

PETITIONER:
RAGHUBIR SINGH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 13/03/1996

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
PARIPOORNAN, K.S.(J)

CITATION:
JT 1996 (4) 1 1996 SCALE (2)689

ACT:

HEADNOTE:

JUDGMENT:
WITH
CRIMINAL APPEAL NO. 436 OF 1985

Santokh Singh
V.
Amarjit Singh & Ors.

J U D G M E N T

Five accused, namely, Amarjit Singh, Raghubir Singh, Jagat Singh, Joginder Singh and Ranbir Singh were sent up for trial before the learned Addl. Judge, Special Courts, Hoshiarpur in connection with the murder of Balwant Singh and for causing injuries to Santokh Singh PW6. They were tried for various offences. Raghubir Singh and Joginder Singh were convicted for an offence under Section 302 IPC while their remaining co-accused were acquitted of the offence under Section 302/149 IPC. All the accused were convicted for an offence under Section 148 IPC. Joginder Singh was also convicted for an offence under Section 325 IPC while the rest of the accused for an offence under Section 325/149 IPC. Raghubir Singh was convicted for an offence under Section 323 IPC and the rest of the accused for an offence under Section 323/149 IPC. Amarjit Singh who is a law graduate and a practising advocate and had been attributed only a 'lalkara' at the time of assault, was in view of his previous record and educational qualifications directed to be released on probation for a period of one year on furnishing a bond in the sum of Rs. 5000/- with one surety of the like amount undertaking to maintain peace and be of good behaviour and to appear and to receive the sentence as and when required by the court during that period. Raghubir Singh and Joginder Singh were sentenced to undergo life imprisonment and to pay a fine of Rs. 5000/- and in default R.I. for one and a half years each for the offence under Section 302 IPC. Joginder Singh was also sentenced to R.I. for one year under Section 325 IPC while the rest of the accused were sentenced to R.I. for nine months each under Section 325/149 IPC. Raghubir Singh was

sentenced to three months R.I. for the offence under Section 323 IPC and the rest of the accused were also sentenced to three months R.I. under Section 323/149 IPC. All the accused were further sentenced to R.I. for six months under Section 148 IPC. The substantive sentences of imprisonment were directed to run concurrently and the fine on realisation was directed to be paid to the heirs of Balwant Singh as compensation.

The appellants have filed this appeal under Section 14 of the Terrorists Affected Areas (Special Courts) Act 1984 challenging their conviction and sentence as recorded on 6.3.1985. State had also filed an appeal against the acquittal of the accused of the offence 302/149 IPC, being CrI. A. No.526/85. That appeal, however, was dismissed by a Division Bench of this Court on 27.2.1987. The complainant Santokh Singh has filed CrI.A. No.436/85 against the acquittal of the three accused for the offence under Sections 302/149 IPC. Both these appeals are being disposed of together.

According to the prosecution case, sometime in August 1984 Harbans Singh PW received a threatening letter allegedly from some extremist on which he moved an application to the District Magistrate for permission to carry his own weapon for self defence. Jagat Singh appellant moved an application on 14.8.84 before the District Magistrate opposing the request of Harbans Singh and on that account the relations between Harbans Singh on the one hand and Jagat Singh and Raghubir Singh who are brothers, on the other hand became strained. Because of the receipt of the letter, Harbans Singh and Balwant Singh started living together. On 11.9.1984 an agreement appears to have been arrived at between Jagat Singh appellant and Harbans Singh PW for a passage through a plot. This led to straining of relations between Joginder Singh and his brother Ranbir Singh (appellants) on the one hand and Harbans Singh on the other. It is also alleged that Santokh Singh PW6 brought about a compromise between Jagat Singh and Dalip Singh which was resented to by the accused. These were the motives for the assault as alleged by the prosecution.

