

PETITIONER:
GURMIT SINGH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 29/09/1995

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
RAY, G.N. (J)

CITATION:
1995 SCC Supl. (4) 146 JT 1995 (7) 171
1995 SCALE (5) 630

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

This appeal arises out of a common judgment of the Punjab and Haryana High Court in Criminal Appeal No.778-DB of 1983 and Criminal Appeal No.653-DBA of 1984. Criminal Appeal No.778-DB of 1983 was filed by Gurmit Singh who was convicted by the Sessions Court, Amritsar for the offence punishable under Section 302 IPC and Sections 25 and 27 of the Arms Act. The other appeal was filed by the State against the order of acquittal of the three co-accused.

Briefly stated, the prosecution case is that on 12.7.83 at about 7.30 P.M. when Sadhu Singh (P.W.10) and his son Parkash Singh (P.W.12) were returning from their field to their house, Accused Gurmit Singh, Puran Singh, Joginder Singh and Kashmir Singh met them on the way. At that time, Puran Singh was carrying a kirpan, Joginder Singh was armed with a single-barrel .12 bore gun and Kashmir Singh was carrying a gandhali. On seeing Sadhu Singh (P.W.10) and Parkash Singh (P.W.12) the accused started uttering abusive words. Sadhu Singh and his son requested them with folded hands not to do so but after proceeding a little ahead they told the accused that they would come back with Bawa Singh to lodge a protest. After reaching their house Sadhu Singh narrated to Bawa Singh what had happened on the way. Meanwhile Duman Singh (P.W.13) who was passing by their house was also informed about the incident. Thereafter Baba Singh (the deceased), Sadhu Singh (PW 10), Parkash Singh (PW12), Duman Singh (P.W.13) and Karam Singh (PW11) went towards the house of accused Gurmit Singh to lodge a protest. Bawa Singh and Sadhu Singh were carrying lanterns in their hands, Karam Singh and Parkash Singh had sticks and Duman Singh had a kirpan with him. When they were a little away from the house of accused Gurmit Singh all the four accused carrying the weapons which they had earlier carried came from the opposite direction. Accused Puran Singh then

raised a Lalkara to the effect that Bawa Singh should not be spared. He then gave a kirpan blow on the right elbow of Parkash Singh. One more blow was given by Puran Singh. Accused Joginder Singh gave a blow with the butt of his gun on the chest of Sadhu Singh. Accused Gurmit Singh took the gun of Joginder Singh and fired with the result that Bawa Singh received injuries on his face and chest. Accused Kashmir Singh gave a blow with the stick portion of his gandhali on the right shoulder of Bawa Singh as a result of which Bawa Singh fell down. He also gave another blow with the stick portion of gandhali on the back of Sadhu Singh (PW10). Accused Joginder Singh picked up the stick of Parkash Singh (PW12) and gave one blow with it to Karam Singh (PW11). Bawa Singh had already died as a result of the injuries received by him. So, Sadhu Singh, Parkash Singh and Karam Singh remained by the side of the dead body during the night as they apprehended that the accused would otherwise remove the same. Next day morning at about 6.30 A.M. Sadhu Singh went to the Police Post at Sultanwind falling under Police Station Sadar Amritsar and lodged the first information report.

On these allegations all the accused were charged for commission of offences under Section 302 read with Section 34 IPC and Sections 25 and 27 of the Arms Act. At the trial the prosecution mainly relies upon the evidence of the three eye-witnesses namely Sadhu Singh (P.W.10), Parkash Singh (P.W.12) and Duman Singh (P.W.13). Karam Singh (P.W.11) was not examined but was offered for cross examination. He was not cross-examined by the accused. As the learned Sessions Judge found the evidence of the eye-witnesses consistent and reliable as regards accused Gurmit Singh he convicted accused Gurmit Singh for the offence punishable under Section 302 IPC and Sections 25 and Section 27 of the Arms Act. He acquitted the other accused as he was of the opinion that participation by the other accused as stated by the eye-witnesses was doubtful in view of the nature of injuries alleged to have been caused by the said accused and the medical evidence on record.

Aggrieved by the order of conviction and sentence accused Gurmit Singh filed and appeal in the High Court and aggrieved by the order of the acquittal the State filed an appeal against the remaining three accused. The High Court believing the evidence of the eye-witnesses maintained the conviction of accused Gurmit Singh, set aside the acquittal of the remaining accused and convicted them for the offences punishable under Section 302 read with Section 34 and Sections 25 and 27 really not injured during that incident but they had caused those injuries themselves in order to create evidence against the accused. He further submitted that for all these reasons the conviction of the accused deserved to be set aside.

We have carefully gone through the evidence of Sadhu Singh (P.W.10), Parkash Singh (P.W.12) and Duman Singh (P.W.13) and also the medical evidence on record. Both Sadhu Singh and Parkash Singh have referred to the incident which had taken place at 7.30 P.M. Therefore, there was no justification for the learned Public Prosecutor who appeared in the Sessions Court to give a go by to that incident. Be that as it may, the learned Sessions Judge did not disbelieve the witnesses on this ground and did not record any finding one way or the other. As there was no justification for the said concession made by the learned Public Prosecutor, the High Court rightly considered that part of the evidence of the eye-witnesses and came to its own conclusion. The defence had not suggested to Sadhu Singh

and Parkash Singh in their cross-examination that such an incident had not taken place. We, therefore, do not find any substance in the contention raised in this behalf. The evidence of the three eye-witnesses is quite consistent and it does not suffer from any serious of the Arms Act.

