

PETITIONER:
KULDEEP SINGH

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 08/02/1996

BENCH:
KIRPAL B.N. (J)
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KIRPAL B.N. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1996 (2) 344 1996 SCALE (2)6

ACT:

HEADNOTE:

JUDGMENT:
[With Crl. Appeal Nos. 522/84, 660/84, 10/85, 133/85]
J U D G M E N T

KIRPAL, J.

This judgment will dispose of Criminal Appeal Nos. 238/85, 522/84, 660/84, 10/85 and 133/85 whereby the High Court partly allowed the appeals of the respondents and converted the conviction of the appellants who are sentenced under Section 302 read with Section 149 I.P.C. to one under Section 304 Part-II read with Section 149 I.P.C.

Twelve persons were tried for an incident which had occurred on 7.7.1982 near Dharmashala of village Baragudha at about 10 P.M. According to the F.I.R. which was lodged by one Munshi Singh PW11. Sukhdev Singh one of the appellants in these appeals who in the company with some other appellants went to the lane of Harijans in the said village and fired some shots in the air. Accordingly, Munshi Singh PW11 alongwith Jagga Singh deceased. Teja Singh. Balkishan. Prem Singh and Chhotta Singh PW12 set out for the police Station Baragudha for reporting this matter. When they reached near the Dharmashala of the village it is alleged that they were confronted by Sukhdev Singh and Pritam Singh who were armed with a gun each, Major Singh Mohinder Singh, Gurtej Singh son of Narain Singh and Amarjit Singh each of whom was armed with a pistol as well as Kuldeep Singh, Zora Singh, Gurtej Singh son of Pritam Singh Munshi Singh and Naiba Singh appellants all armed with a gandasa each and kaka Singh who was armed with a lathi. The appellants raised a shout that the Harijans be suitably dealt with because they did not listen to others. Thereupon it is alleged that Sukhdev Singh gave a blow with the butt of his gun on the head of Munshi Singh PW11. Gurtej Singh son of Pritam Singh gave a gandasa blow on the right side of Munshi Singh's hand while his left hand received a blow by a gandasa which was inflicted by Zora Singh. Gurtej Singh son of Pritam Singh also gave a gandasa blow from the reverse side on his right knee and another blow on the right shoulder and on the back

of Munshi Singh. Kaka Singh also gave a lathi blow on Munshi Singh's fingers. The appellants are also alleged to have caused injuries to Jagga Singh deceased. Prem Singh, Bal Kishan and Teja Singh. The victims raised an alarm and thereupon the appellants, alongwith their respective weapons went away from the place of occurrence.

Chhota Singh PW12 took the injured persons to the Primary Health Centre. Baragudha, Dr. Raj Kumar PW3 examined Munshi Singh PW11 at 11.45 P.M. on 7.7.1982. He noticed 11 injuries on the person of Munshi Singh. On the same night at 12.10 a.m. the said Dr. Raj Kumar PW3 examined Bal Kishan and found that he had 3 injuries, all of which were simple in nature. The said Doctor also examined Teja Singh on the same night who had 6 injuries on him.

The said Dr. Raj Kumar PW3 sent a note about the occurrence to police station Baragudha on that very night whereupon the ASI Bhup Singh PW15 went to the Primary Health Centre, Baragudha and recorded the statement of Munshi Singh PW11 on the basis of which a case under Sections 324, 323, 285, 148, 341 read with Section 149 IPC and Sections 25/27 of the Arms Act was registered at the said police station.

As the injuries on Jagga Singh and Prem Singh were found to be more serous they were referred to the civil Hospital at Sirsa. Dr. J.L. Bhutani PW2 medically examined Jagga Singh deceased at 3.35 A.M. on 8.7.1982 and noticed 7 injuries which were as follows:.

"1. Incised wound 10 cm x bone deep on the lateral aspect of the left side of face in front of pinna extending towards the angle of the mandible. The margins were sharp and fresh bleeding was present.

2. Incised wound 8 cm x 1 cm bone deep on the top of the skull, 1" above the hair line and extending towards the top on the left side. The margins were sharp and fresh bleeding was present. X-ray was advised.

3. Incised wound 9 cm x 1 cm bone deep extending from the hair line in the direction of the sagittal suture. The margins were sharp and fresh bleeding was present. X-ray was advised.