At about 10 p.m. on 11.9.84 Santokh Singh, Nambardar was returning from his tubewell and he met Tarsem Singh PW near Octroi Post on the Jallandhar Hoshiarpur road. They started talking to each other. In the meantime, Raghubir Singh appellant armed with a gandassi reached there and pulling down the turban of Santokh Singh PW6 told him that he was nobody to bring about any compromise between Jagat Singh and Dalip Singh. Santokh Singh PW6 retorted that he had not done any wrong and picked up his turban and placed it on his head. Raghubir Singh appellant then raised a lalkara on which Jagat Singh and Joginder Singh armed with gandassis and Ranbir Singh armed with a datri came there. There were two other unknown persons also accompanying them. Amarjit Singh (co-accused) arrived on a scooter and after parking the same raised a lalkara that Santokh Singh and Tarsem Singh should not be allowed to go and that he would take care of the matter. On this Raghubir Singh is alleged to have given a gandassi blow, from its wrong side, on the right forearm of Santokh Singh PW6 while Jagat Singh appellant gave a gandassi blow by its wrong side on his left thigh. All the accused thereafter caused injuries to him with their respective weapons on his left arm and fingers and other parts of the body, including his right thigh and the right side of his head. In the meanwhile, Nambardar Balwant Singh, deceased, and Harbans Singh PW7 reached there and they also witnessed the assault. They asked the

appellants not to beat Santokh Singh on which Amarjit Singh raised a lalkara saying that since the real enemy had arrived, he should not be spared and allowed to go away unhurt. Raghubir Singh thereupon gave a gandassi blow on the head of Balwant Singh while Jagat Singh gave a gandassi blow from its wrong side on the back of the head of Balwant Singh. On receipt of the injuries, Balwant Singh fell down. The appellants left the place along with their respective weapons after Harbans Singh PW7 escaped to his house. Balwant Singh succumbed to the injuries at the spot. Chowkidar Lakhwant Singh arrived at the spot and carried Santokh Singh PW6 injured to Civil Hospital, Hoshiarpur where he was medically examined and as many as seven injuries were found on his person. According to Dr. T.S.Verma, all the injuries had been caused with a blunt weapon. According to the Radiologist's report, injury No.6, which was a defused swelling of the upper one third of the left thigh, was declared as grievous. Sub-Inspector Sardul Singh PW recorded the statement of Santokh Singh on arrival at the Hospital on receipt of the police ruka, after Santokh Singh was declared fit to make a statement, and forwarded the same, with his endorsement, to the police station. The formal FIR was registered on 12.9.1984 at 12.55 a.m. The investigation was taken in hand by Sardul Singh who went to the spot from the hospital. The dead body of Balwant Singh was found lying there. He prepared the inquest report Ex.PC and the dead body was sent for post mortem examination which was conducted by Dr. Jagmohan Singh on 12.9.84 at 9.15 a.m. The following injuries were found on the deceased:

1) Incised wound 10 cm x 6 cm x 7.4 cm on the forehead. It was placed horizontally/oblique. The frontal bone was fractured. The brain matter was coming out.

2) Reddish contusion mark on the top of right shoulder joint. It was 4.8 cm x 12 cm. It was obliquely placed.

3) Reddish contusion mark 14.4 cm x 1.4 cm on the front of chest in the upper part. It was obliquely placed going upward towards the right side.

4) There was swelling of scalp in the region of parietal region left side and top of skull. It was 12.4 cm x 3.2 cm.

5) Three contusions red in colour in the front of abdomen and right side near the illiac crest. It was 4 cms in diameter."

According to the medical opinion, the death of Balwant Singh was caused due to shock and haemmrohage on account of the injuries received by the deceased which were all ante mortem. The doctor further opined that injuries Nos. 1 and 4 were sufficient to cause death in the ordinary course of nature individually and collectively. It was further opined that the time gap between the injuries and death was immediate and between death and post mortem about 12 hours. According to Doctor injury No.1 had been caused by a sharp weapon while all other injuries had been caused by blunt weapon.

