

PETITIONER:
KARTAR SINGH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 04/01/1996

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
KIRPAL B.N. (J)

CITATION:
1996 SCC (7) 300 JT 1996 (1) 482
1996 SCALE (1)330

ACT:

HEADNOTE:

JUDGMENT:

WITH

CRIMINAL APPEAL NO.248 OF 1983 Dilbagh Singh
Dilbagh Singh
V.
State of Punjab

J U D G M E N T

M.K. MUKHERJEE J.

These two appeals have been heard together as they arise out of a common judgment delivered by the Punjab & Haryana High Court affirming the convictions and sentences recorded against the five appellants under Section 302, 302/149, 324, 324/149 of the Indian Penal Code by the Additional Sessions Judge, Amritsar. While one of these appeals (Crl. Appeal No. 248/83) is at the instance of one of the five convicts, the other (Crl. A. No. 67-67A/83) is by the remaining four. During the pendency of these appeals in this Court one of the appellants, namely, Pargat Singh died and consequently his appeal abates.

Having gone through the judgments of the learned Courts below we find ourselves in complete agreement with the concurrent findings recorded by them - as they are based on a careful consideration and discussion of the evidence adduced during trial - except that it cannot be said to have been conclusively proved, in view of the evidence of Dr. Rajinder Singh (PW 1) who held post-mortem examination upon deceased Mota Singh, that the appellants shared the common object of causing his murder. Except one incised injury found by him on the skull of the deceased all other injuries were lacerated injuries on the legs. Those lacerated injuries, according to PW 1 could be caused by fire-arm, and the incised injury by a sharp edged weapon. According to the prosecution case as detailed by the eye witnesses two of the appellants shot at the deceased with their respective fire-arms and, therefore, if the common object of the unlawful assembly of which they were members was to kill him, it was

expected, in the fitness of things, that they would shot at vital parts of his body, more so when the deceased was at close quarters. The evidence of the doctor further discloses that there was no corresponding internal injury of the incised wound which necessarily means that that injury was also not intended to cause the death of the deceased. Such being the state of evidence on record it can only be said that the common object of the unlawful assembly was to cause grievous hurt to the deceased with dangerous weapons.

For the foregoing reasons we allow this appeal to the extent that the convictions and sentences of the two appellants (Kartar Singh and Dilbagh Singh) under Section 302 and of the others under Sections 302/149 IPC are set aside; and instead thereof they are convicted under Sections 326 and 326/149 IPC respectively. For the above convictions each of them will suffer a sentence of rigorous imprisonment for seven years. The other convictions and sentences imposed therefor will, however, stand. The substantive sentences will run concurrently. The appellants, who are on bail, will now surrender to their bail bonds to serve out the sentences imposed upon them.