

2009 (5) SCR 322

**STATE OF HARYANA
v.
BALKAR SINGH & ORS.
(Criminal Appeal No. 260 of 2004)**

MARCH 26, 2009

**[DR. ARIJIT PASAYAT, LOKESHWAR SINGH PANTA AND P.
SATHASIVAM, JJ.]**

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. State of Haryana is in appeal against the judgment of a Division Bench of the Punjab and Haryana High Court upholding the judgment of acquittal passed by learned Additional and Sessions Judge, Kurukshetra.

2. The respondents, three in number, were charged for commission of offences punishable under Sections 302 and 323 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC').

3. The factual position as projected by the prosecution is as follows:

4. On 9.2.1993 at about 8.00 A.M., Dev Singh was heading from the house to his fields carrying a Sutli and Sua for the purpose of stitching the bags in which potatoes were to be packed and he had hardly covered a distance of 4/5 yards when he found accused Balkar Singh, Chuhan Singh, Surinder Singh, Sher Singh (hereinafter referred to as 'deceased') and injured Shamsher Singh standing near the tubewell of Chuhan Singh, where a drain existed and some water had stagnated by the road side, because the height of the drain was more than the height of the road and some water had tricked inside the house of Harbans Singh. Sher Singh and Shamsher Singh requested Balkar Singh and Chuhan Singh to deepen the drain so that water

would not flow into their houses, to which Balkar Singh and Chuhar Singh did not agree and asked them to do themselves and thereafter the accused left the place. Deceased Sher Singh and Shamsher Singh started deepening the drain with the help of a kassi. After about one minute accused Balkar Singh carrying a Gandasi and the remaining two Chuhar Singh and Surender Singh armed with lathis came there. Balkar Singh gave a gandasi blow to Sher Singh, which hit his left temple. Chuhar Singh gave a lathi blow which hit the left side of the temple and Surender Singh gave a blow on the head of Sher Singh, who fell down and Shamsher Singh ran towards his house. Thereafter there was free exchange of danda blows from both sides. Shamsher Singh was injured by all the three accused, who received injuries on both shoulders, left side of the chest and head. The occurrence was witnessed by him and Prem Singh, who was standing at a distance of 5/7 paces. Thereafter the accused left with their respective weapons and the injured Sher Singh and Shamsher Singh were removed in a tractor-trolley and got admitted in Civil hospital, Ladwa. The police came there and recorded statement, Ex. PD/2 which was thumb-marked by him in token of its correctness.

5. Injured Sher Singh and Shamsher Singh were got medico-legally examined. Sher Singh, who had been referred to P.G.I. Chandigarh, succumbed to the injuries on 13.2.1993, where upon Faqir Chand ASI (PW-12) conducted inquest proceedings Ex. PJ/3 and autopsy was conducted by Dr. B.Suri (PW-14). From the accused side all the three suffered injuries and were medico-legally examined by PW-2 Dr. P.R.Pruthi, Medical Officer, CHC, Ladwa.

6. After investigation, accused were challaned for the offence and a charge under Section 302 and 323 read with Section 34 of the Indian Penal Code was framed against the accused to which they pleaded not guilty and claimed trial.

7. In order to substantiate the accusations, prosecution examined 14 witnesses. The accused persons, to support their plea of innocence, examined the Draftsman DW1. The trial court found that the evidence is not sufficient to establish the guilt of the accused person and accordingly directed acquittal. The same was questioned in appeal before the High Court. The stand of the State before the High Court was that the injury was caused to Sher Singh and Shamsher Singh. Sher Singh had died and Samsher Singh was an injured eye-witness who appeared as PW10. PW9 was eye-witness who was present at the spot where the incident took place. It was stated that the accused persons also had sustained injuries and had taken similar plea in their defence. The accused persons placed reliance on the evidence of Dev Singh. In his statement made to the police he had stated about having reached the place of occurrence after hearing the cries for help. The High Court noticed that the trial court was justified in holding that Dev Singh and Prem Singh had reached the spot after hearing the cries. The High Court also noticed that the possibility of injuries on the body of the deceased and the accused could not be directly attributable to the accused persons. The trial court and the High Court noticed that the occurrence took place in the course of free fight and there were more severe injuries caused on the person of the accused person than the deceased and the so-called eye witness. Considering the nature of evidence, the trial Court and the High Court have come to hold that the prosecution version is not acceptable. In the circumstances, the High Court observed that the number of injuries make it clear that it was a case of free

fight and it cannot be ascertained as to which party was the aggressor. Therefore, the view taken by the trial court was a possible view and the High Court did not interfere.

8. Learned counsel for the appellant-State vehemently argued that the analysis made by the trial court and the High Court and the conclusions arrived at are not in line with the evidence adduced including that of the eye-witness and injured eye-witness. Learned counsel for the respondent supported the judgment of the trial court as upheld by the High Court.

9. Having heard learned counsel for the parties we feel that both the trial court and High Court were justified in their respective view.

10. There is no scope for interference in this appeal which is accordingly dismissed.

