

PETITIONER:
BHUPINDER SINGH & ANR.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 04/12/1996

BENCH:
M.K. MUKERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

Bhupinder Singh and Roshan Lal, the two appellants before us, and four others were tried by the Additional Sessions Judge, Yamuna Nagar for offences punishable under Sections 148, 302/149, 332/189 and 506/149 [PC. The trial ended in convictions of the appellant Roshan Lal under Sections 302 and 332/34 IPC, the appellant Bhupinder Singh and two others under Sections 302/34 and 332/34 IPC and acquittal of the four convictions of the two appellants but acquitted the others. Hence this appeal at the instance of the two appellants after obtaining special leave.

2. Shorn of details the prosecution case is as under :

(a) On March 12, 1990, Ghansham Dasa (P.W.7), a resident of Ambala Cantonment, had come to Yamuna Nagar to meet his in-laws. In that afternoon he, along with his two sisters-in-law and wife of his brother-in-law has gone to see a movie was being screened the six accused, who were occupying seats in the row behind them, started misbehaving with ladies accompanying P.W.7. Being exasperated P.W.7 approached Som Nath (P.W.6), manager of the Cinema Accompanied by Head Constable (HC) Ram Het (P.W.G.), who was then on duty at that place, P.W.6 went inside the hall and advised the accused to behave properly. The respondent to such advice for the time being but after the interval again started cutting jokes with those ladies. On getting that information P.W.G. summoned Head Constable Balbir Singh (the deceased), who was then on duty at the nearby Fountain Chowk, and both of them went inside the hall and brought all the six accused out the two Head Constables then took them to task for their misbehavior. Enraged thereby some of the accrued persons started hurling abuses towards them while others including the two appellants tried to run away. The Head Constables and the Manager of the Cinema Hall then chased them. While being so chased the appellant Bhupinder Singh jumped into a tanker lorry (bearing registration No. P(G 4869) which was parked outside the main gate of the Cinema hall and brought out a wooden balli (Ext. P1/A) from its tool box, Roshan Lal, the other appellant, then snatched that balli from Bhupinder Singh and inflicted a blow with the same on the

head of H.C. Balbir Singh, while some of the other accused persons including Bhupinder Singh, started assaulting H.C. Balbir Singh with kicks and blows. However, P.W.6 along with P.W.8 and Mahesh Kumar, booking clerk of the Cinema, succeeded in apprehending both the appellants while the other accused persons managed to flee away. At the time of their apprehension the two in the meanwhile a minor injuries in the scuffle. In the meanwhile a police flying jeep arrived there in which H.C. Dalbir Singh, who was seriously injured, was shifted to Civil Hospital, Yamuna Nagar.

b) On receipt of a radio message at or about 6.45 P.M., inspector Raghbir Sahal (P.W.11), who was then on patrol duty, reached the scene of occurrence where the two appellants were produced before him P.W. 11 recorded the statement of P.W.6 and forwarded the same to the police station for registration of a case. He then took up investigation and formally arrested the two appellants and seized the balli (Ext. P1/A), which was found lying there, and the torn shirt of H.C. Ram was found lying there, and the torn shirt of H.C. Ram Het. He also seized some blood stained earth from the spot. While at the place of occurrence Raghbir Singh got information about the death of H.C. Dalbir Singh and accordingly he went to the Civil Hospital and after holding inquest upon the dead body of H.C. Balbir Singh, sent it for post mortem examination.

(c) A term of decision including Dr. Akhilesh Narain (P.W.1) held autopsy upon the dead body of H.C. Balbir Singh and found the following :

"A stitched wound 1.1/2" long was present on left side of skull on temporal region one inch below the parietal prominence. The wound was having two stitches. There was a defused swelling, all around the wound in area of 2.1/2". On exploration, the wound was lacerated and was bone deep. On further exploration,

The doctors opined that the injuries were enter mortem and sufficient to cause death in the ordinary course of nature. P.W.11 also got the two appellants medically examined for the injuries found on their persons. On completion of investigation he submitted charge sheet against the accused persons.

