

PETITIONER:
LABHU RAM AND ORS.

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT 26/09/1995

BENCH:
RAY, G.N. (J)
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RAY, G.N. (J)
FAIZAN UDDIN (J)

CITATION:
1995 SCC Supl. (4) 17 JT 1995 (7) 98
1995 SCALE (5) 568

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.N. RAY, J.

This appeal is directed against the Judgment dated April 19, 1979 passed by the High Court of Punjab and Haryana in Criminal Appeal No. 1300 of 1976. By the impugned judgment, the High Court affirmed the conviction and sentence passed against the appellants by the learned 1st Additional Sessions Judge Ludhiana on August 28, 1976 in Sessions Case No. 55/20 of 76 (Sessions Trial No. 33 of 76). Out of the four appellants before this Court, appellant No.1 Labhu Ram died during the pendency of this appeal and the present appeal now concerns appellant Nos. 2 to 4. It may be stated here that the three appellants were sons of Labhu Ram deceased and they were convicted by the trial court for offences under Sections 302/34, 323/34 and 201/34 of the Indian penal code and were sentenced to suffer imprisonment for life for the offence under Section 302 read with Section 34 and a fine of Rs.500/- in default further imprisonment for six months; sentence of six months RI under section 323/34 IPC and sentence of RI for one year under Section 201/34 IPC. Gurdial Singh was further sentenced for one year RI under section 323 IPC for causing injury on Bhagwan kaur wife of the deceased Bhanan Singh. Malkiat Singh and Darshan Singh were sentenced to suffer RI for nine months under Section 323/34 IPC and it was directed that the said sentences to run concurrently.

The prosecution case in short is that there was a house belonging to Hari Singh and Mehar Singh who were tailors by profession. A day before the occurrence the said house was purchased by Bachan Kaur wife of Gurdial Singh for a consideration of Rs.10,000/-. In the sale deed there was a recital that the purchaser herself would obtain the actual physical possession. Only symbolic possession was given to the said purchaser. It is the prosecution case that PW 5 Piara Singh was the tenant in the said house on a monthly

rent of Rs.80/-. The appellants in a bid to obtain actual physical possession after the purchase demolished a wall and a door of the said house in the evening of February 9, 1976. Piara Singh thereafter sought the help of the deceased Bhanan Singh, Dr. Kewal Krishan Sood PW 7 and Darshan Singh. The said persons inquired from the appellants as to why they had demolished a portion of the said house to which they had received the reply that since the appellants became the owners by purchase they would take possession. The deceased and the said other persons intervened in order to settle the matter amicably and desired to see the registered sale deed and the matter was postponed for such settlement on the next day. On the early morning of February 10, 1976 at 4 a.m., the appellants came in front of the house of the deceased Bhanan Singh and started hurling abuses on him. Darshan Singh at that time was armed with a sua and the remaining appellants had lathi in their hands. They asked Bhanan Singh to come out of the house and to see the consequences for rendering help to Piara Singh. Bhanan Singh and pw 4 Bhagwan Kaur then came out of the house. Piara Singh and Gurdev Singh also came out of their houses. They tried to persuade the appellants not to hurl abuses. On this Darshan Singh gave a blow with the sua on the head of the deceased Bhanan Singh, but the weapon missed the head and the dang portion of the sua hit the head. Gurdial Singh also hit Bhanan Singh with lathi on the right leg. Malkiat Singh gave lathi blow on the back of Bhanan Singh deceased. When Bhagwan Kaur, Piara Singh and Gurdev Singh advanced to intervene, they were also given blows by Gurdial Singh. Thereafter, the other appellants gave blows to Piara Singh. The accused gave some more blows to Bhanan Singh, when he had fallen. According to the prosecution case the incident had taken place near the house of Bhanan Singh and the house of the appellants was at a distance of about 60 yards from the said place. Bhanan Singh died at the said spot and the appellants then carried away his body to their house.

Bhagwan Kaur PW 4 lodged the FIR at the Police Station Industrial Area, Ludhiana, shortly after the incident at 5 a.m. It may be stated here that the distance of the Police Station was one mile from the spot. The copy of the FIR was received by the Magistrate at Ludhiana at 7 a.m. on the same day.

