

PETITIONER:
HARDEV SINGH, SUBA SINGH

Vs.

RESPONDENT:
HARBHEJ SINGH & ORS.

DATE OF JUDGMENT: 20/11/1996

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

ACT:

HEADNOTE:

JUDGMENT:

WITH
CRIMINAL APPEAL NO 558 OF 1988
J U D G M E N T

S.P. KURDUKAR, J.

These two Criminal Appeals on obtaining Special Leave have been filed by the appellants challenging the legality and correctness of the judgment and order of acquittal dated January 28, 1988 passed by the Punjab and Haryana High Court at Chandigarh.

(2) The prosecution had put in the challan before the Judge, Special Court Ferozepur on 14.8.1985 for trial of six accused respondents herein on the following allegations:-

Baldev Singh (since deceased) was the younger brother of Hardev Singh (P.W.2) and Jaswant Singh (P.W.1). Harbhej Singh (A-3) and Gurmej Singh (A-4), the respondents herein, are the real brothers whereas Sohan Singh (A-5) and Mohan Singh (A-6), the respondents herein, are the real brothers. The house of Harbhej Singh (A-1) is situated adjoining the house of Hardev Singh (P.W.2). Harbhej Singh (A-1) and Sohan Singh (A-5) are cousins. Suba Singh, the appellant in Criminal Appeal No. 558 of 1988 is the son of Harbhajan Singh (since deceased), whereas Criminal Appeal No. 557 of 1988 is filed by Hardev Singh, the brother of Baldev Singh (since deceased).

(3) It is alleged by the prosecution that Hardev Singh (P.W.2) was doing some construction work at his house. On 23rd May, 1985 at about 7.30 p.m when he was sitting in his house alongwith Jaswant Singh and their father Chanan Singh, Harbhajan Singh (since deceased) and Suba Singh (P.W.3) came to his house with a view to help him in the construction work. At that time all the accused persons armed with deadly weapons reached the house of Hardev Singh (P.W.2). Harbhej Singh (A-1) was armed with a .12 bore double barrel gun. Gurbhej Singh (A-2) with a Gandhali, Sohan Singh (A-5) with a Kirpan, and Amrik Singh (A-3), Gurmej Singh (A-4) and Mohan Singh (A-6) were carrying Gandasas with them. They trespassed into the house of Hardev Singh (P.W.2) and a lalkara was given to teach a lesson to him and others for causing injuries to Harbhej Singh (A-1). Immediately all these accused persons started assaulting Suba Singh (PW.3)

on his chest. In the meantime Harbhej Singh (A-1) fired a shot from his gun hitting on the right dorsal and the pitarm of Harbhajan Singh causing a bleeding injury upon which he fell down. Amrik Singh (A-2) then inflicted blows from the sharp side of the gandasas on his shoulder and right (A-3) gave a gandasas blow from its sharp side on his right thigh; Mohan Singh (A-6) did not lag behind and also gave a gandasas blow on his right ankle. Harbhej Singh (A-1) fired one more shot from his gun but it did not hit anybody. A roush was raised whereupon all the accused persons fled away with their weapons.

(4) Coming to the second part of the incident of the same transaction, it is alleged by the prosecution that when the accused persons were running away they raised a lalkara to finish Baldev Singh. Apprehending danger to the life of Baldev Singh, Hardev Singh (P.W.2) and Jaswant Singh hurriedly went in the direction where Baldev Singh had gone to take fodder, to inform him about the first incident and also to caution him. At that point of time Baldev Singh was coming back after taking fodder in the tractor trolley. When he reached in front of the house of A-1, he was surrounded by the accused persons. Baldev Singh stopped the tractor and tried to escape from the back side of the trolley but in the meantime Sohan Singh (A-5) gave a kirpan blow chopping off his right arm. He fell on the barseen fodder lying in the trolley. Harbhej Singh (A-1) raised an alarm whereupon Amrik Singh (A-3) climbed upon the trolley and chopped off his leg with a gandasas whereas Gurmej Singh (A-3) gave two three blows with a gandasas on his left arm. Mohan Singh (A-6) also gave a gandasas blow from its sharp side on his chest. Due to murderous assault Baldev Singh fell in the trolley with bleeding injuries.

