

PETITIONER:
DARBARA SINGH AND ANOTHER ETC.

Vs.

RESPONDENT:
STATE OF HARYANA AND ORS.

DATE OF JUDGMENT 21/04/1992

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
AGRAWAL, S.C. (J)

CITATION:
1992 AIR 1429 1992 SCR (2) 586
1992 SCC Supl. (2) 295 JT 1992 (2) 580
1992 SCALE (1) 827

ACT:

INDIAN PENAL CODE, 1860:
Sections 34, 148, 149, 302, 304 and 323:
Murder-Common intention-Inflicting injuries with knowledge that the injuries may cause the death of victim-Except one, other accused did not have such knowledge -Effect of -Modification of sentence in respect of those accused-Accused who had knowledge and who inflicted vital injury -Absence of common intention in causing such injury -Sentence-Altered.

HEADNOTE:

The appellants and two others were charged with and tried for offences under sections 148, 302, 149 and 323/149 IPC for causing the murder of one S and causing simple hurts to one R, both related to the accused. The Trial Judge acquitted one of the five accused since no part of the actual occurrence except exhortations were attributed to him and convicted the other four accused under section 302/34 and 323/34 IPC, and sentenced them to life imprisonment and 6 months rigorous imprisonment respectively.

On appeal, the High Court acquitted one more accused on the ground that the medical evidence did not corroborate the claim that he used his kirpan with force as alleged by the prosecution. The appeal preferred by the complainant against this acquittal, was dismissed by this Court.

The other three accused whose conviction and sentence were confirmed by the High Court, have preferred the present appeals.

It was contended on behalf of the appellants that the prosecution case has been discredited by the Courts rendering the same unacceptable resulting in the acquittal of two accused and for the same reasons, they also deserved acquittal. It was also contended that the evidence regarding recovery of weapons did not inspire confidence.

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Disposing of the appeal, this court,
HELD: 1. There may be a tendency here and there to implicate a person in addition to actual assailants in a crime but substitution is rare and that cannot be the case here. As is evident the parties are closely related. The crime was

committed in broad day light. The witness is a stamped witness. There was no reason for the prosecution to falsely evolve a case against the appellants. The medical evidence is consistent and corroborative in connecting all the three appellants. On the eye-witness account and the corroboration it receives from medical evidence, their guilt is established even if the evidence of recovery of weapon is kept aside.[592 C-G]

2. Out of 13 injuries on the dead body six were incised wounds and the remaining were blunt weapon injuries. Amongst the incised wounds the first one was by itself sufficient in the ordinary course of nature to cause death of the deceased. That injury was positively attributed to the appellant in the second case who opened the attack but the remaining five incised wounds were not positively attributed to him alone. It can safely be assumed that some may have fallen to his share to be inflicted and others to the co-accused who has since been acquitted. Even though the Doctor has stated that all the incised wounds could have been caused by Kulhar P.1, that by itself cannot go to conclude that all the incised wounds were caused by the appellant in the second case. Since he inflicted the first incised wound on the head of the deceased, which was sufficient by itself in the ordinary course to cause death, he has rendered himself liable to be adjudged guilty under section 302 IPC. [592-H; 593 A-C]

3. Since extensive damage had been done to the limbs of the deceased after the infliction of vital injury No.1, it can safely be inferred that despite the assailants' choosing non-vital parts of the body for inflicting those injuries, they must be attributed the knowledge that by their concerted act they were likely to cause death of the deceased, for which act they could be punished under section 304 part-II of the Indian penal Code. The act was done while the deceased was alive. The outcome of injury No.1 may or may not have been perceived by the assailants except the appellant in the second case, but they were satisfied in choosing and inflicting injuries on non-vital parts which injuries were caused by breaking the bones of his arms and legs.[593 F-H]

4. Due to his young age, being in teens, the appellant in the first case

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may have acted under the influence of his paternal uncle, viz; the appellant in the second case. Though he shared the common intention of causing extensive injuries to the deceased and injuries to P.W.4 he may not have shared the common intention of causing death but can definitely be attributed the knowledge that by his concerted act the victim could die. Similarly the share cropper had acted under the influence of his employers but cannot be said to be a co-participant in intentionally causing the death of the death of the deceased. He too must be attributed the knowledge that by his act in concert with others he was likely to cause the death of the deceased. Also, no injury on any vital part of the body of the deceased was attributed to either of these accused. Accordingly, these appellants are held guilty of offence under section 304 part II IPC, read with section 34 IPC, and not under section 302 IPC.[594 A-D]

5. The conviction of the appellant in second case is altered to a plain one under section 302 IPC and his life sentence is maintained. His conviction and sentence under section 323/34 is also sustained. The conviction of the other appellants are altered to one under section 304 part II IPC read with section 34 IPC for which a sentence of

seven years rigorous imprisonment is imposed on each of them.[594 D,E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 715 of 1981.