All the appellants, except deceased Labhu Ram, had pleaded that they were absent from their house at the time of the incident and Labhu Ram accused took the plea that being quite old it was difficult for him to walk and he also stated that Gurdial Singh Darshan Singh had been plying rehras and for that reason they were not in their house on the night of the occurrence. He also stated that his other son Malkiat Singh was not residing in the family house at Dashmesh Nagar when the occurrence had taken place. The said Malkiat Singh was employed as Enforcement Inspector in the Agricultural Department, Ludhiana and he used to reside in another house of his father situated in New Janta Nagar. The said Labhu Ram also stated that he was falsely implicated.

Malkiat Singh had also stated that he used to stay with his family members at New Janta Nagar residence which was about 1 1/2 miles from Dashmesh Nagar and he was not present at the time of occurrence. He further stated that he was informed by Pritam Singh, Gurdev Singh and Dayal Singh at about 2.30 a.m. on the day of occurrence that some persons were abusing and were creating nuisance on public road in their Mohalla at Dashmesh Nagar and apprehending trouble to the family members at Dashmesh Nagar from such persons, he went to the police out post at 6-1/2, Basant Park alongwith

the said three persons and gave a report in writing to the Munshi of the said out post, at about 3 a.m. He got a copy of the said report duly acknowledged and signed by the said Munshi Mahender Singh. The Munshi sent a constable with Malkiat Singh and his companions to the police division No.6 and Mahinder Singh then came to know that some police officials had already gone to Dashmesh Nagar. He thereafter came back to his New Janata Nagar residence and reported the matter to his office.

The Investigating Officer had found the dead body of Bhanan Singh inside the house of the appellants. The case of the appellants was that Bhanan Singh having consumed liquor during the night, came over to their house by scaling over the boundary wall. He however fell from the wall and received injuries causing his death. The body of the deceased bhanan Singh was sent for postmortem examination and autopsy was conducted at 4 p.m. on February 10, 1976 by Dr. Jagjit Singh PW 1 and from such examination it transpired that the deceased received 19 injuries, including lacerated wounds, contusions and abrasions. It also transpired from postmortem examination that sternum bone was fractured in its upper middle part corresponding to injury No.4. There was fracture of the second, third, fourth and fifth ribs on the right side of the chest corresponding to injury No.2. There was also fracture of fifth and sixth ribs on the right side of its back which was the result of injury No.11. The right pleura was injured and the cavity was full of blood. The right lung was also injured in middle and upper lobes. According to doctor the death was due to shock, internal haemorrhage and injuries to the vital structures of the right chest caused by injuries Nos.2 and 11. According to the doctor both the said injuries were fatal and each one of them was individually sufficient to cause death in the ordinary course of nature.

The learned Sessions Judge, after considering the evidences adduced in the case and other materials on record, held that the prosecution case was proved and convicted the appellants and passed sentences mentioned hereinbefore. On appeal before the Punjab and Haryana High Court, the Division Bench of the High Court by the impugned judgment affirmed the convictions and sentences passed against the appellants and also against the deceased appellant Labhu Ram and dismissed the appeal.

Mr. Sushil Kumar, the learned Senior counsel appearing for the remaining three appellants, has submitted that the case of the prosecution is not believable at all. It was highly improbable that the appellants having purchased the house in the village with their eyes open that it was tenanted where Piara Singh had been residing with the members of his family would demolish the wall of the said house in an attempt to take forcible possession. He has also submitted that it is also highly improbable that only because the deceased and some other persons intended to mediate in the matter and wanted to settle the dispute between the appellants and the said Piara Singh after looking to the said sale deed, the appellants would become so enraged that they would go to the house of the deceased in early hours of the morning and start abusing the deceased and threaten him with dire consequences. Mr. Sushil Kumar has submitted that if the appellants had really intended to kill the deceased, they would not have murdered him after shouting and thereby inviting others to come and witness the commission of the crime. Mr. Sushil Kumar has also submitted that admittedly the body of the deceased was found inside the house of the appellants and no blood mark could be

noticed in support of the prosecution case of carrying the said body from the place of incident to the house of the appellants which was admittedly about 60 to 70 yards away. Mr. Sushil Kumar has also submitted that wife of Labhu Ram has deposed that the deceased had come to their house in drunken state at night and started abusing the members of the family and had been threatening to molest the daughters in the house. But the deceased being drunken, could not take care of him and fell down from the wall thereby receiving injuries which caused his death. Mr. Sushil Kumar has submitted that in the instant case only contusions, lacerated wounds and abrasions were found on the body of the deceased. If sua and lathis had been freely used by all the appellants with intention to murder the deceased, the doctor ought to have noted several other serious injuries on head and other vital parts of the body. He has submitted that it is significant to note that there was no punctured wound which would be caused if sua blows were given. Mr. Sushil Kumar has also submitted that fracture of ribs and consequential damage of pleura and lungs was also not improbable, if a person falls from a height.