(5) Hardev Singh (P.W.2) then contacted Rajinder Singh, the Sarpanch and informed him about the assault on Harbhajan Singh, Baldev Singh and Suba Singh. The three injured persons were then taken to the hospital in a trolley. The two injured persons, namely, Harbhajan Singh and Baldev Singh while being carried to the hospital, succumbed to their injuries. On reaching the hospital at Mamdot, the doctor on seeing the serious condition of Suba Singh (P.W.3) advised that he be taken to the hospital at Ferozepur for medical treatment. Hardev Singh (P.W.2) then went to the police Station, Mamdot and lodged a report, Ex-PK at 10.50 p.m. on the basis of which a formal FIR Ex-PK/1 was recorded. The special report was sent to Illaqa Magistrate at about 1.30 a.m. on 24.5.1985.

(6) SI Puran Singh then went to the hospital at Mamdot but for want of light he could not hold the inquest on the dead bodies. He then went to Ferozepur hospital but there he was told by the doctor that Suba Singh (P.W.3) was unfit to make any statement. He then returned back to civil hospital at (Mamdot and held inquest viz. Ex.PC and PF respectively on the dead bodies of Harbhajan Singh and Baldev Singh and sent them to the Civil Hospital, Ferozepur for post-mortem examination vide his two ruqqas dated 23.5.85 exhibits PB and PF. He thereafter went to the house of Chanan Singh and during the investigation collected blood stained earth from the place of occurrence vide Ex. PL. A pair of shoes. Ex. P5/1-2 was also taken into possession therefrom vide memo Ex. PN. Two empty cartridges recovered from the spot were taken into possession vide memo Ex. PN. A rough site plan Ex. PV was then prepared. He then recorded the statements of various persons.

(7) During the course of investigation on 28.5.1985 SI Puran Singh arrested Amrik Singh (A-3), Gurbhej Singh (A-2),

Gurmej Singh (A-4) and Sohan Singh (A-5) who were produced by Sadha Singh, the Ex Sarpanch. The accused then made the disclosure statements under Section 27 of the Evidence Act which led to the recovery of certain incrimination articles. Harbhej Singh (A-1) and Mohan Singh (A-6) were arrested on 31.5.1985 and during the investigation they also made disclosure statements which led to the recovery of a gun Ex.P.11 along with five cartridges Ex.P.12 to 16; a licence Ex.P.JJ and a gandasa Ex.P.17. All these articles were taken into possession vide Ex.P.17. All these articles were taken into possession vide Ex.PKK and PLL respectively. The seized articles were then sent to Chemical Examiner, Serologist and Director, Chandigarh for examination and reports. After completing the investigation all the six respondents herein were charge sheeted for offences punishable under Sections 148, 302/149, 449, 324/149 IPC. A-1 was further charged for an offence punishable under Section 27 of the Arms Act.

(8) The defence of the accused is that of total denial. According to them they have been falsely implicated due to enmity. They also denied to have made any statement which led to the recovery of any incrimination article. The accused pleaded that they are innocent and be acquitted. The prosecution in support of its case examined as many as 13 witnesses of whom two are witnesses of facts besides the formal witnesses. The defence also examined Dr.H.L. Bhami, D.W.1, the Consulting Scientist Forensic Science Laboratory, Chandigarh.

(9) The Learned Sessions Judge, Ferozepur, on appraisal of oral and documentary evidence on record by his Judgment and order dated 20th September, 1986 convicted Harbhej Singh (A-1), Amrik Singh (A-3), Gurmej Singh (A-4) and Sohan Singh (A-5) on three counts viz. (i) 449 IPC; (ii) 302/34 IPC; and (iii) 324/34 IPC and sentenced each one of them to undergo rigorous imprisonment for five years on first count; life imprisonment and to pay a fine of Rs.1000/- in default of payment of fine to undergo further rigorous imprisonment for three months on second count for causing murders of Harbhajan Singh and Baldev Singh; and rigorous imprisonment for one year for causing injuries to Suba Singh on the third count. Harbhej Singh (A-1) was convicted under Section 27 of the Arms Act and was sentenced to suffer rigorous imprisonment for one year. All substantive sentences were directed to run concurrently. While acquitting Gurbhej Singh (A-2) and Mohan Singh (A-6) learned Sessions Judge held that the role attributed to both of them was very minor inasmuch as A-2 alleged to have caused a simple injury to Suba Singh (P.W.3) and no overtact was attributed to him. As regards Mohan Singh (A-6), he found that he alleged to have caused one injury on non-vital part of the body Harbhajan Singh and one dimple injury to Baldev Singh. The injuries caused by both these accused could have been caused to them by other co-accused. No motive was alleged against them and, therefore, their false implication cannot be ruled out.

