

CASE NO.:
Appeal (crl.) 180 of 2004

PETITIONER:
Rajinder & Ors.

RESPONDENT:
State of Haryana & Anr.

DATE OF JUDGMENT: 25/08/2004

BENCH:
B.N. AGRAWAL & H.K. SEMA

JUDGMENT:
J U D G M E N T

B.N.AGRAWAL, J.

The appellants along with accused Laxman Singh were tried and by judgment rendered by the trial court accused Laxman Singh, though acquitted of the charge under Section 27 of the Arms Act, was convicted under Section 302 of the Indian Penal Code (hereinafter referred to as "I.P.C.") whereas four appellants were convicted under Sections 302/149 I.P.C. and all sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- each, in default, rigorous imprisonment for a period of one month. Accused Laxman Singh was further convicted under Section 307 I.P.C. and the appellants under Sections 307/149 I.P.C. and each one of them sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.500/- each, in default, rigorous imprisonment for a period of one month. They were also convicted under Sections 148 and 323/149 I.P.C. and sentenced to undergo rigorous imprisonment for a period of one year and three months respectively. All the sentences, however, were ordered to run concurrently. On appeal being preferred, the High Court of Punjab and Haryana confirmed the convictions whereupon two special leave petitions were filed before this Court, one by accused Laxman Singh whereas the other by the appellants. The special leave petition of accused Laxman Singh has been dismissed but leave to appeal was granted in the case of appellants giving rise to the present appeal.

The prosecution case in short was that on 10.4.1999 at about 4.30. P.M., when Lakhan Lal, the complainant, and his father Shiv Charan were at their shop, the appellants and accused Laxman Singh armed with lathies and gun respectively came there in a jeep bearing Registration No. HR \026 26 J-0051 and started abusing the complainant and his father whereupon the complainant and his father came out of their shop and asked the reason for abusing them. At this, the appellants threw stones and sticks on them and in order to save themselves, the complainant and his father ran towards their house and when they were on raised platform of the house, accused Laxman Singh, who had a double barrel gun, fired shot from the same. One shot hit Shiv Charan in his head while the other right calf region as a result of which Shiv Charan fell down. When the complainant tried to take care of his father, gun was fired at him too and stones pelted. While he escaped unhurt from the gun shots as they were off target, he received injuries by pelting of stones on his left palm and right calf. Finding that his father had already died, the complainant, out of fear, entered his house and closed the door from within. Thereafter, the accused persons stoned the women of the house who were on the roof and they were also fired at. The ladies came down out of fear and thereafter the accused fled away. Besides the complainant, his brother Johri Mal had also seen the occurrence. In the meantime, Meenu, wife of the complainant, left for the Police Station, arrived there at about 6.45 P.M. and reported the incident of physical violence. On her information, entry was made in the Daily Diary and Shakuntala, S.H.O., Police Station, Bilaspur and Vinod Kumar, Inspector, left for the place of occurrence with her where fardbayan of Lakhan Lal was recorded stating the aforesaid facts, on the basis of which First Information Report was

drawn up. The police after registering the case took up investigation and on completion thereof submitted chargesheet, on receipt whereof the learned Magistrate took cognizance and committed all the aforesaid accused persons, including the appellants, to the Court of Session to face trial.

The defence of accused persons was that they were innocent, no occurrence, much less the one alleged, had taken place, the deceased might have received injuries at some other place of occurrence in some other manner and the accused were falsely implicated by members of the prosecution party to feed fat the old grudge.

During trial, the prosecution examined sixteen witnesses in all, out of whom PW1 was Dr. Sanjay Narula, who conducted the post-mortem examination on dead body of the deceased and PW2, Lakhan Lal, the informant, and his brother Johri Mal, PW3, who claimed to be eyewitnesses to the alleged occurrence. PWs 4, 5 and 8 to 15 were formal witnesses and PW6, Dr. Rajesh Kumar Sharma, examined the injuries of PW2 whereas PW7 and PW16 were the two Investigating Officers in the case. The defence had not examined any witness in the case on hand. Upon the conclusion of trial, the learned Additional Sessions Judge convicted all the accused persons, as stated above, and their convictions having been confirmed by the High Court, the present appeal by special leave by the appellants; conviction of accused Laxman Singh having been confirmed by this Court by dismissal of his special leave petition.