Mr. Sushil Kumar has strongly contended that the appellant Malkiat Singh has been falsely implicated by the prosecution. The said Malkiat Singh was fairly educated and was an Enforcement Inspector in the Agricultural Department. He had been staying in a separate house at New Janata Nagar and not at the family residence at Dashmesh Nagar. Mr. Sushil Kumar has submitted that Malkiat Singh being informed at about 2-30 a.m. by three neighbors of the Mohalla Dashmesh Nagar that some persons being drunk had been abusing and creating nuisance at the Dashmesh Nagar Mohalla, where the family residence was situated, he left his residence at New Janta Nagar and in the company of the said persons went to the police out post Basant Park for lodging the said information so that no untoward incident would happen in his Mohalla. Mr. Sushil Kumar has submitted that the fact that Malkiat Singh had in fact gone to the police out post, stands corroborated by the copy of the report lodged by him since acknowledged in writing by the Munshi of the said police out post. Mr. Sushil Kumar has submitted that even if it is assumed that the said Malkiat Singh, on the date of the incident was present in the Dashmesh Nagar residence, it is highly improbable that and his ailing old father would come out of their house in the early morning and would go near the house of the deceased and start hurling abuses on the deceased and even when the widow and other witnesses had come there and had persuaded the accused not to create trouble, he and other accused would indulge in assaulting the deceased in the presence of eye-witnesses. Mr. Sushil Kumar has submitted that such case is highly improbable. Malkiat, his old ailing father and other family members were deliberately and falsely implicated in order to wreak vengeance on the deceased Labhu Ram and his three sons. Mr. Sushil Kumar has also submitted that in the instant case no punctured wound was noticed on the person of the deceased even when according to the prosecution case, one of the appellants was armed with sua. He has submitted that in any event, the nature of injuries only indicate that the persons who had assaulted the deceased had no intention of killing him but had intended to give him some thrashing. Unfortunately some vital parts got injured in the incident resulting in death of the said deceased. Mr. Sushil Kumar has submitted that in such case, the conviction under Section 302 read with section 34 is not at all warranted. Mr. Sushil Kumar has submitted that it transpires from post-

mortem examination that sua was not used and no injury was caused on the head of the deceased by lathis. Absence of such injuries only indicate that the accused did not share any common intention to cause the death of the deceased. Hence, the conviction for murder with the aid of section 34 of the IPC was wholly unjustified. He has, therefore, submitted that the court should discard the prosecution case and acquit the appellants. In any event, the court will not accept the prosecution case in implicating Malkiat Singh. Considering the defence evidences which amply support the defence of Malkiat Singh that he was not present at the time of incident, Malkiat should be acquitted. Mr. Sushil Kumar has also submitted even if the involvement of the other two appellants is believed to be true they do not deserve to be punished under Section 302 read with section 34 of the IPC. But if the prosecution case about causing lathi injuries by them on the deceased is accepted, the remaining two appellants may be punished for causing grievous hurt.

The learned counsel for the State has, however, disputed the said contention of Mr. Sushil Kumar. It has been submitted by the learned counsel for the State that in the instant case there are three injured witnesses. Beside Bhagwan Kaur, the widow of the deceased, (PW 4). who received simple injuries on her person, Piara Singh PW 5 and Gurdial Singh PW6 also received injuries at the hands of the accused. Such injuries convincingly establish the presence of the injured witnesses at the time of the incident. Such injuries also completely rule out the defence case that the deceased had climbed the wall of the house of the accused and on account of fall from the wall he had died inside their house. The learned counsel for the State has submitted that in the event of a fall from a wall which was only five feet high, there would not have been serious injuries as noted by the doctor. He has, submitted that the defence case was blatantly false. It has been convincingly established that the incident happened at the spot mentioned in the FIR. The learned counsel for the state has also submitted that immediately within an hour of the incident, FIR was lodged to the Police Station which was about 1 1/2 mile away from the place of the incident and the learned Magistrate also received a copy of the FIR within two hours of lodging the FIR. It is highly improbable that within such a short time a false story would be cooked up and FIR would be lodged on the basis of a false case. The learned counsel has also submitted that PW 5 Piara Singh and PW 6 Gurdev Singh both the injured witnesses are neighbors of the deceased. Their presence, at the time of the incident is quite probable. The learned counsel has also submitted that the evidence of Bhagwan Kaur PW 4 should not be discarded. The widow would have natural inclination to implicate the assailant of her husband and it is not reasonably expected that she would falsely implicate the accused even when she had witnessed the incident and suffered injuries at the hands of the assailants. The learned counsel for the State has also submitted that alibi of the accused Malkiat Singh about his going to the police out post shortly before the incident does not stand scrutiny. It is with a clever attempt to create alibi, that a false report was made at Basant Park out post at a later stage. It could not be convincingly established by Malkiat Singh that the said report had in fact lodged at 3 a.m. It is also highly improbable that three neighbors of his Mohalla after noticing some persons in drunken state and creating nuisance by abusing, would come to Malkiat Singh at dead of night at 2-3 a.m. by travelling 1 1/2 miles only to inform about such nuisance

