

PETITIONER:
KABUL SINGH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 01/09/1995

BENCH:
MUKHERJEE M.K. (J)
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MUKHERJEE M.K. (J)
NANAVATI G.T. (J)

CITATION:
JT 1995 (6) 370 1995 SCALE (5)162

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE. J.

In this appeal preferred under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984 the six appellants challenge the order of conviction and sentence recorded against them under Sections 148, 307, 307/149, 324, 324/149, 323 323/149 of the Indian Penal Code by the Additional Judge, Special Court, Ludhiana.

The prosecution case in a nutshell is that on April 13, 1984 at or about 8 P.M. when Bhajan Singh and his son Chain Singh were sitting on the onirni in front of their house in village Mangli Tanda, the six appellants came there shouting that Bhajan Singh should not be spared. Of the appellants, Amar Singh, Mukhtiar Singh and Chand Singh were armed with lathis, Kabul Singh with a double barrelled gun and Roshan Singh with a takua. Immediately after reaching there Kabul Singh fired a shot from his gun aiming at and causing injuries to Chain Singh. When Bhajan Singh stepped forward he met with the same fate at the hands of Kabul Singh. On being so hit both of them raised alarms and nearing the same Mela Singh, Jainail Singh, Sucha Singh. Smt. Maya and Smt. Chindo reached there. Seeing them the appellants Mukhtiar Singh, Chand Singh and Roshan Singh started assaulting them with their respective weapons. Finding no other alternative, when the victims started hurling brickbats towards them, the appellants fled away. On that very night the injured Bhajan Singh, Chand Singh, Smt. Maya and Chindo went to the Civil Hospital, Ludhiana for their treatment while the other three namely, Jarnail Singh, Mela Singh and Such Singh got themselves examined at the local Primary Health Centre as their injuries were minor.

On the following morning, ASI Mulkh Raj, of Police Out Post Kalan went to Civil Hospital, Ludhiana on receipt of a wireless message from Sahnawal Police Station and recorded the statement of Bhajan Singh (Ext/PCC). He forwarded the statement to the police station for registering a case

thereupon and took up investigation. He went to the spot and got a site plan prepared. Besides he seized some blood stained earth and two empty cartridges and in due course sent the same for examination by experts. In course of the investigation he also seized the licensed gun of appellant Kabul Singh and sent it to the Ballistic Expert. After examining the witnesses and completing the formalities of investigation the Investigating Officer submitted charge-sheet against the appellants.

The motive that was ascribed by the prosecution for the murderous assault was that Bhajan Singh had purchased a plot from the Gram Panchayat for a sum of Rs. 3000/- and constructed a house thereon. Since the Panchayat had not issued any receipt for the above sum in spite of repeated demands, Bhajan Singh had earlier on the day in question had gone to the house of appellant Amar Singh, who was a member of the Panchayat, and demanded the receipt or the money back. Over this issue an altercation took place between them.

In order to bring home the charges levelled against the six appellants the prosecution examined Bhajan Singh (P.W.6), Chain Singh (P.W.7) and Smt. Maya (P.W.8) as eye witnesses. Besides, it examined five doctors, namely, Dr. Uggar Singh (P.W.1), Dr. Ravinder Kumar (P.W.2), Dr. Deepak Walia (P.W.3), Dr. Parminder Singh (P.W.4), Dr. Suman Gupta (P.W.5) who examined and treated the injured at one or the other time, ASI Mulkh Raj (P.W.9) and Nachhattar Singh (P.W.10), a draftsman who prepared the site plan. The report of the Chemical Examiner indicating that human blood was found on the seized earth and that of the Director of Forensic Science Laboratory in Proof of the fact that the seized empty cartridges were fired from the licensed gun of Kabul Singh were also exhibited (Ext. PNN and Ext. P00 respectively).

In their statements recorded under Section 313 Cr.P.C. the appellants, except Roshan Singh, took a plea of right of private defence of their persons. Their positive stand was that at or about 8.30 P.M. when. On their way home, Amar Singh and his son Chand Singh, reached near the house of Bhajan Singh, he came out therefrom accompanied by Chain Singh, Mela Singh Jarnail Singh and Suchha Singh armed with lathis and gave a lathi blow on the right side of the nose of Amar Singh felling him down. Simultaneously, Mela Singh, Jarnail Singh and Suchha Singh also assaulted Amar Singh with lathis, Chand Singh was also beaten up by the above five persons. When, raised by their alarms, the appellants Bhulla Singh, Mukhtiar Singh and Kabul Singh came there they were also assaulted by them. Placed in such a predicament Kabul Singh ran away from the place, went to his house and came back with his licensed gun. He then requested the assailants to desist from further assault but when they did not heed to his request he fired a shot from his gun. In the commotion that followed the female members of Bhulla Singh's family threw brick bats resulting in injuries to Sucha Singh and Maya (P.W.8). Then the assailants left the place of occurrence and the injured appellants were taken to primary health centre where they were medically examined. The defence of the appellant Roshan Singh was one of alibi. The appellants, however, did not examine any witness in support of their versions.