4. There were two punctured wounds 1 cm in diameter and 2" apart and 3 cm deep on the lateral aspect of the left arm. Clotted blood was present. There were corresponding punctured marks on the shirt.

5. Punctured wound on the dorsum of the left hand. Swelling was Present.

6. Patient complained of pain and swelling in the infra-scapular region on the right side and on examination, surgical emphysema was present. Advised X-ray chest.

7. There was scratch mark (abrasion) 15 cm X 1/2 cm on the left side on the back."

Prem Singh was also examined by the said Doctor and he had 3 injuries on his person. Thereafter the Doctor sent a

note to the SHO Police Station at Sirsa about the arrival of the injured persons in the hospital. On police's application the said Doctor certified that Prem Singh was fit to make a statement. At that time the Doctor gave an opinion that Jagga Singh was not fit to make a statement but on another application being filed Dr.J.L. Bhutani PW2 on 8.7.1982 at 12.50 P.M. certified that the Jagga Singh was in a fit condition to make statement. Thereupon SI Charanjit Singh PW15 recorded the statement Ex. PSS of Jagga Singh (deceased) at civil Hospital Sirsa. Jagga Singh succumbed to his injuries on the morning of 10.7.1982 and thereafter the case was converted into one of murder.

After the usual investigation. Challan was filed against all the appellants. Charges were framed against, them under Section 302 read with Section 149 I.P.C.

At the trial the prosecution relied upon the medical evidence statement Ex. PSS of Jagga Singh deceased as dying declaration, the evidence of recoveries of incriminating weapons alleged to have been made as a result of disclosure statements made by some of the appellants and the ocular version given by Munshi Singh PW11 and Chhota Singh PW12. Bal Kishan Teja Singh and Prem Singh the other three persons who had received injuries at the time of the occurrence, were given up by the prosecution on the allegation that they had been won over.

The appellants in turn, denied their participation in the crime and it was asserted that they had been falsely involved on account of the party faction in the village. It may here be stated that the motive for the crime which was suggested was that the Harijans of the village had cast their votes in favour of the congress Party and the partymen of Sukhdev Singh appellant wanted them to cast their votes in favour of the lok Dal Party. The appellants also examined D.S.P. Parma Nand DW1 in their defence according to whom the occurrence took place when members of the complainant party were returning from the police station accompanied by Head constable Sukhjit Singh and constables Balwan and Mahavir Singh. It was stated that the aforesaid police officers acted cowardly inasmuch as they ran away from the scene of occurrence.

The Sessions Judge. Sirsa vide judgment dated 6/8.12.1983 rejected the defence version and accepted the prosecution evidence and convicted and sentenced the accused as under:

<SLS>

Pritam Singh	
Sukhdev Singh.	U/s 148. I.P.C./R.I. for one year each
Amarjit Singh	
Kuldip Singh	
Mahinder Singh	U/s 302/149 I.P.C. Imprisonment for
Major Singh	life each.
Gurtej Singh	
s/o Narain Singh	U/s 326/149 I.P.C. R.I. for 3 years each.
Gurtej Singh	
s/o Pritam Singh	U/s 324/149 I.P.C./ R.I. for six
months each	
Zora Singh. Kaka Singh, Naiba Singh	
and Munshi Singh	
apellants	U/s 323/149 I.P.C./ R.I for 3
	months each.

The substantive sentences of imprisonment were however, ordered to run concurrently.

On appeals being filed the Punjab and Haryana High Court examined the entire evidence and ruled out consideration of the dying declaration alleged to have been

made by Jagga Singh Ex. PSS. Even though Munshi Singh PW11 who was an eye witness and had sustained injuries, was declared hostile, the High Court nevertheless referred to his testimony and observed that even though he had changed the story to a minor extent his evidence was worthy of reliance as far as what he saw on the spot. The High Court also relied upon the evidence of the other eye witness Chhota Singh PW12 and observed that he was present at the place of incident and was in a position to identify the members of the attacking party.