Mr. U.R. Lalit, learned Senior Counsel appearing in support of the appeal, submitted that though the occurrence has taken place in the broad day-light, the prosecution failed to examine a single independent witness but has examined PWs 2 and 3 who are nobody else than sons of the deceased. These witnesses consistently supported the prosecution case, disclosed in the First Information Report, in all material particulars, in their statements made before the Police as well as substantive evidence in Court. The trial court as well as the High Court has placed reliance upon their evidence and were of the view that merely because they were related to the deceased, the same ipso facto could not have been the ground to discard their evidence. In our view, the trial court as well as the High Court was quite justified in placing reliance upon their evidence as they were natural witnesses and consistently supported the prosecution case. That apart, their evidence has been accepted by this Court by upholding conviction of accused Laxman Singh and there is no reason to discard their evidence even in relation to the appellants.

The learned Senior Counsel next submitted that the prosecution case and evidence of firing by accused Laxman Singh were highly doubtful and evidence of PWs 2 and 3 on this count could not have been relied upon. In our view, submission has been made only to be rejected. So far as Laxman Singh is concerned, his conviction having been upheld by this Court by dismissal of his special leave petition, in the facts and circumstances of the present case, it is not possible for this Court to go into the correctness or otherwise of conviction of the said accused. The learned counsel then submitted that though according to prosecution case, the appellants were armed with sticks and used the same during the course of occurrence, no stick was recovered. It is true that sticks were not recovered from any place, much less possession of any of the appellants, but that cannot be a ground to throw out the prosecution case when the same has been otherwise found to be truthful by credible evidence. The learned counsel also submitted that PWs 2 and 3 stated in court that the appellants exhorted for killing the deceased, though no such case was disclosed either in the First Information Report or in the statement of these witnesses before the police. Even if the prosecution failed to prove case of exhortation by the appellants by credible evidence, the same cannot affect the prosecution case in relation to the appellants.

Learned counsel further submitted that the prosecution case of pelting stones on the deceased as well as on PW2 and assaulting them by lathies is not supported by the medical evidence as the doctor found injuries by fire arm. The doctor - PW1, who conducted post-mortem examination on the dead body of the deceased, found as many as eight injuries on his person and in his opinion, injury nos. 1 and 2 alone could have been caused by fire arm and not the other six injuries which does not eliminate the fact of causing injuries by lathies and stone pelting by the appellants. So far as the evidence of doctor - PW6, who examined the injuries of PW2, is concerned, he specifically stated that injuries found on him could be caused by blunt weapon, as such the injuries could have been caused by

lathies and pelting of stones by the appellants. Thus, we have no difficulty in holding that the prosecution case of causing injuries by lathies and pelting of stones is corroborated by medical evidence.

The learned counsel lastly submitted that the common object of the unlawful assembly, of which the appellants were members, could not have been to cause death of the deceased but the same could have been, at the highest, to cause simple hurt. In our view, the submission has been made only to be rejected as the definite prosecution case as well as the evidence is that the five accused persons, including the four appellants, came together in a jeep, one of whom was armed with gun and others with lathies, after arriving at the place of occurrence, they abused members of prosecution party and on protest being made by them, accused Laxman Singh fired at the deceased, who succumbed to the injuries, whereas the appellants pelted stones upon the deceased and PW2 and threw lathies upon them, as a result of which they received several other injuries apart from the two injuries by fire arm inflicted by accused Laxman Singh upon the deceased, and thereupon, they fled away together from the place of occurrence. On these facts, we have no difficulty in coming to the conclusion that the common object of the unlawful assembly, of which the appellants were members, was to cause death of the deceased and pursuant to that common object, one of the members of the unlawful assembly, namely, accused Laxman Singh inflicted two fatal injuries upon the deceased by fire arm whereas the appellants inflicted six other injuries on him. Thus, we do not find any substance in this submission as well. In view of the foregoing discussion, we are of the view that prosecution has succeeded in proving its case beyond reasonable doubt and the High Court has not committed any error in upholding convictions of the appellants, as such no interference is called for by this Court.

Accordingly, the appeal fails and the same is dismissed.