aspect. Clotted blood was present. On dissection underlying bone was cut.

3. Incise wound 3/4" x 1/4"" x 1/8" on front of middle of right leg. Clotted blood was present. On dissection underlying bones were normal.

4. Incised wound 3/4" x 1/4" x 1/8" on front of lower 1/3rd of right leg. Clotted blood was present. On dissection the underlying bones were found normal.

5. Incised wound 5" x 2" x bone deep on frontmedial aspect of lower 1/3rd of left leg, placed obliquely. Clotted blood was present. Underlying both bones were fractured.

6. Incised wound 3/4" x 1/4" x 1/4" on lateral side of right knee. Clotted blood was present. On dissection no fracture was seen.

7. Incised wound 1" x 3/4" x 1/8" on back of right elbow. Clotted blood was

present. On dissection no fracture was seen.

8. Incised wound 1" x 3/4" x bone deep on posterior aspect of lower 1/3rd of right upper arm. Clotted blood present. On dissection lower end of humerus was found fractured.

9. Incised wound 3/4" x 1/2" x 1/8" on medial border of one third of left forearm. Clotted blood was present. On dissection no fracture was seen.

10. Abrasion 1" x 1/2" on top of left shoulder. Reddish crust was present. On dissection no fracture was seen.

11. Incised wound 2" x 1/2" x bone deep on left side frontal aspect, placed anteroposterly starting from frontal hair line to backward.

Clotted blood was present. On dissection underlying bone was cut No injury to brain was seen.

12. Incised wound 7"x11" " x bone deep, present on top of skull, placed obliquely, starting from left side forehead going backward covering left side frontal aspect, right side frontal aspect and right parietal region. Clotted and fluid blood was present. All underlying bones were found fractured. Membranes of brain and brain matter was lacerated and coming out of wound."

According to the opinion of the doctor, the death was due to shock and haemorrhage as a result of multiple injuries described above which were sufficient to cause death in the ordinary course of nature. Exhibit PF/1 is the copy of the postmortem report. P.W. 4 Dr. R. K. Bishnoi conducted X-ray on Ram Sarup in which fracture of medial malleolus, right tibia and fibular shaft lower 1/3rd portion at two sites was found. Exhibit PG is the report. The doctor also X-rayed Ram Piari, However, no fracture was noticed. The prosecution also produced other witnesses with respect to recoveries of the weapons at the instance of the appellants and the other accused and certain articles from the spot. The appellants denied the prosecution allegations and produced some witnesses in defence. D.W. 1 Sukhwinder Singh, D.W. 2 B. D. Sharma, D.W. 4 Phula Ram and D.W. 5 Krishan Lal Kukreja from the Electricity Department were produced to show that there was no electricity in the village at the relevant time. D.W. 3 Dr. P. R. Kayath medically examined Gulab Ram, Mithu Ram, Vijay Ram and Darshan accused and deposed about the different injuries found on them on July 27, 1985.

6. The present appellants are Sema aged 50 years, Bhuru aged 17 1/2 years, Vakil Chand aged 19 years, Satnam aged 40 years, Rupa aged 70 years, Toti aged 17 1/2 years, Pali Ram aged 18 years, Rangu Ram aged 23 years and Mahinder aged 20 years. They attacked while armed with gandase, kassi and kirpan. It is not necessary to describe their weapons individually although in the first information report some of the appellants were stated to be armed with gandase. However, they inflicted injuries with kassis.

7. Before examining the arguments addressed by learned counsel for the appellants, it may be noticed that the Additional Sessions Judge acquitted Gulab Singh to whom fatal blow was attributed to have been caused to Chanan Singh in the abdomen which is injury No. 12. They were acquitted inter alia on the ground that their names did not find mention in the first information report and they were introduced at the stage of the trial. The State has not come up in appeal against the acquittal of Gulab and others.

8. The occurrence took place in the house of Chanan Singh deceased where presence of the three eyewitnesses, who have been produced, was most natural. The evidence of the eyewitnesses as far as appellants are concerned is consistent and is supported by medical evidence. There is no reason coming forward on the record to throw away the prosecution case qua the appellants. The mere ground that some of the accused were given benefit of doubt and acquitted by the Additional Sessions Judge is no ground per se to acquit the appellants.