WITH

Criminal Appeal No. 716 of 1981.

From the judgment and order dated 15.5.1981 of the Punjab and Haryana High Court in Criminal Appeal No. 419(DB) of 1980.

U.R. Lalit, A.N. Mulla, S.K. Sabharwal and O.K. Khullar for the Appellants.

I.S. Goyal for the Respondent.

The Judgment of the court was delivered by

PUNCHHI, J. These two appeals are directed against the judgment and order of May 15, 1981 passed by a Division Bench of the Punjab and Haryana High Court in Criminal Appeal No. 419-DB of 1981.

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The appellants are three in number. They are Wazir Singh, his nephew Darbara Singh and share-cropper (seeri) Dalip Singh. These three, together with Mohinder Singh the brother of Wazir Singh and father of Darbara Singh, as also one Avtar Singh, Wazir Singh's father-in-law's brother, stood trial before the sessions Judge, Bhiwani for offences under sections 148, 302/149 and 323/149 I.P.C. for having caused the murder of Sadha Singh, paternal cousin of Wazir Singh and Mohinder Singh accused, as also to have caused simple hurts to Ranjit Singh, PW4 sister's son of the deceased. The learned Sessions Judge acquitted Avtar Singh taking the view that since the Investigating Officer could not recover the gun, the weapon of offence, from him in spite of interrogation, his name had been introduced by the prosecution in order to complete the alleged unlawful assembly, convenient and handy as it was because of relationship with deceased. Avtar Singh was attributed no part in the actual occurrence except exhortations. The remaining four accused were convicted under sections 302/34 and 323/34 I.P.C. and were sentenced to life imprisonment and six months rigorous imprisonment respectively. In appeal the High Court acquitted Mohinder Singh accused taking the view that though he was stated to have used his kirpan with force, the medical evidence did not corroborate this version because DR. B.M. Kapur, PW-2, who performed the autopsy of the deceased, opined that the injuries which apparently were kirpan injuries could only be caused by the tip of the kirpan suggesting that much force had not been used. The High Court then went on to agree with the opinion of Dr. Kapur to say that all the incised wounds on the deceased could have been caused by Kulhari Ex.PI. This Kulhari was suggested to have been used by Wazir Singh appellant towards commission of the crime. On that premise the High Court let off Mohinder Singh recording the opinion that his participation was doubtful. For lack of corroboration of medical evidence the High Court also observed that it was quite probable that like Avtar Singh, acquitted co-assused, Mohinder Singh accused too had been brought in as an accused. As a result the three appellants remained convicted and sentenced. So they are here before us.

Criminal Appeal No. 714 of 1981 was preferred by Ranjit Singh complainant against acquitted co-accused Mohinder Singh but this appeal was dismissed by us on 8-4-1992 for

non-prosecution because learned counsel for that appellant stated that he had no instructions. So Mohinder Singh remained acquitted.

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The occurrence took place on November 10, 1979 at 12.30 P.M. in the open fields of Village Kikral. Deceased Sadha Singh was present in his fields taking out grass while deceased's nephew Ranjit Singh P.W.4 was present ploughing the deceased's field. Close by in their own fields were Jagir Singh P.W.5 and Malkiat Singh P.W.6. At that juncture Mohinder Singh acquitted co-accused armed with a sword, Wazir Singh armed with a kulhari, Darbara Singh and Dalip Singh, armed with lathis each and Avtar Singh acquitted co-accused armed with a gun came together towards the deceased and opened assault on him. Wazir Singh appellant started and gave a kulhari blow on the head of the deceased whereas Mohinder Singh acquitted co-accused gave injuries by kirpan. Dalip Singh and Darbara Singh appellants inflicted lathi blows, Avtar Singh acquitted co-accused raised exhortations. When Ranjit Singh P.W. interfered he was given lathi blows by Dalip Singh and Darbara Singh, appellants. Jagir Singh and Malkiat Singh P.Ws. who saw the occurrence came running to the place and found Sadha Singh lying injured seriously. Sadha Singh and Ranjit Singh victims were brought by Jagir Singh and Malkiat Singh P.Ws. in injured condition to Rural Dispensary, Siwani which is at a distance of 5 kilometers from the place of occurrence. Dr. Ram Krishan P.W.3 Incharge of the Dispensary, after examining and giving first aid to Sadha Singh advised him to be taken to Civil Hospital, Bhiwani as his condition was serious. Ranjit Singh P.W. however was admitted in the Rural Dispensary Siwani, Siwani police was informed about the arrival of both of them. Sadha Singh was taken to Civil Hospital, Bhiwani, where he was found dead. Dr. Gambhir P.W. 1 sent message to the police station informing the Bhiwani police about the arrival of the dead body. Sub Inspector Sadhu Singh P.W. 12 on the basis of message of Dr. Ram Kishan P.W. 3 went to Rural Dispensary, Siwani where he recorded the statement of Ranjit Singh P.W.4 at 4.15 p.m. First Information Report on the basis of the said statement was recorded at the police station at 5.30p.m. The special report reached the Magistrate at Bhiwani on 11-11-1979.

