

PETITIONER:  
THE STATE OF PUNJAB

Vs.

RESPONDENT:  
AMARJIT SINGH & ORS.

DATE OF JUDGMENT: 24/10/1996

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

ACT:

HEADNOTE:

JUDGMENT:

#### J U D G M E N T

S.P. KURDUKAR, J

The State of Punjab on obtaining Special Leave has filed this Criminal Appeal challenging the legality and correctness of the judgment and order dated January 20, 1988, passed by the Punjab and Harayana High Court at Chandigarh. The respondents-four accused were tried in Sessions Case No. 52/10 of 1986 for committing offences punishable under Sections 302/323 read with Section 34 of the Indian Penal Code. The Addl Sessions Judge, Ludhiana, on conclusion of the trial by his judgment and order dated 19th September, 1986 convicted the respondents (A-1 to a-4) for the offences punishable under Section 302/34 of the Indian Penal Code and sentenced Amarjit Singh (A-1), Surjit Singh (A-3) and Pritam Singh (A-4) to suffer imprisonment for life and to pay a fine of Rs. 100/-; in default to undergo RI for one month, as also under Code and sentenced them to suffer RI for one month. Both the substantive sentences were ordered to run concurrently. However, as the second appellant Daljit Singh(A-2) was found to be below 16 years of age at the time of occurrence, he was dealt with under Section 34(1) of the East Punjab Children Act, 1949 and directed to be kept in Borstal Jail, Faridkot and the matter was referred to the State Government under Section 34(2) of the said Act for passing appropriate orders. Being aggrieved by this order of conviction and sentence, the appropriate orders. Being aggrieved by this order of conviction and sentence, the respondents preferred Criminal Appeal No. 566/DB of 1986 to the High Court which partly allowed the same altering the conviction from Section 302/34 IPC TO 325/34 IPC and sentenced A-1, A-3 and A-4 to suffer RI for three years and to pay a fine of Rs. 1,000/- or in default to undergo further rigorous imprisonment for six months each. However, the conviction and sentence under Section 323/34 of the Indian Penal Code against them was sustained. The direction as regards A-2 was confirmed. It is against this judgment and order passed by the High Court, the State of Punjab has filed this appeal.

2. The prosecution story as unfolded at the trial is as under :-

On December 14, 1985 at about 4 or 5 p.m., Mukhtiar Singh-the complainant (PW 7), his father Chhina Singh (PW 8) and uncle Bakhtawar Singh (since deceased) had gone on tractor-trolley to bring carkande reeds from the Sutlej river in the area of village Bhundri. Mukhtiar Singh (PW 7) was driving the tractor which was stopped under the kikkar trees at a distance of 44/45 karams away from the chhans of Fauja Singh. The land of the complainant was at a distance of 14/15 karams. The complainant and his associates saw the accused burying the tube containing the illicit liquor in his peas crop field and were armed with lathis. Bakhtawar Singh went to the accused and asked them to stop doing the illegal activities in his field whereupon Pritam Singh from his annoyed and caught hold of Bakhtawar Singh from his waist. Thereafter Amarjit Singh (A-10) gave two lathi blows on the head of Bakhtawar Singh (A-3) who also assaulted him with lathi blows. Bakhtawar Singh sustain bleeding injuries and fell down on the ground. A-1 to A-3 even thereafter continued their assault. Mukhtiar Singh (PW 7) who went to rescue him with lathis. After hearing the alarm raised by Mukhtiar Singh (PW 7), Chhina Singh (PW 8) reached at the spot whereupon the accused fled away. The injured persons were then removed to a hospital at Sidhwan Bet by Chhina Singh on tractor-trolley where Dr. Mrs. Pratigya Devi treated them. Being a medico-legal case, an information was sent to ASI Gurdial Singh (PW 12), who reached the spot, prepared the site plan and collected blood stained earth under a panchanama. Since the condition of Bakhtawar Singh was serious, he was shifted to the C.M.C. Hospital, Ludhiana, where he succumbed to his injuries on 17th December, 1985 at 5.40 a.m. ASI Gurdial Singh (PW 12) then recorded the statements of various persons. On receipt of the information of the death of Bakhtawar Singh, SI Amar Singh (PW 13) went to the hospital, held the inquest and forwarded the dead body to the mortuary for autopsy. The accused were arrested on 17th December, 1985. On conclusion of the investigation, a charge sheet came to be filed against the respondents for offences punishable under Sections 302/34 and 323/34 of the Indian Penal Code for committing the murder of Bakhtawar Singh and also causing injuries to Mukhtiar Singh (PW 7).

4. The accused denied the accusations levelled against them and according to them, they have been falsely implicated in the present crime. They also denied that they were engaged in an illicit liquor do any such illegal activity. They pleaded that they are innocent and be acquitted.

