

PETITIONER:
MALKIAT SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 07/08/1996

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

CITATION:
1996 SCALE (5)670

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE. J.

The judgment and order dated December 6, 1984 rendered by the Judge, Special court, Ferozepur in trial No. 42 of 1984 is under challenge in this appeal. By the impugned judgment the learned Judge convicted and sentenced the appellant under Sections 302 and 325 of the India Penal Code.

2 (a) Shorn of details the prosecution case is that Darbara Singh (the deceased) was the driver of a truck and Uttam Singh (P.W. 5) was its conductor. On March 31, 1984 at or about 7 P.M. when they were consuming liquor near the poultry farm of the appellant, he also came there and shared the drinks. Mit Singh (P.W. 4) and Kartar Singh, father and brother of Darbara Singh respectively, were then irrigating their land nearby. After finishing his drinks the appellant went back to his poultry farm. He however came back a little later and told Darbara Singh that he should teach him a lesson as he had forcibly taken away one of their cows. He then picked up a Kassi and started assaulting Darbara Singh with it, On being so assaulted Darbara Singh fell down dead. In the mean time Uttam Singh had taken up a small toki which was lying nearby and attacked the appellant. The appellant then inflicted a number of blows on Uttam Singh with the Kassi, when Mit Singh and Kartar Singh Rushed to the spot the appellant fled away with the Kassi. After deputing Kartar Singh to look after the dead body of Darbara Singh, Mit Singh went to Bagha Purana Police Station and lodged a first information report whereupon a case was registered against the appellant. Uttam Singh had in the meantime been taken to the hospital for treatment of his injuries.

(b) After registering the case, Madan Gopal (P.W.6) Station House Officer, came to the spot accompanied by Mit Singh, Held inquest upon the dead body and sent it for post mortem examination. He seized some blood-started earth from the spot and prepared a sealed packet in respect thereof. During

investigation the appellant was arrested on April 7, 1984 and pursuant to his statement made before S.I. Mukhtiar Singh (P.W.7) a Kassi was recovered. Mukhtar Singh took possession of the Kassi and sent it to the Forensic Science Laboratory for examination. After arrest the appellant was also sent to the hospital as there were some injuries on his person. After receipt of the report of the Forensic Science Laboratory and completion of investigation Mukhtiar Singh submitted charge-sheet against the appellant and in due course the case was committed to the designated Court.

3. The defence of the appellant, who pleaded not guilty to the charges levelled against him, was that on the date of the incident Uttam Singh (P.W. 5) and the deceased Darbara Singh quarrelled with each other which ultimately ended in a mutual assault and injuries to both of them. When he (the appellant) tried to intervene he also sustained some injuries. He then went to Surjit Singh of His village and informed him about the incident and he (Surjit Singh), in his turn, informed Mit Singh. Accompanied by Surjit Singh and Mit Singh he went to the spot where the dead body of Darbara Singh was lying. They took Uttam Singh, who injured, in a car to the Police Station to narrate the incident. Surjit Singh took Uttam Singh to the Hospital. He then narrated the incident to the police but instead of recording his version they wrongfully detained him for several days and falsely implicated him.

4. In support of its case the prosecution examined seven witnesses of whom Mit Singh (P.W. 4) and Uttam Singh (P.W. 5) figured as eye-witnesses. The appellant also examined Surjit Singh (D.W.1) to prove his version of the incident. On consideration of the evidence the Designated Court accepted the version of the prosecution in preference to that of the defence and accordingly passed the impugned order of conviction and sentence.

5. That Darbara Singh met with a homicidal death stands conclusively proved by the unimpeachable testimony of Dr. Jawahar Lal Aggarwal (P.W.1) who held autopsy on the dead body of Darbara Singh on April 1, 1984 and found ten injuries. The doctor opined that the death was due to shock and haemorrhage as result of the injuries sustained and that the injuries were sufficient in the ordinary course of nature to cause death. The evidence of Dr. Aggarwal further reveals that on March 31, 1984 at 11.30 P.M. he had examined Uttam Singh (P.W. 5) and found three lacerated wounds and a swelling on his person which, according to him, were freshly caused by blunt weapon. Dr. S.P. Bansal (P.W.2), a Radiologist testified that on April 4, 1984 Uttam Singh was x-rayed by him and the Skiagram showed fractures of both parietal and occipital bones.

6. In the context of the above trustworthy medical evidence the question that now falls for our determination is whether the appellant was responsible for causing the death of Darbara Singh and Grievous injuries on the person of Uttam Singh (P.W. 5). As, earlier noticed, to prove this part of its case the prosecution rested primarily upon the evidence of P.Ws. 4 and 5. On perusal of their evidence we find that even though they were cross examined at length, nothing could be elicited by the defence so as to discredit them. The presence of Uttam Singh at the Material time cannot be disputed having regard to the fact that he had sustained injuries and also the fact that the appellant admitted his presence and of his having sustained injuries. We do not however find any material in support of his explanation. Though Surjit Singh (D.W.1) came to support his version of the incident he was admittedly not present at

the time thereof and , therefore, he was not competent to speak about the same. It is , of course, true that Surjit Singh testified injuries while fighting between themselves but in absence of any material in support thereof we are unable to place any reliance thereupon. While on this point it is pertinent to mention that the appellant's, as well as D.W.1's, claim that they went to the Police Station immediately after the incident but the Police did not record the appellant's statement is belied by the fact that the appellant was arrested a week after the incident. On the contrary, we find that the evidence of Mit Singh Get ample corroboration from the fact that within almost an hour of the incident he lodged the F.I.R. wherein he not only detailed the prosecution case as to how Darbara Singh and Uttam Singh were assaulted by the appellant but also stated that the appellant had sustained minor injuries at the hands of Uttam Singh when he tried to rescue Darbara Singh . The Medical evidence corroborates the ocular version of P.Ws. 4 and 5 and the recovery of Kassi Pursuant to the statement of the appellant which was found to contain human blood, when examined by the Forensic Science Laboratory, also lends credence to the prosecution story.

7. It was, however, contended on behalf of the appellant that even if it was assumed that the entire prosecution case was true still then it could not be said that the offence committed by the appellant by causing the death of Darbara Singh was one of the murder as it took place in course of a drinking brawl. We do not find any substance in this contention for there is not an iota of material on record to show that the appellant caused the death of Darbara Singh in A Sudden fight in the heat of passion nor can it be said, considering the nature, number and situs of the injuries sustained by Darbara Singh, That in causing his death the appellant did not act in a cruel manner so as to entitle us to bring the case of the appellant within Exception IV of Section 300 IPC.

On the Conclusions as above we dismiss this appeal. The appellant, who is on bail, will now surrender to his bail bonds to serve out the sentence.