

PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
BHOLA SINGH & ANR.

DATE OF JUDGMENT: 31/03/1998

BENCH:
G.T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

Both these appeals are directed against the acquittal of the two respondents. They were tried for committing murder of Jaggar Singh. The trial court convicted respondent Bhola Singh but acquitted respondent Mithu Singh giving him benefit of doubt. Bhola Singh appealed to the High Court against his conviction and the state challenged the acquittal of Mithu Singh. The High Court allowed the appeal of Bhola Singh and dismissed the State's appeal against Mithu Singh.

It was the prosecution case that after the murder of Kartar Singh, father of both the respondents, Jaggar Singh the deceased had developed illicit intimacy with their mother. This was not liked by the respondents. On 5.2.1987 at about 1.00 P.M. the deceased, who was a labourer, was collecting bricks for one Sukhwinder Kaur. His brother Gamdoor Singh was working at some distance and Bhola Singh had some time earlier gone for taking tea. Seeing him alone the respondents attacked him. Bhola Singh gave two Kirpan blows on the back of his knee and Mithu Singh gave one gandasas blow on his right leg. After the deceased fell down they gave two or three more blows on the back of his neck. Seeing Bhura Singh and Gamdoor Singh coming towards them the accused ran away from that place. On these allegations both the accused were tried in the Court of Sessions Judge, Sangrur in Sessions case No. 28/87 for the offence punishable under Section 302 read with sec. 34 IPC. The trial court believing the evidence of PW-3 Gamdoor Singh and PW-4 Bhura Singh convicted Bhola Singh under section 302 IPC. Mithu Singh was given benefit of doubt as it was of the opinion that the evidence of the two eye witnesses with respect to him was not corroborated by the medical evidence. The High Court also believed the evidence of the eye witnesses but strangely acquitted Bhola Singh also holding that it was not possible to say from the evidence as to who out of the two accused had caused the fatal injuries to the deceased and therefore neither of them could be held guilty.

The learned counsel for the appellant Mr. R.S. Sodhi submitted that the High Court having come to the conclusion

that the evidence of the two eye witnesses was worthy of acceptance ought to have convicted them under Section 302 read with Section 34 IPC. This contention deserves to be accepted.

The High Court in its judgment has observed as under:-

"The question now is on the evidence, it can be said with certainty that it was Bhola Singh who was responsible for the head injuries. The prosecution examined (PW3) and Bhura Singh (PW4) as eye-witnesses to the occurrence. Both these eye-witnesses have consistently stated that Bhola Singh accused gave two KIRPAN blow on the back side of the knee of Jaggar Singh and Mithu Singh accused gave on GANDASA blow on the right lower leg of the deceased with its blunt side and that on receipt of these injuries when Jaggar Singh fell down, each of the accused gave two or three more blow on the back of his neck. Br. H.L. Garg who conducted autopsy on the body of the deceased has categorically stated that he could not definitely say that if injury No.2 could be caused with a KIRPAN. According to the evidence on record, injuries on the neck and the right leg of the deceased were stated to have been caused by Bhola Singh and Mithu Singh accused but then it emerges from the evidence that each of the accused caused him two or three more injuries. On the question, therefore, whether the fatal injuries were caused by Bhola Singh accused only or Mithu Singh accused only or by both, we do not think we can safely come to the conclusion that it was Bhola Singh who caused the fatal injuries in the head and neck resulting in the death of Jaggar Singh. In the circumstances, neither of them can be held responsible for the fatal injuries caused to the deceased. In this view, we have necessarily to acquit Bhola Singh accused."

From these observations it appears that the High court had lost sight of the fact that there was also an appeal against acquittal of Mithu Singh. Possibly, that is the reason why we find no discussion in the judgment regarding dismissal of the state appeal against Mithu Singh. Only at the far end of the judgment after making the above observation the High Court had stated. "As a necessary consequence, criminal appeal No. 43-DB of 1988 filed by the State against the acquittal of Mithu Singh fails and is dismissed." The High court treating the acquittal of Mithu Singh as final allowed the appeal of Bhola Singh and then dismissed the appeal against Mithu Singh as a necessary consequence of acquittal of Bhola Singh. Thus neither of the two appeals was dealt with properly by the High Court.