When the prosecution case, as detailed by the three eye-witnesses, is considered vis-a-vis the defence case mentioned above it can be said to have been conclusively proved that an incident of assault took place in front of the house of Bhajan Singh in which Kabul Singh fired from

his gun. The evidence of the doctors also prove that seven members of the complainant's party and five of the appellants sustained injuries. Indeed presence of all of them, except appellants Bhulla and Roshan Singh is also admitted by the defence.

The only question therefor that remains to be answered is whether the incident took place in the manner alleged by the prosecution or by the defence. To answer the question we have given our anxious consideration to the evidence of the three eye witnesses particularly that of Smt. Maya (P.W.8). Indeed, her presence at the time of the incident and her sustaining injuries, in course thereof, is also admitted by the defence. In narrating the incident she stated that on that evening she had gone to the house of Bhajan Singh to enquire about the welfare of his wife. According to her when she was in his house she found Bhajan Singh and Chain Singh in front of the outer gate of their house. While in the house she heard a gun shot coming from outside. She immediately came out and saw Chain Singh in an injured condition. She next stated that she saw Kabul Singh firing from his gun which hit Bhajan Singh. She named the other five appellants present there along with Kabul Singh. She also detailed the weapons they were carrying. In narrating the incident further she stated that after her arrival Chindo also arrived there and Amar Singh gave a blow with a lathi on her head. She next stated that she, Chindo and Bhajan Singh then took up some brick bats lying there and hurled the same towards the miscreants. She lastly stated that after causing injuries to them all the six miscreants (the appellants before us) ran away. Though she was cross-examined at length nothing, except some minor contradictions with reference to her statement recorded under Section 161 Cr.P.C., could be elicited by the appellants to discredit her: nor is there anything on record to show that she was inimically deposed towards the appellants or was interested in the success of the prosecution. When her evidence is considered in the light of the evidence of the other two eye-witnesses and the evidence of the doctors who examined Chain Singh and other injured the conclusion is inescapable that the appellants had no right of private defence and, on the contrary, it is the complainant's party which was entitled to the right of private defence as the appellants were the aggressors. This apart, the nature of injuries that was sustained by some of the appellants clearly show that those could not have been caused by lathis as claimed by them. Rather, the injuries fit in with the prosecution case that they sustained those injuries owing to throwing of brick bats.

It was however contended on behalf of the appellants that the recovery of the two empty cartridges from near the house of Kabul Singh not only falsified the story of the prosecution that Kabul Singh had fired from his gun from near the house of Bhajan Singh out supported the defence case also. It is of course true that the evidence on record shows that the empty cartridges were recovered from near the house of Kabul Singh but then the above circumstance does not support the above contention of the appellants for it was elicited in cross-examination of Bhajan Singh (P.W.6) that the house of Bhulla Singh is opposite to his house and only the village Phirni separates those houses. Then again, it was elicited in cross-examination of Chain Singh that Kabul Singh fired at him from a distance of 7/8 Karams (1 Karam is equivalent to 5 ft. approximately) and Dr. Uggar Singh (P.W.1) who examined the injuries on Chain Singh opined that those injuries could be the result if the fire-

arm was used from a distance of more than six feet.

It was next contended that the evidence of the eye witnesses that brick bats were hurled by them during the incident was absolutely untrue as the Investigating Officer did not find or seize any brick-bats at the site. This contention is also of no avail for it was the defence case also that brick-bats were hurled during the incident. While on this point we cannot also lose sight of the fact that the Investigating Officer visited the site long after the incident was over.

Coming now to the individual roles of the appellants in the incident we find that all of them were armed with deadly weapons except Bhulla Singh, who was unarmed. His conviction under Section 148 IPC therefore cannot be sustained but he will be liable for the offence under Section 147 IPC. We, therefore, alter his conviction from Section 148 to Section 147 IPC and reduce the sentence of one year imposed for the former conviction to six months. Though appellant Roshan Singh took the plea of alibi, he did not produce any evidence in support thereof. His case therefore stands on the same footing as the other appellants more so as he used a takua. Except to the above extent we do not find any reason to alter, much less set aside, any of the convictions of the appellants. As the sentences imposed upon the appellants err on the side of leniency, no interference in respect thereof is also called for.

In the result the appeal stand dismissed and the impugned order of conviction and sentence is upheld subject to the modification indicated above. The appellants, who are on bail, will now surrender to their bail bonds to serve out their sentences.