(10) The four convicted accused (A-1), (A-3), (A-4) and (A-5) aggrieved by the judgment and order of conviction preferred a Criminal Appeal No.553 DB/86 whereas the State of Punjab preferred a Criminal Appeal No.198-DBA/87 against the two acquitted accused (A-2) and (A-6) to the High Court. Both the criminal appeals were heard together by the Division Bench of the High Court and the learned Division Bench by its judgment and order dated January 28, 1988 allowed Criminal Appeal No. 553 DB/86 filed by the State of Punjab came to be dismissed confirming the order of acquittal of them all. The appeal filed by the state of Punjab came to be dismissed confirming the order of acquittal. Appellant

Hardev Singh, the brother of Baldev Singh (since deceased) on obtaining Special Leave has filed Criminal Appeal No.558 of 1988 whereas Criminal Appeal No. 558 of 1988 is filed by Suba Singh, the son of Harbhajan Singh (since deceased) in this Court. Since impugned judgment is common, both these criminal appeals are being disposed of by this Judgment.

(11) Mr. R.L. Kohli and Mr. Som Datta, the Learned Senior Counsel appearing in support of these two criminal appeals assailed the impugned Judgement on various grounds. It was contended that the High Court had totally misread the direct evidence and other materials on record. The reasoning of the High Court while acquitting the accused is based on surmises and conjectures and, therefore, it is unsustainable. It was urged that the evidence on record clearly establishes that Harbhajan Singh was assaulted in front of the house of Chanan Singh. This fact finds corroboration from various circumstances. No sustainable reasons were given by the High Court while rejection the evidence of Hardev Singh (P.W.2) and the injured witness Suba Singh (P.W.3). It was then contended that the incident in question occurred on 23.5.1985 at 7.30 p.m. and the First Information Report was lodged at the earliest opportunity at 10.50 p.m. and copy thereof reached Illaqa Magistrate at 1.30 a.m. on 24.5.1985. The High Court was wholly wrong in holding that there was delay in lodging the First Information Report. Both the eye witnesses were disbelieved on flimsy ground that they were unable to explain the second fire arm injury on Harbhajan Singh. It was then submitted that the learned Sessions Judge was equally wrong in acquitting A-2 and A-6 which order was confirmed by the High Court. There is unimpeachable material on record to prove that they were members of an unlawful assembly having a common object to lay murderous assault on the victims. The trial court as also the High Court had completely misread the scope and true meaning of section 149 IPC . The High Court ought to have allowed the appeal filed by the State of Punjab against the order of acquittal of A-2 and A-6 and they should have been convicted for the offences for the offences for which they were charge sheeted. Learned Counsel, therefore, urged that the appeals be allowed and the respondents accused be dealt with in accordance with law.

(12) It may be stated that the State of Punjab did not file any appeal in this Court against the impugned order of acquittal passed by the High Court.

(13) Mr. R.S Sodhi, the Learned Counsel for the respondents (accused) supported the impugned judgment of acquittal. He urged that the view taken by the High Court is a probable one and, therefore, no interference is called for. Both the appeals are devoid of any merit and be dismissed.

(14) We have given our careful thought to the contentions raised before us. With a view to determine as to whether the view taken by the High Court is probable one, we have carefully gone through the evidence and other materials on record. We may briefly indicate the reasons for acquittal given by the High Court an under:-

- (i) Delay in lodging the FIR.
- (ii) Non examination of independent witnesses of facts.
- (iii) If P.W.2 and P.W.3 were present at the time of incident it would be unbelievable that they would not have intervened to protect the victims.
- (iv) When the assailants went to attack Baldev Singh, his relatives including eye witnesses did not go with weapons to protect him; a situation which according to the High Court "it is not so easily acceptable in real life".

