

CASE NO.:
Appeal (crl.) 713-714 of 2004

PETITIONER:
Balbir Singh, etc.

RESPONDENT:
State of Punjab, etc.

DATE OF JUDGMENT: 03/03/2005

BENCH:
K.G. Balakrishnan & B.N. Srikrishna

JUDGMENT:
J U D G M E N T
WITH

CRIMINAL APPEAL NOS. 776-777 OF 2004

K.G. BALAKRISHNAN, J.

The Additional Sessions Judge, Bhatinda, tried four accused for the offences punishable under Section 302 read with Section 34 IPC. Initially, the final report filed by the police was against five accused, but one of the accused was discharged. The Sessions Judge acquitted all the four accused. The State of Punjab filed a criminal appeal against the acquittal of the accused persons and the de-facto complainant filed a revision challenging the acquittal. The appeal and the revision were considered by the High Court and the Division Bench found all the four accused guilty of the offences punishable under Section 302 read with Section 34 IPC and each one of them was sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/-, with a default sentence of six months further imprisonment. Aggrieved by the findings of the High Court, A-2 and A-3 have filed Criminal Appeal Nos. 776-777 of 2004 and the fourth accused, Balbir Singh has filed Criminal Appeal Nos. 713-714 of 2004. During the pendency of the appeal before the High Court, the first accused, Gorkha Singh passed away.

The incident giving rise to these appeals happened on 1.10.1993 at about 9.30 AM. Deceased Tara Singh had purchased an agricultural field in village Kailey Bander from one Gurdial Kaur in 1990 and since then he had been cultivating that land with the help of his sons, PW-2 Badal Singh, Gurdev Singh and Harpal Singh. According to the prosecution, the appellants herein expected to inherit the property owned by Gurdial Kaur on her death and the purchase of the property by Tara Singh was resented to by them and they bore a grudge against him. On the date of the incident, PW-2 Badal Singh and his father deceased Tara Singh were coming back from the field. PW-3 Jaswinder Kaur, the daughter-in-law of deceased Tara Singh was also in the near vicinity. When Tara Singh reached near the field of one Mithu Singh, the four appellants, namely, Sikander Singh, Gora Singh, Gorkha Singh and Balbir Singh emerged from the nearby field and Gora Singh told that Tara Singh must be taught a lesson. Sikander Singh, threw away his 'Sotti' (wooden stick) and caught hold of Tara Singh. The turban of Tara Singh fell down whereupon Gorkha Singh, who was armed with a 'kulhari' (axe) gave a blow on the left side of the head of Tara Singh. Gora Singh, who was armed with an axe, also hit Tara Singh on the right side of his head. Balbir Singh also gave two blows to Tara Singh with a 'Ghope' (pointed rod). PW-2 Badal Singh and PW-3 Jaswinder Kaur

cried out, but the appellants continued to give blows to Tara Singh, who fell on the ground and died. PW-2 Badal Singh left PW-3 Jaswinder Kaur near the dead body of his father and went to meet the Sarpanch of village Kailey Bander. The Sarpanch was not available, so PW-2 reported the incident to his brother, Bhag Singh. He had also met Chowkidar Banta Singh. It may be noticed that Tara Singh was formerly a permanent resident of village Virk Khurd and only after the purchase of the property from Guardial Kaur he had come down and settled near the agricultural field. PW-2 Badal Singh then proceeded to his village Vir Khurd and met Jaswant Singh, the elder brother of his father and along with him he went to the police station and gave the First Information Report.

The Asstt. Sub-Inspector Bhajan Singh PW-5 took over the investigation and reached the place of incident. He recovered the turban and shoes worn by deceased Tara Singh and some blood-stained soil from the place of incident. He held inquest over the dead body and sent the same for post-mortem examination through the Head Constable. There were as many as thirteen injuries on the body of deceased Tara Singh. PW-1 Dr. Kulbir Singh, who conducted the post-mortem deposed that injury no. 11 was fatal and the two horizontal bruises measuring 15 x 2 cms had corresponding internal injury and the seventh and the eighth ribs of deceased Tara Singh were fractured and the fractured ribs had pierced the lung tissue. According to him, the death was due to hemorrhage and shock.

During their examination under Section 313 of the Criminal Procedure Code, the accused set up a very curious plea to the effect that they were falsely implicated and that deceased Tara Singh was attacked by two unknown persons and that DW-1 Gurjant Singh was a witness to the incident and the accused examined Gurjant Singh as DW-1. He deposed that while he was sitting in his house, he heard an alarm and when he reached the place, he saw two persons causing injuries to Tara Singh, but he could not identify them. He found Tara Singh dead on the spot and went to inform his relations and he could not meet anyone. He came to know that Tara Singh was formerly a resident of village Virk Khurd and proceeded to Virk Khurd in his car. There he met PW-2 Badal Singh and then they came back to Kailey Bander. PW-2 Badal Singh made consultation with Jaswant Singh and gave the First Information statement to the police.