Now about the motive. The grand-father of Sadha Singh deceased had four sons, Chanan Singh, Bishan Singh, Kishan Singh and Makhan Singh. The eye-witnesses Malkiat Singh and Jagir Singh are the sons of Chanan Singh. Sadha Singh deceased was the son of Bishan Singh. Mohinder Singh acquitted co-accused and Wazir Singh appellant are sons of Kishan Singh. Makhan Singh the fourth son was married to Harnam Kaur but had not made issue. It appears that Makhan Singh on September

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20, 1975 executed an agreement to sell his lands in some proportions to the three families of his brothers, but Mohinder Singh acquitted co-accused wanted to purchase all the land of Makhan Singh. The agreement ultimately did not materialise. Thereafter there is history of acrimony and illwill between the parties itching to obtain the land of Makhan Singh. Besides Wazir Singh appellant got lodged FIR against Sadha Singh deceased in May, 1977 accusing him of an attack and of having stolen away his motor cycle. Such were the strained relations which provided the motive of the crime.

The post mortem of Sadha Singh deceased performed by Dr. B.M. Kapur P.W.2 revealed 13 injuries on his body. The

first one was an incised wound 2"x1/2" over the left side of the forehead, on dissection of which it was found to be a fracture of the frontal bone. There was also extra dural haemotoma and fracture of the skull on the left side. The other injuries were either incised wounds or blunt weapon injuries. They were on non-vital parts of the body. There were, however, compound and diverse fractures of both bones of both the legs as well as that of both the arms. The cause of death then opined by Dr. Kapur was, due to shock and haemorrhage on account of multiple injuries, which was sufficient to cause death in the ordinary course of nature. At the trial however Dr. Kapur went on to add that injury No.1 could individually be sufficient in the ordinary course of nature to cause death. He also opined that injuries other than injury NO.1 collectively were sufficient to cause death in the ordinary course of nature even if one were to exclude injury No.1. Dr. Kapur further opined that all the incised wounds could be caused by kulhari P.1. Dr. Ram Kishan P.W.3 on examination found Ranjit Singh having five injuries on his person which were simple in nature and were caused by a blunt weapon. Four of them were contusions which were sizeable and one was an abrasion.

During the investigations the weapons of the offence were recovered by the investigating officer at the instance of recovery statements made by the accused persons respectively.

The entire bundle of evidence was produced before the Court of sessions which led to the result above indicated. Learned counsel for the appellants individually as well as collectively at the first instance pressed into service reasons for the acquittal of Avtar Singh and Mohinder Singh

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co-accused to contend that the prosecution case has been discredited by the courts below rendering it unacceptable. Highlighting this aspect it was contended that the complainant party apparently had spread their net wide and had dragged in Avtar Singh acquitted co-accused just in order to lay charge of unlawful assembly and Mohinder Singh co-accused to share the incised injuries, when those injuries could have been caused by one weapon like kulhari Ex.Pl. On that basis it was asserted that P.W.s having told lies the entire prosecution case deserved throwing out. Beside it was urged that the evidence regarding recovery of weapons did not inspire confidence. These arguments even though attractive do not appeal to us. There may be a tendency here and there to implicate a person in addition to actual assailants in a crime but substitution is rare and that cannot be the case here. As is evident the parties are closely related. The crime was committed in broad day light. Ranjit Singh is a stamped witness. There was no reason for the prosecution to falsely evolve a case against the appellants. Now here there are two types of injuries on the deceased being incised wounds and blunt weapon injuries totalling 13 in number. This is suggestive of at least two assailants respectively armed with suitable weapons. to be responsible for these injuries. But when these seven blunt weapon injuries of the deceased are added to five blunt weapon injuries of Ranjit Singh P.W. and the extensive damage caused seen, it becomes evident that there were more than one assailant inflicting blunt weapon injuries. Thus there were three assailants as is evident from the result. Besides shortly before the occurrence Ranjit Singh P.W. was ploughing the field and it is expected of a ploughman to be carrying a stick. The very fact that he did not claim to have used any goes to confirm that he was a victim of two assail-

