

PETITIONER:
RAMA SHANKAR

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 03/09/1996

BENCH:
KURDUKAR S.P. (J)
BENCH:
KURDUKAR S.P. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1996 (7) 651 1996 SCALE (6)326

ACT:

HEADNOTE:

JUDGMENT:
WITH
CRIMINAL APPEAL NO. 349 OF 1996
Ranbir Singh & Ors.
V.
State of Haryana

J U D G M E N T

S.P. KURDUKAR, J.

A small incident of taking a turn without giving any signal by the driver of the three wheeler had initially led to a wordy exchange between Raghbir Singh (PW 2) and his brother Satbir who were riding on a scooter and Ranbir Singh (A-1) who was driving the three wheeler. Ordinarily, this incident should have ended at that stage but Raghbir Singh (PW 2) after reaching the Forest Department at Hisar where he was working, came back with his friends to the place of first incident and thereafter again there was exchange of hot words between these two groups which led to the assault by Ranbir Singh causing death of Ajit Singh.

2. The broad facts of the prosecution case may be summarised as under:

On 10th May, 1991 at about 7.30 a.m. Raghbir Singh (PW 2) and his brother Satbir were going to the Forest Department at Hisar on a scooter. At the same time, a three wheeler driven by Ranbir Singh (A-1) was going ahead of the scooter. A-1 without giving any indication took a right turn; however, Raghbir Singh (PW 2) skillfully avoided the accident with great difficulty. There was an altercation between the scooterist and the driver of the three wheeler who called his brother Rama Shankar (A-2) and Vinod (A-3). However, this incident ended there only and thereafter scooterist left for their office. This incident was reported to Umed Singh, the officer in the Forest Department and thereafter Raghbir Singh (PW 2), Ramphal (PW 3) and Umed Singh came to the place where the first incident took place. All the three accused (appellants) were then standing at the place of 1st incident. Raghbir Singh (PW 2), and his

companions advised A-1 to drive the three wheeler cautiously so that accident is avoided. In the mean time, Ajit Singh (since deceased), a Peon in the Forest Department, reached there. Both the groups then got involved in heated exchange of words and thereafter A-1 suddenly inflicted two knife blows on Ajit Singh who resultantly fell down. A-2 gave a lathi blow on Raghbir Singh (PW 2) whereas A-3 inflicted knife blow on Ram Phal (PW 3). The injured raised an alarm whereupon Jaswant Singh came there with his car. All the accused in the mean time fled away with their weapons. Raghbir Singh (PW 2) and Ramphal (PW 3) who had sustained the injuries were removed to the hospital at Hisar. Ajit Singh died on the spot. Statement of Raghbir Singh (PW 2) recorded at about 11.45 a.m. was treated as an FIR. The Investigating Officer, thereafter went to the place of incident and held the inquest panchnama, spot panchnama and recorded the statements of injured persons and other witnesses. The accused on 11th May, 1991 surrendered in the Court and they were formally shown arrested on 13th May, 1991. After completing the necessary investigation, all the three accused were put up for trial for offences punishable under Sections 302, 302/34, 384, 324/34, 323 and 323/34 IPC. To be more precise, A-1 was charged under Section 302, A-2 and A-3 under Section 302/34, A-3 under Section 307, A-1 and A-2 under Section 307/34 IPC, A-2 under Section 323 IPC and A-1 and A-3 under Section 323/34 of the Indian Penal Code.

All the three accused pleaded not guilty to the charges and claimed to be tried.

3. The prosecution in support of its case examined as many as nine witnesses. Of them, Raghbir Singh (PW 2) and Ramphal (PW 3) are the injured eye witnesses. Dr. S.K.Modi (PW 1) held the autopsy on the dead body of Ajit Singh. He also examined the two injured eye witnesses on 10th May, 1991 and issued the injury certificates thereof. There is also evidence relating to the disclosure statement made by A-2 which led to the recovery of a knife under Section 27 of the Evidence Act.