3. The appellants pleaded not guilty to the charges levelled against them; and in his statement recorded under Section 313 Dr. P.C. appellant Roshan Lal stated as under :

" and Bhupinder Singh were seeing the movie and in the meantime light went off and there was some confusion. The other persons who were seeing the movie began to in and out of the hall. Balbir Singh raised hue and cry, the public objected to it at which Ram Het and Balbir Singh began to beat the public. Somebody out of the public hit Balbir Singh. We were later on implicated falsely in this case. As we were having injuries on our person, to save their skin, the police has concocted this story. Ram Het and Balbir Singh H.C. were also seeing the movie. This is a false case and the witnesses are

deposing falsely. I am innocent."

4. To sustain the charges levelled against the appellants the prosecution examined 11 witnesses of whom H.C. Ram Het (P.W.8) detailed the entire prosecution story. The trial Court found P.W.8 trustworthy and as, according to it, his evidence stood corroborated by the evidence of Som Nath (P.W.6) and Ghansham Dass (P.W.7), the medical evidence and the recovery of the balli at the place of occurrence, accepted the case of the prosecution in preference to that of the defence. The High Court concurred with all the finding of the trial Court so far as they pointed to the guilt of the appellants.

5. We have perused the judgments of the learned Courts below keeping in view that evidence on record and our such exercise persuades us to unhesitatingly hold that the concurrent findings of the learned Courts below are unexceptionable, being based on proper appreciation of evidence and cogent and convincing reasons.

6. It was however contended by Mr. Sharma, the learned counsel for appellants, that having regard to the admitted fact that both the appellants had injuries at the time of their arrest, it was the bounden duty of the prosecution to explain how they sustained those injuries and consequent upon their failure to do so the learned Courts below ought not to have accepted the prosecution's version of the incident. It appear that this contention was raised on behalf of the appellants before the High Court also and it rejected the same with the following observations :

"This is not a case where it can be said that the injuries on the person of the accused have remained unexplained. From the very inception, the prosecution case was that it was during the scuffle at the time of occurrence that accused Roshan Lal and Bhupinder Singh had received single injuries. There is nothing un-natural in this part of the prosecution case. It has come in the evidence that the accused and their companions had tried to run away from the spot and in that process, accused Roshan Lal and Bhupinder Singh were secured whereas their other companions managed to escape. Both these accused can very well receive the minor injuries while attempting to release themselves with a view to run away. Both of them were infect medically examined by the police in which regard copies of their MLRS have been proved as PT/1 and PW/1 respectively. The perusal of those medico-legal reports would reveal that the injuries suffered by them are all minor in nature and these can be received by them in the manner as suggested by the prosecution."

Since we are in complete agreement with the above observations of the High Court the contention of Mr. Sharma in this regard must be rejected.

7. It was next contended by him that even if it was assumed that the entire prosecution case was true still

Bhupinder Singh could not be held guilty for injury caused by Roshan Lal on the head of Balbir Singh injury caused by Roshan Lal on the head of Balbir Singh with a balli with aid of Section 34 IPC for the only allegation against him in this regard was that he took out the balli from the tool box of a tanker. We do not find any substance in this contention also. When the totality of the circumstances culminating in the death of Balbir Singh is taken into account there cannot be any escape from the conclusion that Bhupinder Singh shared a common intention with Roshan Lal for causing the death of Balbir Singh. The evidence on record unmistakably proves that while discharging his duties at the Cinema hall 11.C Ram Het (P.W.8) had asked the accused persons not to misbehave with the ladies who were enjoying the movie. In spite of repeated requests made by the manager of the Cinema Hall and the head Constables the accused persons did not desist from behaving in an objectional manner. Then again in discharge of his duties when he along with H.C. Dalbir Singh, whose services he requisitioned, tried to apprehend the appellants, Bhupinder Singh jumped into the lorry tanker and brought out the wooden balli obviously to assault the Head Constables. Therefore simply because he did assault the deceased with the balli but Roshan Lal did after snatching it from him it cannot be said that Bhupinder Singh was not a party thereto.

8. It was lastly contended by Mr. Sharma that in any view of the matter the offence allegedly committed by the two appellants could not be said to be one under Section 302 IPC. We are not impressed by this argument also having regard to the circumstances preceding the assault, the weapon used, the situs of the injury and the force with which the blow was inflicted, which is evident from the nature and extent of the injuries described earlier.

9. For the foregoing conclusions the appeal fails and the same is hereby dismissed the appellant Bhupinder Singh, who is on balli, will now surrender to his bail bonds to serve out his sentence.