9. The contention of S. Dara Singh, Senior Advocate appearing on behalf of the appellants is that since Gulab has been acquitted of the charge framed under section 302, Indian Penal Code, for committing the murder of Chanan Singh and that injury No. 12, as described above, was attributed to Gulab and further there being no evidence that any other accused caused the fatal injury or that other injuries found on the deceased were individually sufficient to cause death, the appellants cannot be convicted under section 102 read with section 149, Indian Penal Code. There is force in this contention. P.W. 2 Dr. S.B. Garg, who conducted postmortem on the dead body of Chanan Singh, stated that in this case injury No. 12 alone was fatal injury. The doctor did not give opinion regarding other injuries as to whether any one of them individually was sufficient to cause death of Chanan Singh in ordinary course. Keeping in view the nature of injury No. 12 and the damage caused. there is no reason to discard the opinion of the doctor that it was injury No. 12 alone which proved fatal. Since this injury, as per evidence of the three eyewitnesses produced, was attributed to Gulab who was given benefit of doubt by the Additional Sessions Judge and was acquitted, the other accused appellants, who caused other injuries on the person of Chanan Singh, thus cannot be vicariously held responsible with the aid of section 149, Indian Penal Code, for offence under section 302, Indian Penal Code. This matter was considered by the Supreme Court as far back as 1968 in Baul and another v. The State of U.P., A.I.R. 1968 Supreme Court 729. There were two accused who were convicted by the Sessions Judge under section 302 read with section 34, Indian Penal Code. The High Court acquitted one of them. It was held that the other accused could not be convicted under section 302 simpliciter in the absence of proof of exact nature of injuries caused by each accused. It was observed by the Supreme Court that it could not be postulated in such circumstances that the other accused alone caused all the injuries. The accused was thus convicted by the Supreme Court under section 325 instead of section 302, Indian Penal Code. The matter was also considered by a Division Bench of this Court, in Bakhtawar Singh v. the State of Punjab, 1980 Chandigarh Criminal

Cases (P&H) 144. Two of the coaccused were acquitted by the trial Court and the prosecution failed to prove as to which of them gave the fatal injury to the deceased. All the injuries were not attributed to the appellants. The injuries which were attributed to the accused who were acquitted could not be attributed to the appellants. After holding as above, conviction was converted to one under section 325, Indian Penal Code. Again the matter was considered by a Division Bench of this Court in Maghar Singh and another v. The State of Punjab, Criminal Appeal No. 162DB of 1986 decided on April 27, 1997, and it was observed as under

"The question for determination is as to what offence the appellants had committed. According to the prosecution, Malkiat Singh appellant and Jaswant Singh gave kirpan blow from the sharp side on the head of Himmat Singh deceased and Maghar Singh caused one injury to the deceased on his shoulder with a. sheathed kirpan.

One of the head injuries sustained by the deceased proved to be fatal but it cannot be ascertained who was the author of the fatal injury. Jaswant Singh who was originally arrayed as an accused person had been acquitted by the trial Court. In this situation, Malkiat Singh appellant can only be convicted under section 326, Indian Penal Code and Maghar Singh appellant under section 326 read with section 34, Indian Penal Code and we order accordingly."

10. in view of the ratio of the decisions referred to above and taking into consideration the evidence as discussed above, the appellants cannot be convicted under section 302, Indian Penal Code. They are, therefore, convicted under section 326, Indian Penal Code.

11. For the reasons recorded above, this appeal is partly allowed. The conviction of the appellants under section 302/149, Indian Penal Code, is set aside. They are convicted under section 326 read with section 149. Indian Penal Code, and sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 500/ each, in default of payment of fine to undergo rigorous imprisonment for three months. The conviction and sentence of the appellants on other counts, as ordered by the Additional Sessions Judge, are. maintained. All the substantive sentences awarded would run concurrently.