

CASE NO.:
Appeal (crl.) 559 of 2002

PETITIONER:
Major Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 27/11/2002

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

The appellant was charged along with his mother Balwant Kaur who was A-2 before the Sessions Court for an offence punishable under Section 302 read with Section 34 IPC while his father Jeet Singh A-1 and Thana Singh A-4 (who is the uncle of the appellant) were charged for an offence under Section 302 IPC simpliciter for having caused the murder on 7.11.1995 of Sukho and Gurtar Kaur, wives of the appellant. The prosecution case briefly is that the deceased Gurtar Kaur was married to Baldev Singh, brother of the appellant, while the other deceased Sukho was married to the appellant. They were daughters of Pritam Singh PW-2. It is stated that after the death of Baldev Singh, his wife Gurtar Kaur also lived with the appellant as his wife. None of them had any children. The prosecution further states that Jeet Singh A-1 and Balwant Kaur A-2 along with the appellant were constantly harassing the deceased for not bringing sufficient dowry. The further case of the prosecution is that on the day before the incident in question, PW-2 Pritam Singh along with his son Phulel Singh had visited the house of A-1 to bring about a settlement in regard to the dispute of non-payment of dowry. It is also stated that both PW-2 and his son Phulel Singh stayed overnight in the house of Jeet Singh and in the following morning on 7.11.1995 at about 9 or 10 a.m. A-1 and A-2 picked up a fight with the deceased ladies in regard to the complaint made by them to their father as to non-payment of dowry. During the course of the quarrel, it is stated that A-1 picked up a Kassi and Thana Singh A-4 picked up a Kulhari and assaulted the deceased. At that time, the appellant caught hold of Gurtar Kaur by her hand while A-1 Balwant Kaur caught hold of Sukho's hand so as to facilitate the other two appellants namely A-1 and A-4 to assault the deceased. The injury caused to the deceased was so grievous that both of them died on the spot. The further case of the prosecution is that the accused persons including the appellant ran away from the place of the incident while PW-2 Pritam Singh went to the Police Station along with one Jagdip Singh DW-4 and lodged a complaint at about 11 a.m. at the Rode P.S. which is about 8 kms. from the place of the incident. After the investigation the abovementioned 4 accused persons were charge-sheeted as stated above.

Learned Sessions Judge, Faridkot, who tried Sessions Case No.12/96 came to the conclusion that the prosecution has proved the charges against the accused persons and sentenced A-1 and A-4 to undergo imprisonment for life for offences committed by them under Section 302 and directed a payment

of fine of Rs.1,000/- each, and in default of payment of fine to undergo further RI for 3 months each. He further sentenced A-2 Balwant Kaur and the appellant under Section 302 read with Section 34 IPC and directed them to undergo imprisonment for life and to pay a fine of Rs.500/- each in default to undergo further RI for one and a half months each, for their respective roles in the murder of the deceased.

The appeals filed by A-1, A-4 and the appellant came to be dismissed by the High Court while giving the benefit of doubt to A-2 Balwant Kaur, it allowed her appeal and set aside her conviction.

In this appeal only appellant (A-3) is before us.

The two points urged in this appeal by Mr. K B Sinha, learned senior counsel appearing for the appellant, are : (i) assuming that the prosecution case is true that the appellant held the hand of one of the deceased when she was attacked, the appellant cannot be attributed with the common intention of the attacker since the attack in question arose without premeditation and in a sudden fight. (ii) the appellant is a polio patient with 60% disability on his legs, therefore, it was not possible for him to have physically held the deceased persons while she was attacked and the further case of the prosecution that after the attack the appellant ran away from the place of the incident also cannot be believed because as per the material on record, the appellant was hardly able to walk with difficulty.

Prosecution case as to the attack on the deceased rests mainly on the evidence of PW-2 since only other eye-witness Phulel Singh who has not been examined by the prosecution because of the fact that he had become mentally deranged after the murder of his two sisters hence was not available to be examined in this case. PW-2 in his evidence has clearly stated that there was ill-treatment of his daughters by the family of A-1 Jeet Singh in regard to not bringing sufficient dowry. PW-2 in his evidence stated that on the date of the incident at about 9 or 10 a.m. when they were sitting in the courtyard of the first accused, all the accused persons were present and when he questioned the accused persons why his daughters were being ill-treated, the accused persons got enraged and started abusing his daughters and within a few minutes A-4 picked up a Kulhari, A-1 picked up a Kassi and A-2 Balwant Kaur caught hold of deceased Sukho by her arms and the appellant caught hold of deceased Gurtar Kaur also by her arms. While they were so holding the victims, A-1 and A-4 gave blows with the said weapons on the respective deceased persons. It is PW-2's case that after the attack, they ran away from the place of the incident before the Sarpanch of the village could come there. Thus from the evidence of this witness, whose presence cannot be disputed at the place of the incident, it is clear that the appellant held the hand of Gurtar Kaur when she was assaulted. Learned counsel for the appellant however submitted that there is no material to show that the appellant had shared the common intention of the assailants because there was no way the appellant could have known that A-1 and A-4 would attack the deceased with an intention to kill them. He submitted that the assailants had not come armed but picked up the weapons which are normally found in the house of an agriculturist and using the same they assaulted the victims, therefore, assuming that the prosecution case that the appellant held the hand of the victim is true even then it cannot be said that the appellant shared the common intention of the assailants. We are unable to accept the explanation of the learned counsel. It is to be seen

from the prosecution evidence that when the assailants picked up the weapons and came to assault the victims the appellant held the hand of one of the victims so as to help the assailants assault the victims. There is no material on record to show that he either released the hand of the deceased or tried to dissuade the assailants from attacking. In such a situation in our opinion it is reasonable to conclude that the appellant also shared the intention of the assailants which is now held to be one to commit the murder of the deceased, and this being a concurrent finding of the courts below which finding we do not consider to be in any manner unreasonable, we are in agreement with the same.

Learned counsel for the appellant then contended that right from the young age, the appellant was afflicted by polio on his lower limbs consequent to which he was hardly able to stand or walk. He pointed out that the disability was nearly 60% on his legs, in such a case that it would be very difficult to accept the prosecution case that this appellant could hold the hands and of a grown up lady like Gurtar Kaur right through the assault. He also pointed out that the prosecution case that the appellant thereafter ran away from the place of the incident cannot also be accepted in view of the medical evidence that the appellant could hardly walk with difficulty. We have perused the medical certificate produced on behalf of the appellant so also the defence evidence led in this regard, and having done so we are not inclined to accept the argument of the learned counsel addressed in regard to this point also. It is seen from the records the disability was confined only to the legs of the appellant and was only in regard to his walking. This does not preclude the appellant from standing up and holding the hand of the victim when the assault took place. Therefore, the contention that the appellant was physically not in a position to hold the hand of the victim cannot also be accepted. The next limb of this argument that the evidence of PW-2 that the appellant also ran away from the place of the incident would show that PW-2 was not talking the truth. We notice that what was meant by PW-2 is that after the attack and before the Sarpanch came, all the accused persons went away from the place of the incident. Since even according to the medical evidence the appellant is capable of mobility though with difficulty, this part of the prosecution evidence cannot be construed as false solely on the ground that the word used by PW-2 was that the appellant also ran away. As stated above by this, what he actually meant was that the appellant along with other assailants left the place of the incident before the Sarpanch could come to the place of the incident. Therefore, we are not inclined to reject the evidence of PW-2 on this score.

For the reasons stated above, this appeal fails and the same is hereby dismissed.