- (v) The witnesses could not have identified the assailants since it was a dark night hence it was a case of blind murders.
 - (vi) The deceased were men of desperate character and had many enemies and the respondents (accused) were named as culprits primarily on suspicion.
 - (viii) DDR entry 34 dated 23.5.1985 did not disclose the names of eye witnesses, place of occurrence or the weapons.
 - (ix) Medical evidence does not support the ocular account since injury No.6 found on the dead body of Harbhajan Singh remained wholly unexplained.
 - (x) The victim (Harbhajan Singh) must have been fired at from a very close range and not from the distance of 25 ft. as shown in the site plan.
- (15) After going through the ocular evidence and other materials on record we are of the considered view that every finding recorded by the High Court is patently wrong and unsustainable. The High Court has completely misread the evidence on record.
- (16) Coming to the finding as regards the non-examination of independent eye witnesses who saw the incident in question we must hasten to add that it is complete erroneous and unmerited. The prosecution has examined Hardev Singh (P.W.2) and an injured witness Suba Singh (P.W.3), although some other villagers did come at the place of incident but in our opinion merely because other independent witnesses were not examined could not be a ground to discredit the evidence of these two eye witnesses. This Court time and again has emphasised that the evidence of close relations who testified the facts relating to the occurrence be not rejected merely on the ground that they happened to be the relatives. All that this Court has ruled is that the evidence of such witnesses be scrutinised very carefully. We have very carefully gone through the evidence of Hardev Singh (P.W.2) and Suba Singh (P.W.3) who were consistent in their evidence as regards the details of assault caused by the respondents (accused). Both the witnesses have given minute details in regard to the weapons used by each of the accused and the manner in which they have assaulted Harbhajan Singh in front of the house of Chanan Singh. They also stated that A-1 fired from his gun at Harbhajan Singh causing him bleeding injuries. They further stated that the second shot fired by A-1 missed the target. It is true that the medical evidence does indicate two gun shot injuries. In the facts and circumstances of the case non explanation of the gun shot injury No.6 by these two eye witnesses would neither dilute their evidence nor their presence could be doubted. It is the positive case of both the witnesses that Harbhajan Singh had come the house of Chanan Singh to help him in the construction work. There is nothing in their evidence which can persuade us to disbelieve the story narrated as regards the assault on Harbhajan Singh. Coming to the assault on Baldev Singh caused by the respondents (accused), Hardev Singh (P.W.2) and Suba Singh (P.W.3) had stated that Baldev Singh, on noticing that the respondents (accused) were coming towards him, left the driver's seat and went to the trolley to escape himself from the probable attack by the accused. Harbhej Singh (A-1) gave a lalkara and thereupon Amrik Singh (A-3) climbed up the trolley and chopped off the leg of Baldev Singh with gandasa. Gurmej Singh(A-4) also climbed up the trolley and gave 2-3 blows on his left arm from the sharp side of gandasa. Mohan Singh (A-5) also gave a gandasa blow from the sharp side on his chest. After infliction injuries to Baldev Singh the accused

fled away. Both these witnesses were searchingly cross examined by the defence but there is hardly any material brought on record to discredit their evidence. The evidence of both these witnesses in our considered view unmistakably proves that the respondents (accused) who were the members of the unlawful assembly having a common object to cause the murders of Harbhajan Singh and Baldev Singh did cause such bodily injuries to them as a result thereof they met with homicidal deaths.

(17) The evidence of both these witnesses find corroboration from the fact that the blood stained earth seized from the first site of occurrence contained the human blood. In these circumstances we have no manner of doubt that the respondents (accused) formed an unlawful assembly and its object was to cause murderous assault on Harbhajan Singh and Baldev Singh. Both the witnesses have also testified that the respondents (accused) came together with deadly weapons in their hands with the common object to cause such assault.

(18) Coming to the next ground of acquittal viz., non intervention of the relatives of the deceased including the eye witnesses during the assault on the victims to protect them, In our opinion is wholly unsustainable. Since the respondents (accused) were armed with deadly weapons as against this the victims and his relatives were totally unarmed and in such a situation it was absurd to expect any intervention and if they were to do so it would have led to some more casualties. We, therefore, do not see any merit whatsoever in the reasoning given by the High Court in this behalf.

(19) The High Court was totally wrong in recording a finding that it was a blind murder during the dark night. The incident took place at 7.30 p.m on 23rd May, 1985 and the witnesses have emphatically asserted that there was enough light to identify the accused. Moreover the respondents (accused) were known to the eye witnesses since their houses were adjacent to the house of Chanan Singh. This finding, therefore, is totally imaginary without any material on record.

(20) The next finding of the High Court that the deceased were desparate criminals having many enemies and the respondents (accused) were roped in on mere suspicion is again unsustainable. Except the ipse dixit of the respondents there is no material brought on record to support this assertion. This finding of the High Court is based on evidence and thus illegal and

(21) The further ground in support of acquittal recorded by the High Court that the case against the respondents (accused) was framed in the village with the connivance of the of the police, is based on mere surmise. The very fact that the FIR was lodged within three hours of the occurrence naming the accused with all details unmistakably proved the involvement of the accused in the present crime. Therefore, this ground is figment of imagination on the part of the High Court. There was hardly any time to concoct any false story against the respondents (accused).

(22) The High Court had again committed a grave error in relying upon the DDR entry No.34 dated 23rd May, 1985 wherein the names of the eye witnesses, place of occurrence and the weapons of offence were not mentioned to corroborate the FIR and ocular evidence.