4. The learned Sessions Judge, Hisar on appraisal of oral and documentary evidence on record by his judgment and order dated 8th December, 1992 found A-1 guilty of an offence of murder of Ajit Singh punishable under Section 302 of the Indian Penal Code. As also for the same murder found A-2 and A-3 guilty with the aid of Section 34 of the Indian Penal Code and convicted them for life imprisonment and a fine of Rs.2,000/-. In default, to undergo RI for six months. All the three accused were also found guilty for an offence punishable under Sections 324/34 and 323/34 IPC and sentenced them to suffer RI for one year and six months respectively. All substantive sentences were directed to run concurrently.

Aggrieved by the aforesaid judgment and order of conviction passed by learned Sessions Judge, all the three accused preferred a criminal appeal before the Punjab & Haryana High Court at Chandigarh. The learned Division Bench vide its judgment and order dated July 20, 1995, dismissed the said appeal. It is against this judgment and order passed by the High Court, A-2 has filed Criminal Appeal No. 348/96 whereas A-1 and A-3 have filed Criminal Appeal No. 349/96. Since both these appeals arise out of a common judgment passed by the Punjab & Haryana High Court, they were heard together and are being disposed of by this judgment.

5. At the outset, it may be stated that learned Advocates appearing in support of both these appeals did not and could not challenge the fact that Ajit Singh died a homicidal

death. We have gone through the evidence of Dr. S.K.Modi (PW 1) and the post mortem examination report and we are satisfied that the cause of death given by Dr. S.K.Modi (PW 1) suffers from no infirmity. Both the courts below have, therefore, rightly held that Ajit Singh died a homicidal death because of injuries sustained by him during the incident that took place on 10th May, 1991.

6. As stated earlier, the prosecution case principally rested on the evidence of two injured eye witnesses namely Raghbir Singh (PW 2) and Ram Phal (PW 3). Raghbir Singh (PW 2) is the de facto informant who in his evidence has narrated the first incident where he and Satbir had wordy quarrel with Ranbir Singh (A-1) who took a right turn of his three wheeler without giving any indication/signal which could have led to a serious accident but for his applying the brakes, luckily saved therefrom. At that point of time, A-2 and A-3 also came to the place of incident. Nothing untoward happened at that stage. Raghbir Singh (PW 2) and Satbir thereafter went to the office of Forest Department and told about the incident to the superior officer Umed Singh. Raghbir Singh (PW 2) then stated that he, Satbir and Umed Singh came to the place of incident. In the mean time, Ajit Singh (since deceased) also joined them. There was again heated exchange of words between the two groups and suddenly A-1 took out the knife and assaulted Ajit Singh. He then stated that Rama Shankar (A-2) gave a lathi blow to him. Vinod (A-3) assaulted Ram Phal (PW 3) causing an incised injury. Ram Phal (PW 3) has substantially supported the evidence of Raghbir Singh (PW 2) in identical terms. In our opinion, it is not necessary to reproduce the same.

7. It is true that both the courts below have attributed common intention to A-2 and A-3 for the substantive offence of murder of Ajit Singh punishable under Section 302 of the Indian Penal Code. Ordinarily, in an appeal under article 136 of the Constitution, this Court would not be justified in interfering with the finding of fact. However, after going through the impugned judgment as well as the judgment rendered by the Sessions Judge, Hisar, we are of the considered view that both the courts below have committed a material illegality and error while appreciating the evidence of Raghbir Singh (PW 2) and Ramphal (PW 3) while attributing common intention to A-2 and A-3 under Section 34 of the Indian Penal Code in respect of murder of Ajit Singh. As indicated above, Raghbir Singh (PW 2) after going to his office (Forest Department) narrated incident to Umed Singh and thereafter came to the place of incident alongwith them and then the quarrel started which had ended in murderous assault on Ajit Singh. Ajit Singh was not a party to the first incident but he joined on his own at a later stage in the second incident. There is nothing in the evidence of either Raghbir Singh (PW 2) or Ramphal (PW 3) which would enable the Court to draw an inference of common intention on the part of A-2 and A-3 to commit murder of Ajit Singh. It is the complainant party which came on its own. It is not the case of any of the injured eye witnesses that all the three accused were going towards the Forest Office where Raghbir Singh (PW 2) was working to seek his explanation. All the three accused were standing at the place of first incident. It was only the complainant party which returned thereafter had wordy exchange between them. All of a sudden A-1 caused stab injuries to Ajit Singh. The first incident itself happened without any premeditation. Infact A-2 and A-3 joined A-1 at a later stage. It is in these circumstances if the evidence of Raghbir Singh (PW 2) and Ramphal (PW 3) is scrutinized, it is very difficult to come to a conclusion

