

PETITIONER:
RAM SINGH AND ORS.

Vs.

RESPONDENT:
THE STATE OF HARYANA

DATE OF JUDGMENT: 02/04/1998

BENCH:
G.T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

The appeal is directed against the judgment and order of the Punjab and Haryana High Court in Criminal Appeal No. 242 DB/88. The High Court confirmed the conviction of the appellants under Section 148 and Sections 324, 325 and 302 I.P.C. all read with Section 149 I.P.C. recorded by the Sessions Court, Ambala in Sessions Case No. 22/87.

The appellants on the one hand and the two deceased - Bachittar Singh and Bachan Singh on the other hand were distant collaterals and they had 'baras' situated side by side on the outskirts of their village near the common boundary of two 'baras' there was a 'kikar' tree and a dispute was going on between them since long as regards ownership of that tree. On June 5, 1987, at about 6.00 p.m., appellant No.5 - Swaran Kaur was seen by Bachittar Singh and Bachan Singh standing near that kikar tree. they also saw Avtar Singh - appellant No. 4 cutting branches of that tree. So, Bachittar Singh and Bachan Singh went to that 'bara' and protested against Avtar Singh cutting the branches. That led to an exchange of hot words and abuses followed by an assault on Bachittar Singh and Bachan Singh. According to the prosecution case, seeing this assault on Bachittar Singh and Bachan Singh, Labh Singh - PW 17 and Pala Singh - PW 18 went to their rescue but they were also assaulted by Avtar Singh, Ram Singh - appellant No. 1, Didar Singh - appellant No. 2 and Piara Singh - appellant No. 3 who had also by that time reached that place armed with weapons. As a result of that assault, Bachittar Singh and Bachan Singh lost their lives and Labh Singh and Bachan Singh received some injuries.

In order to prove its case, the prosecution had examined three eye-witnesses, Labh Singh - pw 17, Pala Singh - PW 18 and Kirpal Singh - 19. The trial court believed their evidence and convicted all the five appellants. The High Court accepting evidence of those eye-witnesses confirmed the conviction of all the appellants.

Mr. Tulsi, learned senior counsel for the appellants, submitted that the High Court has failed to consider that the eye-witnesses have not correctly stated the manner in which the incident had started and also failed to appreciate that Didar Singh - appellant No. 4 was falsely implicated.

He also submitted that the defence version that appellant No. 1, 4 and 5 had acted in self-defence while causing injuries to Bachittar Singh, Bachan Singh, Labh Singh and Pala Singh, was more probable than the version given by the eye witnesses. On the other hand, learned counsel for the respondent - State submitted that looking to the large number of injuries received by Bachittar Singh and Bachan Singh, the plea of self-defence urged by the appellants cannot be believed and was, therefore, rightly rejected by the High Court. He also submitted that the evidence of Labh Singh and Pala Singh is also corroborated by the evidence of an independent-witness PW 19, Kirpal Singh and therefore the High Court was right in accepting their evidence and confirming the conviction of appellants.

We have carefully gone through the evidence of the three eye-witnesses. All of them have stated that seeing appellant No. 5 - Swaran Kaur standing near the Kikar tree and Avtar Singh - appellant No. 4 cutting branches of that tree. Bachittar Singh and Bachan Singh had gone to the 'bara' and seeing an assault on them Labh Singh and Pala Singh had rushed to that place. Though their evidence is consistent, it is quite vague as regards the assault on Bachittar Singh and Bachan Singh. There were nine injuries on the body of Bachittar Singh but the eye-witnesses have not explained how those nine injuries were caused to him. They have only vaguely stated that Piara Singh and Ram Singh assaulted their father with 'sotis' and therefore he had fallen down. Both Labh Singh and Pala Singh stand contradicted by their police statements, wherein they had stated that they had not seen Avtar Singh cutting branches of the tree. Their version before the court was that they had heard noise of cutting branches of a tree. This improvement made by the witnesses was not without any purpose. No cut branches were noticed at the place of occurrence. There is neither mention of it in the site plan nor any cut wood was seized by the police. Both these infirmities in their evidence create a serious doubt regarding the reason why and the manner in which they had gone to that 'bara'. The evidence also discloses that during this very incident Avtar Singh had received three injuries and Swaran kaur had also received two blows. According to the eye-witnesses, none from their side had carried any weapon. An attempt was made by Labh Singh before the court to explain the injury on the hand of Swaran Kaur by stating that Avtar Singh had aimed a blow at him, but he had retreated with the result that it fell on Swaran Kaur. He then stated that by that hands of Ram Singh and then had given some blows to Avtar Singh. This was again an improvement made by him as he had not so stated in his police statement. We find that the eye-witnesses have neither given the correct account regarding how the incident started nor explained satisfactorily injuries caused to appellant Nos. 4 and 5.

We also find that appellant No. 2 Didar Singh was in all probability falsely involved by the eye-witnesses. According to them, Didar Singh had run to that 'bara' with a 'Gandasa' in his hand and given one blow with it to Bachan Singh. 'Gandasa' is a sharp edged weapon. No injury possible by a sharp edged weapon was found on the person of Bachan Singh.

All these infirmities in the evidence create a serious doubt regarding the manner in which the incident had happened. Appellant Nos. 1, 4 and 5 have admitted their presence at the scene of the offence. They have explained why Swaran kaur had gone to their 'bara' and how and under what

circumstances they had gone there and caused injuries to the other side. What they have said appears to be more probable. For all these reasons, conviction of the appellants cannot be sustained.

We, therefore, allow this appeal, set aside the judgment and order of the High Court and acquit the appellants of all the charges levelled against them. Their bail bonds are ordered to be cancelled.

JUDIS