

PETITIONER:
BHOLA SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 26/11/1998

BENCH:
M.K. MUKHERJEE, S.RAJENDRA BABU.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T
Rajendra Babu, J.

This appeal, by special leave, is directed against the order made by the High Court affirming the order of Sessions Court in convicting the appellant under Section 302 I.P.C. read with Section 34 I.P.C. and sentencing him to suffer imprisonment for life and to pay a fine of Rs. 2000/-.

The prosecution case as unfolded before Trial Court is follows :

On 12.7.1992 at about 5 p.m. Saun Singh attempted to cut kikar trees and the same was objected to by Puran Singh asking him to wait till the actual demarcation of the trees and refrained him from cutting the trees till then. Saun Singh returned along with his son and son-in-law to his house. On the next morning that is on 13.7.1992 at about 6 a.m. Saun Singh accompanied his son and son-in-law proceeded towards his field when Balwinder Singh, Bhola Singh (appellant) and Lakhbir Singh who were armed with a Gandasa and Jagsir Singh who was armed with a Ghop attacked him. Bhola exhorted that Saun Singh be not permitted to go and he be taught a lesson for attempting to cut kikar trees. Appellant Bhola assaulted Saun Singh from the blunt side of the Gandasa on his right arm. He also inflicted a second blow causing injury on the head of Saun Singh again by the blunt side of the Gandasa. Saun Singh fell on the ground when acquitted accused Jagsir Singh assaulted Saun Singh with Ghop dang wise which hit Saun Singh on the right arm at the same place where earlier the appellant Bhola had inflicted the injury. This was followed by assault made by appellant Balwinder Singh who used Gandasa from the blunt side and gave blows on the left and right leg near the ankle. Kartar Singh and Didar Singh raised alarm and shouted for help. The accused persons then turned towards them to assault them but they ran away from the place of occurrence to save their lives. It appears that Kartar Singh made arrangements for taking Saun Singh to the hospital who was found to have died at 8 a.m. A First Information Report (F.I.R) was registered at 10.30 a.m. regarding the incident that had taken place. After

conducting inquest proceedings the dead body of Saun Singh was sent for post mortem examination. Dr. Ramesh Kumar conducted the post mortem examination and he found the following ante-mortem injuries on the body of the deceased Saun Singh:-

1. A lacerated wound 5 cms x 1/2 cm transversely placed on left side of head, 8 cms from posterior hair line and it starts from 1 cm above left pinna. On dissection wound was going deep through scalp, under line bone was fractured, on further dissection membranes and brain matter were lacerated and cordial cavity was full of blood.
2. Lacerated wound 5 cms x 1/2 cm x 1 cm longitudinally placed on front of left leg, 6 cms on ankle joint. On dissection wound was going deep to skin muscle and clotted blood was present.
3. Lacerated wound 5 cms x 1/2 cm longitudinally placed on front of right leg, 11 cms from knee joint. On dissection wound was 1 cm muscle deep. Clotted blood was present.
4. Lacerated wound 2 cms x 1/2 cms on front of light leg longitudinally placed 8 cms from ankle joint. On dissection wound was 1 cm deep in muscle. Clotted blood was present.
5. Contusion 6 cms x 1 cm obliquely placed on posterior side of left fore-arm on its middle. On dissection underlying bones were fractured and clotted blood was present.
6. Contusion 5 cms x 1 cm obliquely placed on lateral side of right fore-arm on its middle. On dissection underlying bones were fractured. Clotted blood was present.
7. Abrasion 1 cm x 1 cm on middle of left clavical. On dissection underlying bone was fractured and clotted blood was present.

The opinion was furnished that Saun Singh died on account of injuries causing shock and haemorrhage. The accused were charge-sheeted on the aforesaid allegations. The prosecution principally relied upon two eye witnesses of the occurrence Kartar Singh (PW-1), son-in-law of the deceased, and Didar Singh (PW-d) son of the deceased, and other witnesses such as the doctors who attended on the deceased on the first occasion and the doctor who conducted the autopsy as well as the Investigating Officer.

The accused persons were examined under Section 313 of Code of Criminal Procedure and they denied the prosecution case and claimed to be innocent stating that they had been falsely implicated. They also contended that the deceased Saun Singh had been involved in some criminal cases for theft and violation of the Arms Act.

The learned trial Judge relied upon the version of two eye witnesses Kartar Singh and Didar Singh and he did not attach any importance to the contention raised on behalf of the accused that there is no mention in the F.I.R. about the use of the sharp edged weapons from their blunt side. However, he upheld the argument that Jagsir Singh and Lakhbir Singh had been falsely implicated and gave them the

benefit of doubt and convicted the appellant Bhola Singh and another accused as stated earlier. On appeal the High Court concluded that the evidence of the two eye witnesses of the occurrence found ample corroboration from the medical evidence and other attending circumstances of the case and, therefore, there is no merit in the submissions of the learned counsel for the appellant.

As was done before the courts below, it was contended before us that injuries suffered by the deceased Saun Singh were from blunt weapon as indicated by the post mortem report and the same could not have been inflicted with Gandasa and, as such there is no good reason to hold that Didar Singh and Kartar Singh witnessed the occurrence. We have carefully gone through the evidence of Kartar Singh (PW-1) and Didar Singh (PW-2), the two eye witnesses. If they had really witnessed the occurrence as had taken place, they would have certainly described the weapons used in causing injuries to the deceased, Saun Singh, leading to his death. It is highly improbable and unlikely that when the accused armed with sharp weapons like Gandasa and Ghop had used only the blunt edged side and not the sharp edged side of the said weapons. We are convinced that these two eye witnesses had set out this version only to fit in what had been found in the post mortem report. The normal way in which a Gandasa and Ghop could be used was only from the sharp edged side and not from the blunt edged side. Therefore, it is highly unlikely that the two eye witnesses PW-1 and PW-2 could have seen the incident as had taken place. It gives rise to serious doubt as to their presence at the time of incident. The trial court and the High Court did not duly appreciate this aspect of the matter and, therefore, we are of the view that there is an error in this regard. Hence, we accept the case as set forth on behalf of the appellant. We allow this appeal, set aside the conviction passed by the trial court as confirmed by the High Court and set him at liberty.