that A-2 and A-3 shared the common intention with A-1 to commit the murder of Ajit Singh. It is well settled that common intention can develop on the spur of the moment but the prosecution evidence is too short to come to that conclusion. It ever the case of both these injured eye witnesses that the accused persons had thrown a challenge and therefore, they were waiting at the place of Ist incident. It was the complainant party which came to the place of incident within a short time with Umed Singh and thereafter Ajit Singh joined them. It is in these circumstances we are of the considered view that no common intention as regards committing the murder of Ajit Singh could be attributed to A-2 and A-3. This vital circumstance it appears was not brought to the notice of the High Court. We, therefore, hold that there was no common intention on the part of A-2 and A-3 to commit the murder of Ajit Singh. Resultantly, it must follow that conviction of A-2 and A-3 under Section 302 read with 34 of the Indian Penal Code is unsustainable.

8. Learned counsel for the A-1, however, urged that even A-1 also could not be convicted under Section 302 of the Indian Penal Code. He urged that the quarrel between the two groups took place all of a sudden without any premeditation or pre-concert and, therefore, the conviction of A-1 under Section 302 of the Indian Penal Code is unsustainable and at the most, he could be held liable under Section 304 part II of the Indian Penal Code. In support of this contention, learned counsel urged that deceased had no concern with the quarrel and therefore, there was no intention to commit his murder. We are not impressed by this submission because A-1 infact assaulted Ajit Singh with a knife on a vital part of the body and as a result thereof, he died on the spot. We, therefore, see no merit in the contention raised on behalf of A-1. The conviction of the A-1 under Section 302 simpliciter recorded by the courts below is legal and calls for no interference.

9. Learned counsel for the appellants while assailing the conviction of the appellants under section 324 read with 34 and Section 383 read with 34 of the Indian Penal Code for causing injuries to Raghbir Singh (PW 2) and Ramphal (PW 3) urged that both these witnesses have deposed falsely against them to take revenge of the first incident. It was then urged that assuming that the appellants were guilty of these offences, the sentences awarded to them are too harsh and disproportionate and be altered to the period of imprisonment already undergone. We have given our careful thought to this submission and in our opinion, having regard to the nature of injuries sustained by Raghbir Singh (PW 2) and Ramphal (PW 3), no reduction in the sentences for any of these appellants is called for.

10. In the result, Criminal Appeal No. 348/96 is partly allowed. Conviction of A-2 under Section 302/34 of the Indian Penal Code is quashed and set aside. However, his conviction under Section 383 read with 34 of the Indian Penal Code is confirmed.

Criminal Appeal No. 349/96 filed by A-1 and A-3 is partly allowed to the extent that the conviction of A-3 under Section 302/34 of the Indian Penal Code is quashed and set aside. However, conviction t A-3 under Section 324 read with 34 of IPC is confirmed. The appeal of Ranbir Singh (A-1) against his convictions and sentences under Sections 302, 324 read with 34 and S.S read with 34 of the Indian Penal Code are confirmed. The appellants who are on bail to surrender to their bailbonds to serve out the remaining period of sentences.

JUDIS