SI Sardul Singh PW undertook the investigation and collected blood stained earth and prepared the rough site plan. The clothes of the deceased which had been brought by

Constable Madan Lal were also sealed into a parcel and taken into possession. Raghubir Singh and Joginder Singh appellants surrendered before the court on 14.9.84 and were taken into custody. On 17.9.84 ASI Ajit Singh interrogated Raghubir Singh who made a disclosure statement leading to the recovery of a gandassi from a heap of stock lying in his field. Joginder Singh also made a disclosure statement on 17.9.84 and led to the recovery of a gandassi. Both the weapons gandassi EX.P1 recovered on the disclosure statement of Raghubir Singh and gandassi Ex.P2 recovered on the disclosure statement of Joginder Singh were found to be blood stained. They were seized and sealed. ASI Jagjit Singh interrogated Jagat Singh and Ranbir Singh on 21.9.84 and they also made disclosure statements leading to the recovery of a gandassi and a Datri concealed by them respectively. Gandassi Ex.P3 was recovered at the instance of Jagat Singh while Datri Ex.14 and Khundi Ex.P5 were recovered at the instance of Ranbir Singh. On completion of the investigation, the appellants were sent up for trial and were convicted and sentenced in the manner noticed above.

Santokh Singh PW6 is the injured eye-witness. He has deposed to not only about the motives but also about the assault both on himself and on Balwant Singh. He has fully supported the prosecution version as detailed in the earlier part of this judgment. His evidence is clear and cogent. According to Dalip Singh PW10 when he arrived at the spot after the occurrence he had found Santokh Singh PW6 present there along with Lakhwant Singh Chowkidar and the dead body of Balwant Singh. According to him, Santokh Singh PW6 narrated the occurrence to him and PW6 was removed to the hospital by Lakhwant Singh Chowkidar in the rickshaw. The submission of learned counsel for the appellants that all the 3/4 alleged motives were minor and not sufficient to induce the appellants to commit the murder of Balwant Singh does not impress us. The motives may be minor but nonetheless they did provide an occasion for attack on the deceased by the appellants. That apart, even in the absence of motive, the guilt of culprits can be established in a given case if the other evidence on the record is trustworthy and the absence of proof of motive has never been considered as fatal to the prosecution case where the ocular evidence is found reliable. The evidence of Santokh Singh PW6 is straight forward and consistent. He being an injured witness would not leave out his real assailants and implicate the appellants falsely. His evidence has impressed us. Besides, the evidence of PW6 has received ample corroboration from the medical evidence provided by Dr. Jagmohan Singh PW1, Dr. T.S.Verma, PW2, and Dr. C.L.Thukral PW3. The statement of Santokh Singh PW6 was recorded at the hospital at about mid-night and it was on the basis of that statement that the formal FIR came to be registered. In the FIR itself the genesis of the occurrence and the manner of assault have been clearly detailed. The names of the accused as well as the weapons with which they were armed have also been clearly stated. This prompt FIR containing all necessary details also lends sufficient credence to the statement of PW6 Santokh Singh made at the trial. As already noticed Dalip Singh PW10 and Lakhwant Singh Chowkidar have fully corroborated the statement of Santokh Singh not only with regard to the second part of the occurrence but also about the manner in which the first part of the occurrence relating to the attack on Santokh Singh PW took place. We also do not find any force in the submission of learned counsel for the appellants that since the attack on Balwant Singh was at the spur of the moment therefore PW6 could not

have witnessed the occurrence and as such he is not a reliable witness. PW6 Santokh Singh was very much present at the spot and it was in his presence that Balwant Singh deceased and Harbans Singh PW arrived at the spot and advised the accused not to attack PW6 and thereafter a lalkara was raised that since the real enemy had arrived, he should not be spared. Nothing has been brought out in the course of cross-examination of PW7 which may create any doubt about the manner in which Balwant Singh had arrived at the spot and was attacked in the presence of Santokh Singh. There was admittedly party faction in the village and Amarjit Singh was heading one faction, while Harbans Singh PW7 belonged to the other faction. The lalkara regarding the arrival of the enemy thus stands explained. The recoveries of the weapons from Raghubir Singh, Joginder Singh, Jagat Singh and Ranbir Singh have been amply proved from the testimony of Swaran Singh PW11 ASI Baldev Raj PW12 and ASI Ajit Singh PW13. These recoveries also lend assurance to the testimony of Santokh Singh PW6 and Harbans Singh PW7. Nothing has been brought out in the cross-examination of either of these two witnesses which may in any way create any doubt about their truthfulness. The trial court while dealing with the attack on Santokh rightly observed:

"From this evidence, therefore, it has to conclude that all the accused were present at the time of the occurrence with the common motive to attack Santokh Singh PW and on the lalkara of Amarjit Singh, accused, the others co-accused actually attacked him and caused the injuries which were actually found on his person during the medico legal examination. In this situation the accused formed an unlawful assembly carrying weapons which were used in the commission of the offence qua Santokh Singh and consequently, they became liable under Section 148 IPC. Out of the injuries sustained by Santokh Singh during the occurrence, injury No.6 was found to be grievous with a fracture of the left thigh. This injury was caused by the wrong side of the gandasi and the blow is attributed to Joginder Singh accused."