What was contended by Mr. B.K. Mehta, learned senior counsel appearing for all the appellants was that as the learned Public Prosecutor had given a go by to the earlier incident which had taken place at 7.3 P.M. the whole version of the eye-witnesses became doubtful because in absence of that incident there was no reason for the appellants to attack Bawa Singh and others accompanying him. He submitted that in view of this concession made by the learned Public Prosecutor the High Court should not have relied upon that part of the evidence of the eye-witnesses and taken a contrary view. He also contended that the version of the eye-witnesses that they remained near the dead body for the whole night is not consistent with natural conduct and it was an attempt to explain the delay in lodging the first information report. He also contended that even though Sadhu Singh had stated to the police that he had received injuries during the incident no injury statement was prepared at that time and he was not sent for medical examination soon thereafter. Both Sadhu Singh (P.W.10) and Parkash Singh (P.W.12) were sent for medical examination on the next day after about 11 O'clock and that would go to show that they were infirmity. Except bringing out minor omissions the defence was not able to take out anything in their cross-examination which would raise any doubt regarding truthfulness of their evidence. examination. The High Court has dealt with each and every reason given by the trial court for not accepting their evidence with respect to Puran Singh, Joginder Singh and Kashmir Singh. In our opinion, the High Court was quite right in re-appreciating the evidence and coming to its own conclusion in as much as the reasons given by the trial court for acquitting those appellants were not proper and sufficient. Their evidence clearly establishes that it was appellant Gurmit Singh who had fired the gun and caused injuries to Bawa Singh which had caused his death. Their evidence also clearly establishes that appellants Puran Singh and Karam Singh were with appellant Gurmit Singh at the time of the incident and had taken part therein, as deposed by the eye-witnesses. The conduct of the eye-witnesses in remaining with the dead body for the whole night cannot be said to be unnatural in view of the possibility of the appellants removing the dead body in order to cause disappearance of the evidence against them. Once this explanation given by the witnesses for not approaching the police earlier is accepted, it cannot be said that there was any delay in lodging the first information report.

It was next contended by Shri Mehta that in any case the appellants could not have been convicted under Section 302 read with Section 34 as they were acting in exercise of their right of private defence: and, at the highest they can be said to have exceeded that right. In view of the evidence on record it is not possible to accept this contention also. The evidence discloses that seeing the party of Bawa Singh approaching them the appellants also armed with weapons proceeded in that direction and did not remain near the house. the evidence further discloses that Sadhu Singh and Parkash Singh had while going away earlier proclaimed that they would come with Bawa Singh in order to lodge a protest. After reaching their house and narrating the incident to Bawa Singh they had all started for the house of the

appellant armed with sticks and a kirpan. That would indicate that they were not going there for lodging a simple protest. It clearly appears to us that both the sides had pre-determined to fight and the incident wherein Bawa Singh came to be killed happened as a result of that pre-determination. Thus this was a case of free fight between the two groups. This aspect has not been considered by the High Court. In view of our finding that his was really a case of free fight the conviction of appellants for the offences punishable under Sections 302, 326 and 323 all read with Section 34 IPC will have to be set aside and they will have to be convicted for the offence committed by them individually.

The evidence clearly establishes that Appellant No.1, Gurmit Singh caused the death of Bawa Singh. He has been convicted under Section 302 and, therefore, we maintain his conviction and also the order of sentence passed against him for that offence. His conviction for the offences punishable under Sections 326 and 323 both read with Section 34 is set aside. Therefore, the sentence imposed upon him for those offences is also set aside. The conviction of Appellant No.2, Puran Singh under Section read with Section 34 and also under Section 323 read with Section 34 and the order of sentence passed against him for those offences is set aside. The evidence against him establishes that he had given two kirpan blows to Puran Singh but it is not established that he caused grievous hurt to Puran Singh. Therefore, he will have to be convicted under Section 324 IPC. For the said offence he is sentenced to undergo rigorous imprisonment for two years. The conviction of Kashmir Singh, Appellant No.3, under Sections 302 read with Section 34, 326 read with 34 and 323 read with 34 is set aside and so also the order of sentence passed against him for those offences. His conviction under Section 323 for causing injuries to Bawa Singh and Sadhu Singh is maintained. The order of sentence passed against him for the offence punishable under Section 323 is also maintained. So far as Appellant No.4, Joginder Singh is concerned his conviction under Sections 302, 326 and 323 all read with Section 34 is set aside and also the order of sentence passed against him for those offences. However, his conviction under Section 323 for causing injuries to Sadhu Singh is maintained. The order of sentence passed against him for that offence is also maintained.

The appeal is thus partly allowed. It is allowed to the aforesaid extent only. It appears that Appellant Nos. 2, 3 and 4 have been released on bail. They are ordered to surrender to jail custody for serving out the sentence imposed upon them if they have not by now served out the same.