5. In support of its case, the prosecution examined Mukhtiar Singh (PW 7) and Chhina Singh (PW 8) as witnesses of fact. Besides this evidence, prosecution examined three medical experts of whom Dr. Shamsher Singh (PW 5) held the autopsy on the dead body of Bakhtawar Singh.

6. As indicated above, learned Addl. Sessions Judge, Ludhiana, convicted the respondents A-1 to A-4 for offences punishable under Sections 302/34 and 323/34 of the Indian Penal Code, however, on appeal by A-1 to A-4, the High Court partly allowed the same and altered the conviction of A-1 to A-4 from Section 302/34 IPC TO 325/34 IPC and sentenced A-1, A-3 and A-4 to suffer RI for three years and to pay a fine of Rs. 1,000/- and in default to undergo further RI for six months. Their conviction and sentence under Section 323/34 of the Indian Penal Code was, however, maintained. It is this order of High Court which is the subject matter of challenge in this Criminal Appeal.

7. Mr. Ranbir Yadav, Learned Advocate appearing in support of this appeal urged that the impugned judgment of

the High Court is unsustainable in law. After having held that A-1 to A-4 had a common intention to cause assault on Bakhtawar Singh and looking to the nature of the injuries deposed to by three medical experts, the offences could not have been altered from Section 302/34 IPC to one under Section 325/34 of the Indian Penal Code. He, therefore, urged that the impugned judgment and order be quashed and set aside and that of the trial court be restored.

8. Mr. P.N. Puri, Learned Counsel appearing for the respondents supported the impugned judgment.

9. On careful scrutiny of the judgments of the courts below and after going through the oral and documentary evidence on record, we are satisfied that the impugned judgment to the extent of altering conviction from 302/34 to 325/34 IPC is totally unsustainable. The High Court in its cryptic judgment as regards the nature of an offence has concluded as under :-

"It emerges from the prosecution evidence that Pritam Singh accused caught hold of Bakhtawar Singh deceased from his waist and Amarjit Singh, Daljit Singh and Surjit Singh accused caused injuries to him with their lathies on his head. There is no evidence to show as to which of the appellants struck the fatal blow to the deceased. Having regard, therefore, to the circumstances in the present case and the nature of the injuries sustained by the deceased, we are unable to agree with the trial court that the case falls under Section 302 read with Section 34 IPC. There is no evidence of any intention on the part of the appellants either to cause death of the deceased or to cause such injuries of which the appellants could have the knowledge that it was likely to cause death although it cannot be doubted that the appellants had the common intention to cause grievous hurt to the deceased with lathies. Thus, the offence falls under Sections 325/34 and not under Section 302/34 IPC."

9. The above reasoning of the High Court is totally contrary to the evidence of Mukhtiar Singh (PW 7) and that of Chhina Singh (PW 8). It is not only misreading of their evidence but totally misconstruing what they have testified. The very nature of the assault and the injuries sustained by Bakhtawar Singh (deceased) unmistakably prove the common intention of the assailants. The common intention is to be gathered from the proved facts/circumstances. The evidence of these two witnesses of the fact clearly indicate that Pritam Singh (A-4) held Bakhtawar Singh from his waist which facilitated A-1 to A-3 to cause assault on him with sticks. Even after Bakhtawar Singh fell down, A-1 to A-3 continued to assault him. In these circumstances, there could not be better evidence of common intention. Surprisingly, the High Court observed that there was no intention and/or common intention shared by A-1 to A-3 to commit the murder of Bakhtawar Singh. Dr. Shamsher Singh (PW 5) who held the autopsy on the dead body testified that the cause of death

was due to shock and haemorrhage resulting from the fracture of skull bones which sufficient to cause death in the ordinary course of nature. He further testified that all these injuries were ante mortem. In the face of this evidence on record, we are of the considered view that the High Court was totally wrong in altering the convictions of A-1 to A-4 from Section 302/34 IPC TO Section 325/34 IPC. It also needs to be mentioned that there was no challenge to the fact that Bakhtawar Singh died a homicidal death. In the facts and circumstances of this case, we have no hesitation in coming to the conclusion that the High Court has committed a serious error of law while altering the conviction of respondents A-1 to A-4 from Section 302/34 IPC to Section 325/34 of the Indian Penal Code.

10. In the result, the appeal is allowed. The impugned judgment and order of the High Court dated January 20, 1988 to the extent of altering the conviction of the respondents from 302/34 to 325/34 IPC is quashed and set aside and that of the learned Addl. Sessions Judge, Ludhiana, dated 19th September, 1986 is restored. A-1, A-3 and A-4 who are on bail, shall surrender to their bailbonds forthwith to serve out the remainder of their sentences.