

PETITIONER:
PRITAM SINGH ETC.

Vs.

RESPONDENT:
STATE OF PUNJAB ETC.

DATE OF JUDGMENT: 20/08/1996

BENCH:
M.K.MUKHERJEE, S.P.KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

THE 20TH DAY OF AUGUST, 1996

Present:

Hon'ble Mr. Justice M.K. Mukherjee

Hon'ble Mr. Justice S.P. Kurdurkar

U.R. Lalit, Sr.Adv., Rajiv K.Garg, Ajay Bansal, (Ms. Indu Sharma) (NP) N.D.Garg, S.B. Upadhyay, Laxmi Raman Singh, (H.M. Singh,) Adv. for R.S. Suri, Advs. with him for the appearing parties.

J U D G M E N T

The following judgment of the Court was delivered:
Pritam Singh

V.

State of Punjab

WITH

CRIMINAL APPEAL NO. 63 of 1988

Balbir Singh

V.

Nachhatar Singh & Ors.

J U D G M E N T

S.P. KURDUKAR, J.

Criminal appeal No. 157 of 1985 is filed by the appellant-original accused no. 1 under section 14 (1) of the Terrorist Affected Areas (Special Courts) Act, Against the judgment and order dated 9th January, 1985 passed by the learned Judge, Special Court, Ferozepur in case No. 36 of 1984. The learned Special Judge found the appellant guilty of committing the murder of Naib Singh and accordingly sentenced him to suffer imprisonment for life under Section 302 of the Indian Penal Code and also sentenced him to suffer rigorous imprisonment for nine months for an offence punishable under Section 324 of the Indian Penal Code for causing simple hurt to Balvinder Singh (PW 5).

2. Criminal Appeal NO 63 of 1988 is filed by Balbir Singh - the complainant against the very same judgment challenging the acquittal of Nachhatar Singh and Sukhpal Singh under Section 302/34 of the Indian Penal Code. Since both these appeals arise out of the common judgment, they are being disposed of by this judgment.

3. The appellant is brother of Nachhatar Singh (A-2) and Sukhpal Singh is son of the appellant (A-3). They were put

up for trial for committing the murder of Naib Singh and causing grievous injuries to the prosecution witnesses. Sukhpal Singh was convicted by the Trial Court under Section 323 of the Indian Penal Code but Nachhatar Singh was acquitted.

4. It is also not in dispute that Naib Singh (since deceased) was the first cousin of appellant. On February 14, 1984, in the morning hours, Balbir Singh (PW 4) alongwith his son Naib Singh was going to the fields. When they reached the point from where the passage bifurcates to the field of Pritam Singh, Pritam Singh, Nachhatar Singh and Sukhpal Singh (A-1 to A-3) who were armed with gandasas, came there and raised a lalkara that Balbir Singh (PW 4) be not spared. The appellant immediately attacked and gave gandasas blow on the head of Naib Singh. Naib Singh sustained a bleeding injury and fell down. The other two accused caused injuries to Balbir Singh (PW 4) with the gandasas.. Balvinder Singh (PW 5) on hearing the alarm reached the place of occurrence. The appellant gave gandasas blow on his head also. Nachhatar Singh (A-2) gave two gandasas blows to Balvinder Singh (PW 5) from the blunt side. Balvinder Singh (PW 5) at the relevant time was having kasauli and in self defence used the same causing injuries to Pritam Singh-the appellant and Nachhatar Singh (A-2). This incident was witnessed by Thana Singh (PW 6). Thana Singh (PW 4) and Balvinder Singh (PW 5) took the injured Balbir Singh (PW 4) to the Civil Hospital at Gidderbaha. Dr. N.G. Garg (PW 2) declared Naib Singh dead. Dr. N.C. Garg (PW 2) examined Balbir Singh (PW 4) and issued the injury certificate. Dr. N.C. Garg (PW 2) also examined Balvinder Singh (PW 5) and found two injuries on his person. Paras Ram (PW 8) Station House Officer, Police Station, Gidderbaha, On receipt of the Information went to the Hospital and recorded the statement of injured Balbir Singh (Ex. P12) and treated the same as formal P.I.R. The crime came to be registered against three persons under Sections 302, 323 and 324 read with Section 34 of the Indian Penal Code. After completing the necessary investigation, the accused were put up for trial for the aforesaid offences.

5. Nachhatar Singh (A-2) had also sustained injuries went to the Civil Hospital. Gidderbaha for medical treatment. His statement was also recorded by Paras Ram (PW 8) SHO, Police Station, Gidderbaha.

6. The defence of the accused is that they have not committed any offence and pleaded that the members of complaint partly were aggressors and infact Balvinder Singh (PW 5) who was armed with kasauli assaulted and caused injuries to Pritam Singh (A-1) and Nachhatar Singh (A-2). In exercise of their right of private defence they were compelled to retaliate the assault. They have committed no offence. They are innocent and they be acquitted.

7. The prosecution in support of its case examined eight witnesses. Balbir Singh (PW 4) and Balvinder Singh (PW 5) are the eye witnesses. PW2 is Dr. N.C. Garg who performed the autopsy on the dead body of Naib Singh and also issued injury certificates to the injured prosecution witnesses and to Nachhatar Singh (A-2).