The Sessions Judge, of course, did not accept the evidence of DW-1, but he acquitted the accused mainly for the reason that there was inordinate delay in giving the First Information statement to the police by PW-2 and as the witness could not satisfactorily give any explanation, this was taken as a serious lapse on the part of the prosecution. Another reason given by the Sessions Judge was that PW-2 Badal Singh could not have been present at the scene of occurrence as he did not make any attempt to save his father from the assailants. According to the Sessions Judge, had PW-2 been present at the scene of occurrence, he would have certainly intervened to save his father. The Sessions Judge was also of the view that there was no penetrating injury found on the body of the deceased Tara Singh, although according to PW-2, the accused had given a piercing thrust on the body of the deceased Tara Singh with a 'Ghope' and that there were contradictions between the medical evidence and the oral evidence.

The High Court reversed the findings of the Sessions Judge and held that the delay in giving the F.I.R. was of no consequence as it was satisfactorily explained by PW-2. The High Court was also of the view that PW-2 being a young man could not have intervened in the attack on his father as there were four assailants, who were armed. According to the High Court, the same could not be taken as a factor

to disbelieve PW-2. The High Court thus reversed the findings of the Sessions Judge.

We heard Shri Ranjit Kumar, learned Senior Counsel for the appellants and also the counsel for the State of Punjab. The evidence of PW-2 and PW-3 shows that the accused attacked the deceased with various weapons. The prosecution evidence shows that deceased Tara Singh and his family members were originally the residents of village Virk Khurd. They had purchased the agricultural property in question about three years before the incident and constructed a hutment nearby and started living there. When PW-2 saw the ghastly incident of attack on his father by the assailants, he could not seek the help of anybody from the village Kailey Bander where the incident took place, probably because he had no acquaintance there. He went in search of the Sarpanch of the village but could not meet him and therefore he was constrained to go to his own village Virk Khurd and met his father's elder brother and then went to the police station. It cannot be said that a young person like PW-2 acted in an unreasonable manner. The counsel for the appellants pointed out that two of his brothers were in the nearby field, but PW-2 did not inform them. As stated before, deceased Tara Singh with his family members had come to village Kailey Bander three years before the incident and probably they too may not have any acquaintances. Therefore, it is quite probable that for this reason PW-2 chose to go to the village Sarpanch. The High Court was fully correct in holding that PW-2 cannot be disbelieved for not having intervened in the melee as there were four assailants who were armed with weapons. In our view, the High Court rightly reversed the findings of the Sessions Judge. The contention of the appellants counsel that there were contradictions between the medical evidence and oral evidence also is of not much consequence as the witness could not be in a position to specifically say as to which portion of the weapon was used when there was a sudden attack by a group of persons.

Coming to the nature of the offence committed by the appellants, there is evidence to the effect that the appellants only wanted to teach a lesson to Tara Singh. They were aggrieved by the fact that deceased Tara Singh had purchased the agricultural land which they expected to get from Gurdial Kaur. Two of the assailants were armed with axes, but they did not use the sharp edge of those weapons and the injuries sustained by deceased Tara Singh would show that there were no deep penetrating injuries. Most of the injuries were of minor nature, having possibly been caused by the blunt edge of the weapon. The doctor, who conducted the post-mortem examination deposed that injury no. 11, namely, two bruises on the back of the deceased Tara Singh fractured two of his ribs. The evidence of PW-2 and PW-3 clearly is to the effect that it was Sikander Singh who caused those injuries, which ultimately proved fatal. Two other injuries were caused by Gorkha Singh, the first accused. Appellants Gora Singh and Balbir Singh are not alleged to have caused any fatal injury to the deceased Tara Singh. Gora Singh, though armed with a 'Kulhari' (axe), used the blunt portion of that axe. Sikandar Singh was armed with a 'Sotti' (wooden stick). He caught hold of deceased Tara Singh to enable other assailants to cause injury to him and Sikandar Singh himself gave 'Sotti' blows on the back of the deceased which resulted in causing fracture of the ribs and, in turn, piercing of the lung tissues of the deceased Tara Singh. There is no dispute that these injuries were caused on Tara Singh. It is clear that Sikandar Singh dealt the fatal blows which ultimately resulted in the death of the deceased. If the entire prosecution evidence is considered in the background of the so called motive alleged, it is very difficult to discern that these appellants had any common intention to cause the death of the deceased. The 'Sotti' blows dealt on the back of deceased Tara Singh proved fatal causing fracture of ribs which pierced his lung

tissues.

On careful analysis of the prosecution evidence and the role played by each one of the appellants, we are of the view that the evidence does not show that these appellants shared a common intention to cause the death of the deceased. However, appellant Sikandar Singh caused injuries on deceased Tara Singh which proved to be fatal at the end. The act committed by Sikandar Singh would come within the offence punishable under Section 304 Part I IPC as he could be attributed with the knowledge that the injury caused by him is likely to cause death. The grievous injuries caused by other appellants, namely Gora Singh and Balbir Singh, would fall within the mischief of Section 326 IPC.

In the result, we set aside the conviction and sentence of all the appellants under Section 302 read with Section 34 IPC and alter the conviction of the appellants as follows: Sikandar Singh is found guilty of the offence punishable under Section 304 Part I IPC and he is sentenced to undergo imprisonment for a period of seven years and the other appellants, namely, Gora Singh and Balbir Singh are found guilty of the offence punishable under Section 326 IPC and sentenced to imprisonment for a period of three years. The appellants are entitled to set off the period of imprisonment already undergone by them. The appeals are accordingly disposed of.