being created by some drunkards instead of going straight to the police station and informing the police. particularly when police station is closer, being only at a distance of one mile from their mohalla. The learned counsel has submitted that it is equally improbable that the said Malkiat Singh, simply on getting an information that some persons were creating disturbance in intoxicated condition in the Mohalla, would come out of his house at that odd hour and personally go to the police out post just to lodge a report of the information received by him from some residents of the mohalla. It is also significant to note that in the said report to the police out post (Exhibit D0), Malkiat Singh has given his address as house No.345, street No.5, Dashmesh Nagar, Ludhiana and not this residence at New Janta Colony which according to him is his usual place of residence. It is quite probable that having participated in the crime, Malkiat Singh wanted to cover up his complicity in the offence and in an attempt to create an alibi, he introduced a false story and lodged a report to a police out post long after the incident. According to learned counsel for the State, the prosecution case has been very convincingly proved by clinching and reliable evidences given by the eye-witnesses. Both the learned Sessions Judge and also the High Court accepted the prosecution case. In the aforesaid circumstances, no interference is called for by this Court and the appeal should be dismissed.

After giving our anxious considerations to the facts and circumstances of the case and the submissions made by the learned counsel appearing for the parties, it appears to us that in the instant case the depositions of Bhagwan Kaur PW 4 and two injured eye-witnesses, namely. PW 5 and PW 6 are wholly reliable. Such depositions do not suffer from any inconsistency. In our view, conviction can be based on the said depositions of the eye-witnesses. The case sought to be made out by the accused about the circumstances causing the death of Bhanan Singh is not only false but absolutely absurd. The nature of injuries sustained by the deceased also rules out the case of the defence that the deceased went to the house of the accused being drunk and attempted to go inside the house of the accused by scaling the wall while abusing the inmates and threatening to molest the daughters in the house of Labhu Ram, but suffered a fall from the wall of the house of the accused and died at the spot on receiving injuries on account of such fall from the wall. The wall is only five feet high and serious injuries suffered by the deceased could not have occurred by a fall from such small height. It is a pity that the wife of accused Labhu Ram was examined by the accused to give a false and absurd account of the defence case.

In our view. the learned counsel for the State is also justified in contending that the alibi of Malkiat Singh that he had been to the said police out post at 3 a.m. to lodge an information about the presence of some drunkards in Dashmesh Nagar Mohalla is absolutely false and should be discarded. It appears to us that after the commission of the crime alleged against him, Malkiat wanted to create an alibi and lodged a report at a later stage in the said police out post. It appears from the post-mortem examination that the deceased had been brutally assaulted by the accused thereby causing 19 injuries on his person. The evidences adduced by the eye-witnesses about the injuries caused to the deceased also tally with the post-mortem report and deposition of the doctor. In our view, such injuries would not have been caused if the accused did not intend to kill him. There is also evidence that even when the deceased fell down after

receiving injuries, he was not spared but the accused further assaulted him. Such conduct of the accused is only consistent with an intention to kill the deceased.

Therefore, no interference is called for in this case and the appeal is dismissed. It may be stated here that initially bail was granted by this Court to the deceased Labhu Ram and the appellant Malkiat Singh. Later on, the other appellants had also been granted bail by this Court. In view of the dismissal of their appeal, the appellants should be taken into custody forth with so as to serve out the sentences passed against them.

JUDIS