(23) The finding of the High Court that A-1 must have fired from a close range and not from a distance of 25 ft. as deposed to by Hardev Singh (P.W.2) and Suba Singh (P.W.3) is not correct. To sustain this reasoning the High Court relied upon the evidence of Dr. Maan (P.W.1) In a sudden assault of

this nature it was difficult for an eye witness to describe the correct distance from where the gun was fired. This minor discrepancy in our opinion would not justify to disbelieve the two eye witnesses.

(24) Coming to the injuries inflicted on Suba Singh (P.W.3), who had stated in his evidence that he had sustained the injuries on his person during the assault caused by the respondents (accused), it need be noticed that he was treated at Ferozepur Hospital. His evidence finds corroboration from the evidence of Dr. A.S. Mann (P.W.1) Medical Officer, Civil Hospital, Ferozepur who Testified to these injuries. It is true that the same were superficial. The evidence of Suba Singh also finds corroboration from the evidence of Hardev Singh (P.W.3). In view of this evidence we see no hesitation to conclude that the respondents who were members of an unlawful assembly caused injuries to Suba Singh and committed an offence punishable under Sections 324/149 IPC.

(25) The defence has examined Dr. H.L. Bahmi (D.W.1) who claims to be the Consulting Forensic Scientist New Delhi. We have gone through the evidence and the same in our opinion is tailor made to suit the defence. After going through the reports of the Chemical Examiner Ex. PNN and the FSL EX. PQQ produced by the prosecution and the evidence of Dr. H.L. Bahmi (D.W.1) we are satisfied that the reports of the Chemical Examiner and FSL are more credible and we accept the same and reject the evidence of Dr. H.L. Bahmi

(26) It also needs to be mentioned that the learned trial judge in paragraph 44 of his judgment has referred to various recoveries at the instance of some of the respondents and in particular recovery of .12 bore gun (Ex.P.11) from Harbhej Singh (A-1). The trial court accepted the prosecution evidence in respect of these recoveries and held that these various recoveries corroborated the evidence of two eye witnesses. Surprisingly, the High Court had not touched these evidence at all which in our opinion is a serious error on its part. We accept the evidence of various recoveries made during the course of investigation, which in unmistakable terms, corroborates the evidence of two eye witnesses.

(27) Coming to the acquittal of accused Nos.2 and 6 by the trial court against which the State of Punjab had filed an appeal to the High Court and the same was dismissed - in our opinion the learned Sessions Judge had completely misunderstood the scope of Section 149 IPC. The only reason given by the learned trial Judge was that there was no material on the record to prove that they caused any serious injuries to the two victims. It was further observed that no specific role was attributed to these two accused. In our opinion this finding is again contrary to the evidence on record inasmuch as both these accused were the members of the unlawful assembly and did have the common object as it was implicit in their action i.e they were armed with deadly weapons; came along with other accused and participated in the murderous assault on both the victims. The trial court and the High Court had erred in law in not holding both these accused guilty with the aid of Section 149 IPC for the substantive offences punishable under Section 302 IPC. The order of acquittal passed by the trial court and on appeal affirmed by the High Court thus cannot be sustained for the reasons recorded hereinabove.

(28) In the result the Criminal Appeal No.558 of 1988 is allowed. The order of acquittal passed by the trial court and affirmed by the High Court in respect of A-2 and A-6 is quashed and set aside. The order of acquittal passed by the

High Court in respect of Harbhej Singh (A-1), Amrik Singh (A-3), Gurmej (A-4) and Sohan Singh (A-1) in also quashed and set aside and all the respondents (A-1) to (A-6) are held guilty for the offence punishable under Sections 302/149 of the Indian Penal Code for committing the murders of Harbhajan Singh and Baldev Singh and each one of them is sentenced to suffer imprisonment for life on two counts and to pay a fine of Rs.1000/- each in default further rigorous imprisonment for three months. Respondents(A-1) to A-6) are also convicted under Section 449 of the Indian Penal Code and each one of them is sentenced to suffer RI for five years. Respondents (A-1 to A-6) are also convicted under Sections 324/149 of the Indian Penal Code for causing injuries to Suba Singh and each one is sentenced to suffer RI for one year. Harbhej Singh (A-1) is also convicted under Section 27 of the Arms Act and sentenced to suffer RI for one year. The substantive sentences of respondents(A-1 to A-6) are directed to run concurrently. The respondents(A-1 to A-6) who are on bail, shall surrender to their bail bonds forthwith to serve out the remainder of their sentences.

(29) In view of our order passed in Criminal Appeal No.558 of 1988 no separate order is called for in Criminal Appeal No.557 of 1988, which stands disposed of.