The High Court, however, accepted the arguments of the defence counsel to the effect that though two of the appellants were armed with a gun each and five of them were armed with a pistol each and yet these weapons were not used which showed that the appellants did not have the common object of an unlawful assembly to commit the murder of the victims. The High Court accordingly set-aside the conviction of the appellants before it from one under Section 302 read with Section 149 I.P.C. to one under Section 304 Part-II read with Section 149 I.P.C. and awarded the accused R.I. for four years and a fine of Rs. 5,000/- and in default of payment of fine they were ordered to undergo further R.I. for two years. The conviction and sentences were ordered to run concurrently in the case of all the appellants before the High Court.

Mr. R.C.Kohli, learned counsel appearing for the appellants in Criminal Appeal No. 10/1985 states that three of the five appellants namely, Mohinder Singh, Major Singh and Amarjeet Singh are since dead. Their appeal, therefore, abates.

Mr. Sushil Kumar Jain, learned counsel appearing for the appellant in Criminal Appeal No. 660 of 1984 states that the appellant Naiba Singh is dead. His appeal, therefore, abates.

The learned counsel appearing on behalf of the different appellants have sought to contend that the conclusion of the Courts below that the appellants were responsible for causing death of Jagga Singh was not Correct. It was submitted that Ex. PSS could not be regarded as a dying declaration and had been highly rejected by the High Court. It was also submitted that Munshi Singh PW11 had not supported the prosecution version in toto and that Chhota Singh P12 was in fact not present at the place of incident. It was also contended that the F.I.R. was lodged late and there was no explanation for the same.

We have carefully gone through the judgment of the courts below and have also seen the evidence on record. It is clear, and is not disputed, that an incident had occurred in the late evening of 7.7.1982 in village Baragudha which had led to injuries on 5 persons one of whom, namely Jagga Singh, having succumbed to them. The only dispute which was raised was whether the appellants were responsible for causing the said injuries. This question is essentially one of fact and both the trial court as well as the High Court have come to a concurrent finding of fact that the said injuries were caused by the appellants. The said conclusion seems to flow from the evidence on record. Even if the dying declaration of Jagga Singh is ignored it is not possible to come to the conclusion that Chhota Singh PW12 was got up witness who was not present at the place of incident. The evidence of Chhota Singh PW12 has withstood the cross examination and he has supported the prosecution's case. He had identified all the appellants as being party to the attack on the deceased and the injured persons and he has also attributed the roles played by each of them. The mere

fact that he was not injured is not a ground which can persuade us to come to the conclusion that he was not present at the place of incident. His testimony having been believed by both the trial court as well as the High Court we see no reason to reject the same.

As far as Munshi Singh PW11 is concerned he was one of the persons who was injured in the incident. In his examination-in-chief he had clearly stated that Kuldeep Singh Major Singh, Amarjit Singh Naiba Singh, Gurtej Singh. Zora Singh. Mohinder Singh etc, raised a lalkara stating that majbis be finished. He had further stated that accused persons were armed with 4 or 5 pistols or gandasa and they all attacked him. Prem Singh, Teja Singh Bal Kishan and Jagga Singh. Though he did not mention the other appellants as persons who attacked, hevertheless Munshi Singh PW11 did say in his evidence that:

"It is correct that compromise has been effected with Pritam Singh Sukhdev Singh Zora Singh and Kaka Singh and that is why I am not naming them".

The aforesaid sentence of Munshi Singh clearly implies that these named persons had taken part in the incident but they were not being named by him because of a compromise arrived at between Munshi Singh on the one hand and these four persons on the other. In the statement he did not say that some of the accused including Sukhdev Singh did not take part in the attack on the Harijans.

In our opinion, therefore, we see no reason to interfere with the conclusion of the High Court that the appellants were guilty of the offences for which they were convicted and sentenced by it. In view however of the lapse of time and inasmuch as the appellants were convicted for offences under Section 304 read with Section 149 I.P.C. and sentenced to 4 years R.I. and a fine of Rs. 5,000/- each were released on bail by the order dated 28.1.1985 and have already undergone imprisonment for over two years we feel that the ends of justice would be met by reducing their sentence from 4 years R.I. to the sentence already undergone by them. The fine of Rs. 5,000/- each is however, maintained.

Subject to this modification the appeals filed by the appellants are dismissed. On payment of the fine within a period of two months from the date of communication of this order the appellants shall stand discharged from their respective bail bonds. In default they shall serve rigorous imprisonment for 2 years each, as ordered by the High Court.