We have, therefore, gone through the evidence of the two eye witnesses. We find that their evidence is consistent and does not suffer from any infirmity which would create any doubt regarding their having seen the incident. Both the courts below were also of the same view. They had no reason to falsely involve the respondents if they were really not the assailants. The eye witnesses have stated that Bhola Singh have given two blows with a kirpan on back of the knee of the deceased and Mithu Singh had given one gandasas blow on his right leg and after the deceased had fallen down they had given two or three more blows on the back of his leg. The trial court held that the two injuries found on the head and neck of the deceased were caused by Bhola Singh and if Mithu Singh had given two or three blows to the deceased after he had fallen down then there should have been two or three more injuries on the person of the deceased. As there were only five injuries on the person of the deceased the trial court held that the evidence of the eye witnesses as regards the blows stated to have been given by Mithu Singh after the deceased had fallen down stood contradicted by medical evidence. It also held that the injury on the right leg of the deceased could have been caused by a fall. It, therefore, gave benefit of doubt to Mithu Singh and acquitted him. The High court was of the view that it was not proved beyond doubt by the prosecution that the injuries on the head and the neck of the deceased were caused by Bhola Singh alone or by Mithu Singh alone or by both of them together. What the trial court and the High Court failed to appreciate was that both Bhola Singh and Mithu Singh had come together to the place where the deceased was working along with his brother PW-3 Gamdoor Singh and PW-4 Bhura Singh. Both of them had assaulted the deceased before he had fallen down. The injuries stated to have been caused by Mithu Singh on the right calf was corroborated by the medical evidence. It, was therefore, not at all proper to reject the evidence of the eye witnesses as regards the said injury caused by Mithu Singh on the ground that the said injury was also possible by a fall. Thus presence and participation by both Bhola Singh and Mithu Singh was proved by the prosecution beyond reasonable doubt. Both of them had common animus against the deceased as they had not liked his illicit intimacy with their mother. It was also not correct not to accept the evidence of the eye witnesses on the ground that no injury was found on the person of the deceased as a result of any blow having been given to him by Mithu Singh after he had fallen down on the ground. They had not stated that the blows given by him had in fact caused injuries to the deceased. It was quite likely, as the deceased was till then to seriously injured, that the deceased had avoided those blows. Even while proceeding on the basis that no further blows were given by Mithu Singh after the deceased had fallen down on the ground it ought to have been appreciated that the said circumstance could not have made any difference as regards his guilt as both of them were acting in furtherance of their common intention. The words uttered when they saw the deceased near that place were that they would teach a lesson to him for having illicit relations with their mother and they clearly indicated their intention to finish him.

It was however urged by the learned counsel for the respondents that the evidence of PW-4 Bhura Singh discloses that the deceased was not well on that day as he had not taken tea in the morning and, therefore, it was not likely that he had gone for work on that day. The deceased and his

brothers belonged to village Jakhepal while the dead body was found near Indira Basti of Sunam Town. Unless the deceased had gone there his dead body could not have been found from that place.

It was also contended by the learned counsel for the respondents that not a single independent witness from the locality was examined by the prosecution to prove its case. We do not find any substance in this contention also. The evidence of the Investigating Officer (P.W.7) discloses that the place where the incident took place was little away from Sunam Town as one had to pass through the market and then reach that place. He has also stated that when he along with other police personnel had reached that place none was present there. P.W-10, the sub Inspector who had accompanied him has also stated that he could not record statement of any person residing nearby as the women folk had closed the doors of their houses and they had refused to come out even though they were called for the purpose of recording their statements. It is, therefore, not correct to say that no attempt was made by the Investigating Officer to find out whether any independent witnesses had seen the incident or not. As none had come forward as an eye witness no independent person could have been examined as an eye witness.

The evidence of P.Ws.3 and 4 leaves no doubt that both Bhola Singh and Mithu Singh were acting in furtherance of their common intention when they had assaulted deceased Jaggar Singh and caused his death. We, therefore, allow both these appeals and set aside the common judgment and order passed in criminal Appeal Nos. 438-DB of 19887 and 43-DB of 1988. Both the respondents are convicted for the offence punishable under Section 302 read with Section 34 IPC and sentenced to suffer imprisonment for life. The respondents were on bail during the pendency of these appeals, therefore, they are ordered to surrender to custody for serving out the sentence imposed upon them.