

CASE NO.:
Appeal (crl.) 474-475 of 2002

PETITIONER:
Jasbir & Ors.

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 16/12/2002

BENCH:
S. RAJENDRA BABU & P. VENKATARAMA REDDI.

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, J. :

Seven persons were charge sheeted for causing the death of Hoshiar Singh, Ram Chander, Pawan Kumar, Ajit on the intervening night of 4/5th October 1993 by entering into dwelling houses of Hoshiar Singh and Surat Singh and causing grievous hurt to Sahbo, Sarjo, Ashok and Surat Singh.

In brief, the prosecution version put forth before the Trial Court is that on the intervening night of 4/5th October 1993, when Satpal, his brother Ram Chander, his father Hoshiar Singh, his mother Sahbo and his mother's sister Sarjo were sleeping on the roof of their house, seven accused armed with Gandasis and Pharsas climbed on the roof of the house and inflicted injuries upon Hoshiar Singh and Sahbo and again they targeted Surat Singh and also inflicted injuries upon Pawan and Ajit. It was specifically stated that Jagdish and Randhir gave lathi blows on the back, buttocks, legs and heads of Surat Singh. Rani, Rohtash, Satbir Singh and Jasbir also inflicted injuries upon Ashok. Similarly it was alleged that Jagdish and Randhir gave lathi blows when they attacked Hoshiar Singh and Sarjo. On the alarm raised, the assailants took to their heels and carried their weapons of offence with them. Ram Chander and Ajit succumbed to the injuries at the spot while Pawan and Hoshiar Singh died later on in the hospital.

The Trial Court, accepting the evidence adduced by the prosecution, convicted all the seven persons. When the matter was carried in appeal, the High Court, after analysing the evidence of various witnesses, held that Rani did not resort to the violence particularly when other near relations duly armed with weapons already planned to avenge the death of her husband and gave benefit of doubt to her and thereby allowed her appeal and dismissed the appeals filed by the other six accused.

Of the six accused, only five accused preferred this appeal by special leave. This Court dismissed the appeals of Satbir and Rohtas and granted leave in respect of Jasbir, Randhir and Jagdish.

So far as Jasbir is concerned, the defence set up is that of alibi relying upon the records relating to his attendance in his battalion at Meerut Cantonment in respect of which Devender Singh Bist [DW.1], Nai Subedar and Lt. Col. Sudershan Kumar [DW.2], both of them were posted in 510, Army Base Workshop, Meerut, have spoken. The attendance register of Jasbir was produced. It was stated that the attendance is taken at 6 a.m., 8 a.m., 1600 hrs. and 1845 hrs. and at 2200 hrs., when the lights are off. Jasbir was a craftsman and used to live outside the cantonment area. It was stated that he was free to leave the cantonment area to go to his private residence at 7.15 p.m. and report back next morning at parade at 6 a.m. In the light of the evidence tendered by Lt. Col. Sudershan Kumar [DW.2], the Trial Court did not accept the plea of alibi inasmuch as the distance between Meerut and the village Simli where the

incident took place is only 35 kms., after 7.15 p.m. he could go to his village and come back to report for the morning parade at 6 a.m. the next day. It held that there was overwhelming material to indicate his presence in the village on the date of the incident and witnesses have spoken about his active participation in assaulting the deceased persons. This finds affirmation in the judgment of the High Court.

The High Court opined that it was possible for a person to travel to the village and come back during the intervening period between 7.15 p.m. and 6 a.m. next day. In that view of the matter, as a finding of fact, two courts have come to the identical conclusion and we do not find anything perverse or unreasonable in the conclusion reached by them and hence we dismiss the appeal filed by Jasbir.

So far as Jagdish and Randhir are concerned, it is stated that they had used lathis to inflict injuries upon the deceased persons. The defence pointed out the infirmities in the prosecution case, in that the same was not in conformity with the FIR because there is no mention of use of lathis by any of the accused and that medical evidence was clearly to the effect that there were no injuries caused by blunt weapons. The Trial Court held that the eye witness account is to the effect that these two accused had given large number of lathi blows at both places of the occurrence to the deceased persons who were sleeping on the roof of both the houses and none of the doctors had been asked to opine if any of the injuries could be caused with the lathis. Insofar as the evidence tendered before the court not being in conformity with the FIR, it was stated that it was not possible to describe each one of the blows that were inflicted when as many as seven persons had attacked the deceased and blow-wise description was not possible and that the lathi blows may not have left their intensity marked on the bodies of which serious notice could have been taken at the time of their admission in the hospital. In addition, with such blows they might have fallen on quilts on which the persons were sleeping and some of them hitting the charpoys etc. could not be ruled out and on that basis, the Trial Court held that there was no discrepancy between the FIR and the evidence tendered before the court nor there was a conflict between the medical evidence and the oral evidence.

The High Court went further and held in this regard as follows :
"It has come in the first information report that all the assailants were armed with Gandasis whereas during the course of evidence it has come that the appellants were armed with Pharsas, Gandasis and Lathis. If the injuries with the lathis are not found on the person of the injured it did not mean that these two persons Jagdish and Randhir were not present on the scene of occurrence. The Pharsa if used may look like Lathi. All the witnesses have specifically stated that Randhir and Jagdish showered a large number of blows on the person of the injured and the deceased and have mentioned the role of each and every appellant mentioning that they inflicted injuries with their respective weapons. It is only left that the witnesses did not count the number of blows. So to expect the witnesses in the midnight would count the number of blows given and would keep a note of it, would be too much to accept from the witnesses."

On this basis, the High Court held that there was no discrepancy between the FIR and the evidence tendered before the court nor that the oral evidence was different from the medical evidence. The number of injuries and most of all incised wounds on vital and non-vital parts of the bodies reflects the murderous assault inflicted on the victims with the intention to cause death of the deceased and not less than that.

We have been taken through the FIR and the statement made by Satpal when the inquest was held. He stated that he noticed that Randhir, Jagdish, Rohtash, Satbir, Jasbir, Rani and Banwari were armed with halberds and climbed up the roof of the house. Halberd is described to be a kind of battle-axe which

can be used as spear as well. In other words, it is a combination of spear and battle-axe with a long handle. When the statement made by him in the FIR and at the inquest is clearly to the effect that they had the halberd, to say that they were armed with lathis would not be correct or accurate at all. In such cases when there has been long enmity between the parties, it is not unusual to lug in persons who are innocent as well. When there were no injuries caused by lathis, it cannot be explained away in the manner as has been done either by the Trial Court or by the High Court, particularly when the witnesses are specific that large number of blows on the person of the injured and the deceased have been inflicted with lathis. The High Court should not have assumed that pharsa may look like lathi whereas it was nobody's case that the pharsa was used by Randhir and Jagdish or none of the witnesses stated that Randhir and Jagdish had some weapon which looked like a lathi but was really a pharsa or a halberd. Therefore, it will not be safe to rely upon the evidence tendered by these persons as to the presence of either Randhir or Jagdish.

In the result, we allow the appeal preferred by Randhir and Jagdish and set aside the conviction recorded by the Trial Court, as affirmed by the High Court. Their appeal stands allowed while that of Jasbir stands dismissed. The said two appellants shall be set at liberty if they are in jail.