

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 974 of 2008

GURMAIL SINGH

..... APPELLANT

VERSUS

STATE OF PUNJAB

..... RESPONDENT

WITH

CRIMINAL APPEAL NO. 975 OF 2008

AND

**CRIMINAL APPEAL NO. 981 OF 2011
ARISING OUT OF SLP (CRL) NO. 4898 OF 2008**

O R D E R

1. This judgment will dispose of three appeals, being Criminal Appeal Nos. 974 of 2008, 975 of 2008 and 981 of 2011 @ SLP(Crl) 4898 of 2008.

2. The facts are being taken from the paper book of Criminal Appeal No. 974 of 2008 entitled Gurmail Singh v. State of Punjab.

3. The facts leading to these appeals are as under:

3.1 Sohan Singh, P.W., the complainant, and his co-accused Nachhattar Singh and Parshotam Singh, are

married to real sisters. Nindo is the daughter of Sher Singh, accused. Darshan Singh accused is the son of Sher Singh. A few days prior to the incident which happened on the 25th March, 1996 a message was received with regard to the proposed marriage of the son of Parshottam Singh accused, on which the accused had got together in his house to celebrate the occasion by taking liquor. At about 10:00p.m. the accused came out in the street and raised a lalkara that they would teach the complainant party a lesson for having teased Nindo. At that time accused Gurnam Singh and Gurmail Singh were both armed with small knives (kirch) and Sher Singh, Nachhattar Singh, Parshottam Singh, Dharampal Singh and Avtar Singh were armed with lathis. Sohan Singh came out into the street to persuade them not to abuse and that they would sort out the dispute in the morning. While he was still talking to the accused Rajwinder Singh PW and Baljinder Singh also arrived there. Nachhattar Singh, Sher Singh, Dharampal Singh and Avtar Singh then raised a lalkara saying that they should not be allowed to go alive and should be taught a lesson for having teased Nindo. Gurnam Singh thereupon gave a knife blow on the right side of the abdomen of Baljinder Singh and when Rajwinder Singh came forward to help Baljinder Singh, Gurmail Singh

gave a knife blow on the right side just below his chest whereas Gurcharan Singh gave a knife blow on the lower portion of his right flank. Rajwinder Singh fell down whereupon Sher Singh gave a dang blow on his right shoulder. In the meantime, the women folk came out into the street and hurled brickbats in self-defence. As a consequence of this counter attack the accused ran away from the spot. Baljinder Singh and Rajwinder Singh were shifted to the A.P. Jain Hospital at Rajpura in a truck but the former succumbed to his injuries on the way. After investigation, the accused, eight in number were brought to trial for offences punishable under Sections 302/149, 302, 324/149 and 323/149 of the IPC. The prosecution placed primary reliance on the evidence of Sohan Singh PW 5, Rajwinder Singh PW6, the injured eye witnesses, and also on the evidence of Dr. Charanjit Singh, PW1 whereby he, had at the initial stage, declared Rajwinder Singh unfit to make a statement, Dr. S.M. Birdi who had conducted the medical examination on the injured and Dr. O.P. Agarwal PW 4 who had conducted the post mortem on the dead body of Baljinder Singh. The accused in their defence, pleaded false implication and further that the dispute had arisen because of some election rivalries. Some of the accused also claimed alibis. The trial court on a

consideration of the evidence, acquitted Avtar Singh, Dharam Pal Singh, Nachtar Singh and Parshottam Singh whereas Gurnam Singh, Gurmail Singh, Gurcharan Singh and Sher Singh were convicted for having committed the murder of Baljinder Singh. This judgment has been affirmed by the High Court leading to these appeals by way of special leave.

4. Before us, the main argument raised by the learned counsel for the appellants is that even assuming the prosecution case to be true the matter would still not fall within the definition of murder but would fall be culpable homicide not amounting to murder punishable under Section 304 Part I of the IPC. It has also been submitted that in the facts and circumstances of the case, the provisions of Section 34 of the IPC were not made out as there was no intention on the part of the accused to commit murder. It has finally been submitted that Sher Singh accused, appellant was similarly situated as those acquitted by the trial court as the injury attributed to him on the shoulder of Rajwinder Singh could have caused as a result of a scuffle during the incident and was not possible with a lathi.