ants who could use their blunt weapons against him as well as against the deceased. The medical evidence is thus consistent and corroborative in connecting all the three appellants, that is, in Wazir Singh having used his kulhari and Dalip Singh and Darbara Singh having used their lathis in the commission of the crime. On the eye-witness account and the corroboration it receives from medical evidence, their guilt is established even if the evidence of recovery of weapons is kept aside. We have thus no reason to question the ultimate result arrived at by the High Court though we have our doubts about the reasoning employed by it to acquit Mohinder Singh co-accused.

The next point urged was with regard to nature of the offence committed by the appellants. We notice that out of 13 injuries on the dead body of Sadha Singh, six were incised wounds and the remaining were blunt

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weapon injuries. Amongst the incised wounds the first one above-described was by itself sufficient in the ordinary course of nature to cause death of the deceased. That injury was positively attributed to Wazir Singh appellant who opened the attack but the remaining five incised wounds were not positively attributed to Wazir Singh appellant alone. It can safely be assumed that some may have fallen in his share to be inflicted and others to Mohinder Singh co-accused who has since been acquitted. Even though Dr. B.M. Kapur has stated that all the incised wounds could have been caused by kulhar p.1 but that by itself cannot go on to conclude that all the incised wounds were caused by Wazir Singh appellant. Distinguishing the role assigned to Wazir Singh in this manner, we take the view that on the infliction of the first incised wound on the head of the deceased, which was sufficient by itself in the ordinary course of nature to cause death, and death did ensue, Wazir Singh appellant has rendered himself liable to be adjudged guilty under section 302 I.P.C.

Dr. B.M. Kapur has further opined that leaving aside injury No.1, injuries nos.2 to 13 were collectively sufficient to cause death in the ordinary course of nature. In this collection we have five incised wounds and seven blunt weapon injuries. The blunt weapon injuries are fractures of bones of both the arms and legs. Even though some of those blunt weapon injuries are extensive and grievous in nature because of the fracture of bones of the left fore-arm, right fore-arm, elbow, left leg and right leg, these by themselves cannot in the facts and circumstances of this case, be said to have been inflicted by the assailants other than Wazir Singh appellant with the intention of causing death, or in ratification of the act of Wazir Singh appellant. But since extensive damage had been done to the limbs of Sadha Singh, after the infliction of vital injury No.1, it can safely be inferred that despite the assailant's choosing non-vital parts of the body for inflicting those injuries, they must be attributed the knowledge that by their concerted act they were likely to cause death of the deceased, for which act they could be punishable under section 304 part-II of the Indian Penal Code. The act was done while Sadha Singh was alive. The outcome of injury No.1 may or may not have been perceived by assailants other than Wazir Singh but they were satisfied in choosing and inflicting injuries on non-vital parts of the body of Sadha Singh, which injuries were breaking bones of his arms and legs.

We have leaned towards this view also for the reason that Darbara

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Singh, due to his young age being in teens, may have acted under the influence of his paternal uncle Wazir Singh, appellant and though he shared the common intention of causing extensive injuries to deceased Sadha Singh and injuries to Ranjit Singh P.W. he may not have shared the common intention of causing the former's death but can definitely be attributed the knowledge that by his concerted act Sadha Singh could die. Similarly Dalip Singh, a share cropper of his employer, Wazir Singh and Mohinder Singh, perhaps had acted under the influence of his employers but cannot in these facts be said to be a co-participant in intentionally causing the death of Sadha Singh. He too must be attributed the knowledge that by his act in concert with others he was likely to cause to death of the deceased. It is worth reminding that neither of the two accused Darbara Singh and Dalip Singh are attributed any injury on any vital part of the body of the deceased. Thus on the above analysis Darbara Singh and Dalip Singh, appellants are held guilty for offence under section 304 Part II IPC, read with Section 34 IPC.

Resultantly we alter the conviction of Wazir Singh appellant to a plain one under section 302 IPC and maintain his life sentence. His conviction and sentence under section 323/34 is also sustained. The convictions of Darbara Singh and Dalip Singh appellants are altered to one under section 304 part II IPC read with section 34 IPC for which sentence of seven years rigorous imprisonment is imposed on each of them. The appeals stand disposed of accordingly.

G.N.

Appeals disposed of.

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