The learned Trial Judge after considering the evidence led by the prosecution and the defence taken up by the accused held the appellant guilty of an offence of murder of Naib Singh punishable under Section 302 IPC and sentenced him to suffer imprisonment for life. The appellant was also found guilty of an offence punishable under Section 324 of the Indian Penal Code for causing simple hurt to Balvinder Singh and sentenced him to suffer rigorous imprisonment for nine months, It may be stated that we are not concerned with

the other two accused in this appeal.

9. Mr. U.R. Lalit, the learned counsel appearing in support of this appeal urged that the evidence of Balbir Singh (PW 4) and Balvinder Singh (PW 5) is totally unreliable being close relations of deceased Naib Singh. Both these witnesses had suppressed the true facts from the Court relating to the incident. He then urged that infact the members of the complainant party were the aggressors and initially they opened up the assault on Nachhatar Singh who had sustained as many as seven injuries out of which two were incised wounds and one was lacerated wound. Learned counsel urged that the trial court has totally misread the evidence of Balbir Singh (PW 4) and Balvinder Singh (PW 5) and wrongly convicted the appellant for the aforesaid offences.

10. Mr. H.M. Singh, learned advocate appearing for the State of Punjab supported the impugned judgment.

11. At the outset, it may be stated that there is no serious challenge before us to the fact that Naib Singh met with a homicidal death.

12. The next question that falls for our consideration is as to which party was the aggressor and whether appellant and his associate had any right of private defence.

The prosecution story mainly rests on the evidence of Balbir Singh (PW 4) and Balvinder Singh (PW 5) who claimed to be the eye witnesses. Balbir Singh is the father of Naib Singh (since deceased). Balvinder Singh (PW 5) is the son of PW4. P.W.4 has stated that field of appellant is adjoining to their field. On February 14, 1984 at about 10.15 a.m., he alongwith his son Naib Singh were going to the fields and at the relevant time A-1 to A-3 were in their field. When they reached the spot which bifurcates the passage, on going to the field of appellant and other going to his field, suddenly, the appellant Nachhatar Singh (A-2), Sukhpal Singh (A-3) came to that junction, they were armed with gandasas and said that he (PW 4) would not be spared. the appellant thereafter opened the attack and gave gandasa blows on the head of Naib Singh. Nachhatar Singh (A-2) and Sukhpal Singh (A-3) gave gandasa blows on his head by the blunt side. Sukhpal Singh (A-3) again tried to give gandasa blow to him, however, he warded off the same but sustained an injury on his left arm. He then fell down. nachhatar singh (A-2) gave two more blows with gandasa on his head. He then gave an alarm and thereafter his son Balvinder Singh (PW 5) came there. The appellant suddenly gave the gandasa blow on the head of Balvinder Singh (PW 5). Other accused persons also assaulted Balvinder Singh (PW 5) then wielded kasauli in his self defence and in that process Nachhatar Singh had sustained injuries. When again an alarm was given, the accused fled away. Balbir Singh (PW 4) has been cross-examined at great length but, however, he stood firmly and asserted that initially the appellant and his associates opened up the assault and the appellant first gave a gandasa blow on the head of Naib Singh. He also further asserted that the appellant and other accused assaulted him (PW 4) and Balwinder Singh (PW 5).

13. The evidence of Balvinder Singh (PW 5) is almost identical in material particulars and he stated that when he heard the alarm given by his father Balbir Singh (PW 4), he come to the spot and noticed that the appellant and other accused were assaulting his father Balbir Singh (PW 4) and Naib Singh. He was also assaulted by Nachhatar Singh (A-2) and other accused persons. Apprehending danger to his life and his father and brother, in self defence, he wielded the kasauli in which Nachhatar had sustained the injuries. There

is nothing in the cross-examination which would make us to disbelieve the evidence of these two eye witnesses.

14. Mr. U.R. Lalit, however, urged that there is total artificiality in the evidence of Balbir Singh (PW 4) and Balvinder Singh (PW 5) when they tried to split the incident into two parts. According to learned counsel, infact complainant party was the aggressor and they had assaulted the appellant and Nachhatar Singh and caused incised and lacerated injuries to them. In support of this submission, he drew out attention to the injury certificates of Nachhatar Singh (A-2). It is true that Nachhatar Singh had sustained two incised and one lacerated wound but, however, having regard to the evidence of Balbir Singh (PW 4) and Balvinder Singh (PW 5) which is totally free from any contradiction/omission, it is difficult to accept that the complainant party was the aggressor. Once the evidence of Balbir Singh (PW 4) Balvinder Singh (PW 5) is accepted being truthful as regards the initial start of assault by the appellant and his associates, it must follow that the appellant and his associates were the aggressors and when they were assaulting Naib Singh, Balbir Singh (PW 4) and Balvinder Singh (PW 5) with the deadly weapons like gandasas, Balvinder Singh (PW 5) was totally justified in retaliating the attack in self defence. It may be stated that even in the First Information Report lodged by the complainant, the injuries sustained by Nachhatar Singh (A-2) were also mentioned. During the trial, PW 4 and PW 5 also explained the injuries sustained by the appellant as well as Nachhatar Singh (A-2).

15. After careful consideration of the evidence on record, we are satisfied that the impugned judgment suffers from no error of law or fact and does not call for any interference. Appeal to stand dismissed. Appellant, who is on bail, to surrender to his baibond forthwith to serve out the remainder of his sentence.

16. Coming to the criminal Appeal No. 63 of 1988 filed by the complainant, we are of the considered opinion that no interference is called for. Accordingly, the appeal is dismissed.