5. The learned counsel for the State has, however, supported the judgment of the trial court.

6. Mr. D.P. Singh has submitted that in the light of the judgments of this Court reported as Virsa Singh v. State of Punjab AIR 1958 465, Laxman Karlu Nikalje v. The State of Maharashtra 1968 (3) SCR 685, Harjinder Singh v. Delhi Administration AIR 1968 867, Randhir Singh alias Dhire v. State of Punjab 1981 (4) SCC 484, Tholan v. State of Tamil Nadu 1984 (2) SCC 133 the injury caused to the deceased would not fall under clause "thirdly" of Section 300 and as such the conviction ought to have been recorded under 304 Part I or II of the Indian Penal Code. We have considered the submissions very carefully and have examined the judgments aforesaid with the assistance of the learned counsel.

7. It is true that clause thirdly of Section 300 of the IPC deals with a case where the intention was to cause the very injury found on the dead body. In the case of Virsa Singh, Laxman Karlu's case and Arun Nivalji More's case, the injuries had been caused on non vital parts but the death had occurred because of the fact that some artery beneath the injured part had

been cut. The Court, in that eventuality, held that it could not have been presumed that the appellants wanted to cause that very injury which ultimately led to death. It is true that in Randhir Singh's case the injury had been caused by a kassi on the head of the deceased. It appears, however, that what had weighed very heavily with the Court was the fact that attack was not pre-planned, the accused was only 18 years of age and the kassi had been brought by his father and given to him to cause a blow on the victim, only one injury had been caused and that the death had occurred after six days of the incident. In Tholan's case it was held that though the injury had been caused in the chest but the facts were that the appellant had not intended to give the blow with a knife in the chest. In the case before us, we find that a lalkara had been raised by the accused threatening retribution on account of the misbehaviour of Darshan Singh, son of Sher Singh with Nindo a few days earlier and that the accused had been drinking together in the house of Parshottam Singh and had thereafter come out leading to the incident. It has been held in all the afore-cited cases that the question as to whether the injury had been caused with the intention to cause death would be a matter of objective satisfaction of the Court. We

are, therefore, of the opinion, that the injury in the present case had been caused directly and deep into the stomach of the deceased, a very vital part, which had led to death within a short time. It cannot, therefore, be said that there was no intention to cause that very injury which had led ultimately to the death of the deceased. In a somewhat similar situation, it has been held in Arun Nivalaji More v. State of Maharashtra 2006 (2) SCC 613 that where the injury had been caused in the stomach which was a vital part of the body, it could be said that the injury had been caused with the intention of causing death in the background of the facts that preparations for the attack on the deceased had earlier been made.

8. We now take up the question of common intention in the facts of the case. Once again it needs to be highlighted that the accused were all of one family and they were annoyed with the members of the victim family as they had teased Nindo. They also lived close together in the same locality and had come out armed and raised a lalkara that the opposite party be done away with and that the injuries had been caused thereafter. It is also clear that several injuries had been caused to Rajwinder Singh PW as well and that one

injury had been proved fatal for Baljinder Singh. A case of common intention is, thus, spelt out.

10. We, however, find some merit in the argument of the learned counsel that Sher Singh appellant should be given the benefit of doubt in the circumstances. The injury attributed to him on the person of Baljinder Singh is a "Red abrasion 2.5cm X 0.5cm on the right super scapular region obliquely placed 3 cm back ward from the upper tip of the right shoulder joint." A perusal of this injury would indicate that it is of very small dimensions and there is a clear doubt as to whether an abrasion could be caused with a lathi which Sher Singh was said to be carrying. We are, therefore, of the opinion that Sher Singh is similarly placed as the accused who have been acquitted by the trial court.

12. We, accordingly, allow the appeal of Sher Singh. The appeals of the other accused are dismissed.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

**NEW DELHI
APRIL 20, 2011.**