We agree with the above findings of the trial court.

Our critical analysis of the evidence on the record shows that the common object of the unlawful assembly was limited to the attack on Santokh Singh and did not extend to cover the murder of Balwant Singh. Balwant Singh apparently received the injuries when he intervened during the course of the occurrence and those injuries proved fatal. The trial court rightly found that in the established facts and circumstances of the case, the accused who had actually caused the injuries to Balwant Singh alone were responsible for the murder of Balwant Singh and that others could not be held liable either with the aid of Section 149 or Section 34 IPC.

There was no serious dispute either before the trial court or before us that Balwant Singh had died at the time and place as alleged by the prosecution on account of the injuries sustained by him. As per the post mortem report

Ex.PA, the deceased had five injuries out of which three were contusions, one was an incised wound on the forehead and another a swelling in the parital region. Injuries No. 1 and 4 were opined by Dr. Jagmohan Singh to be individually and collectively sufficient in the ordinary course of nature to cause death. According to the ocular testimony of PW6 injury No.1 is attributed to Raghubir Singh appellant while injury No.4 is attributed to Joginder Singh appellant. Santokh Singh PW6 has categorically deposed that Raghubir Singh had given the gandasī blow on the head of Balwant Singh from its sharp side while Joginder Singh had given a blow with the gandasī from the wrong side on the back of the head of Balwant Singh, who fell down thereafter and the other accused caused further injuries on the deceased. Indeed, in the FIR Ex. PM Santokh Singh PW6 had specifically attributed the first blow to Raghubir Singh and had stated that the rest of the accused also caused injuries to him from the wrong and right side of their respective weapons. The injury attributed to Joginder Singh is not specifically mentioned by Santokh Singh in the statement Ex.PM, Both Harbans Singh PW7 and Santokh Singh PW6 at the trial, however, clearly deposed that injury No.4 had been caused by Joginder Singh. Nothing has been suggested in the cross-examination of Harbans Singh PW7 regarding the injury attributed to Joginder Singh appellant. The mere omission in the FIR of injury No.4 having been caused by Joginder Singh appellant cannot in any way improve the case of the appellants and discredit Santokh Singh PW6. We agree with the trial court that the two fatal blows to Balwant Singh had been inflicted by Raghubir Singh and Joginder Singh appellants. So far as the defence of the appellants, including the statement of Ram Prasad DW1, the trial court has rightly considered and found the same not to be worthy of any credence. We agree.

Faced with the unimpeachable evidence on the record, learned counsel for the appellants submitted that appellants Joginder Singh and Raghubir Singh could not be said to have intended to cause the death of Balwant Singh and therefore the offence would not fall under Section 302 IPC. We cannot agree. Undoubtedly, Balwant Singh received the fatal blows when he intervened but the injuries inflicted on him were intentional and not accidental. The blows were given to him with great force on vital parts of his body. Keeping in view the seriousness of the injuries, the Weapons used and the seat of the injuries, the offence committed by these two appellants would squarely fall under Section 302 IPC.

Thus, for what has been said above the conviction and sentence of the appellants for various offences as recorded by the trial court are well founded and do not suffer from any infirmity whatsoever. There is no merit in this appeal which consequently fails and is dismissed.

Coming now to the Criminal Appeal No.436 of 1985 filed by the complainant, we do not find any force in the same and particularly in view of the dismissal of CrI.A.No.526/85 decided on 27.2.1987 filed by the State, for the very same relief, this appeal must fail and is hereby dismissed.

The appellants Raghubir Singh and Joginder Singh are on bail. Their bail bonds are cancelled. They shall be taken into custody to undergo the remaining part of the sentence.