

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No(s). 1817 OF 2009

MANPHOOL SINGH & ORS.

Appellant(s)

VERSUS

THE STATE OF HARYANA

Respondent(s)

WITH

Criminal Appeal No. 332 OF 2009

THE STATE OF HARYANA

Appellant(s)

VERSUS

PAWAN & ORS.

Respondent(s)

J U D G M E N T

R. BANUMATHI, J.

Criminal Appeal NO.1817 of 2009 :

(1) Being aggrieved by the conviction under Sections 302 r/w 149 I.P.C. and the sentence of life imprisonment, the appellants have preferred this appeal.

(2) During the pendency of the appeal, it is stated at the Bar that appellants no.1-Manphool Singh (A-1), No.2-Rattan Singh (A-2) and No.4-Zile Singh (A-6) have died and the only contesting appellant i.e. appellant no.3-Surender Singh (A-5) is alive.

(3) Summary of the case and details are briefly stated. Case of the prosecution is that due to previous enmity, on 14th March, 1994 when deceased no.1, Gopi Chand, and deceased no.2, Mahabir, were sitting at the house of Harpal, appellants and other co-accused (since acquitted) are alleged to have attacked the complainant party. Due to the said attack Gopi Chand (D-1) and Mahabir (D-2) died. Accused, Surender Singh, Zile Singh and Rattan Singh are said to have attacked Gopi Chand (D-1) with lathis and accused-Manphool Singh fired at Mahabir (D-2) with a gun.

(4) To bring home the guilt of the accused before the trial court, the prosecution has examined three witnesses, namely, Harpal (PW-9), Manphool (PW-10) and Mahendra (PW-11) who have all stated that the accused have formed unlawful assemble on the fateful day and that Surender Singh (A-5), Zile Singh (A-6) and Rattan Singh (A-2) attacked Gopi Chand (D-1) with lathis and Manphool (A-1) fired at Mahabir (D-2). Their evidence to some extent is also corroborated by the medical evidence. Based on the evidence of the eye-witnesses, the recovery of weapons and the medical evidence, the trial court convicted the appellants under Sections 302 r/w 149 and 307 r/w 149 I.P.C. The trial court also convicted other accused Narender (A-3), Pawan Kumar (A-4) and Vijay (A-7) by invoking Section 149 I.P.C. On appeal, the High Court confirmed the conviction of the appellants herein but acquitted the accused, namely, Narender (A-3), Pawan Kumar (A-4) and Vijay (A-7). Being

aggrieved of the acquittal of the said accused, the State has preferred Criminal Appeal no.332 of 2009.

(5) We have heard Mr. Rishi Malhotra, learned counsel appearing for the appellants and Mr. Arun Bhardwaj, learned Additional Advocate General appearing for the respondent-State. The main contention urged by learned counsel for the appellants is that the occurrence was at the night time and the evidence of the eye-witnesses, as to overt act of each of the accused, is not believable. It is further submitted by learned counsel that the defence put fourth by the accused in exercise of the private defence by Manphool (A-1) and others in the occurrence, was not properly appreciated by the courts below. In this regard, learned counsel has drawn our attention to the evidence of Dr. P.K. Jain (PW-5), Dr. K.C. Kajal (DW-1) and Dr. P.K. Anand (DW-2) who have issued wound certificate regarding the injuries sustained by the appellant-Manphool (A-1). It was submitted that on the night of the occurrence when Manphool (A-1) was coming home he was intercepted by the complainant party and attacked and Manphool (A-1) has reacted in private defence which aspect was not properly considered by the courts below.

(6) We have carefully gone through the rival submissions, the materials on record and the impugned judgment.

(7) No doubt eye-witnesses Harpal (PW-9), Manphool (PW-10) and Mahendra (PW-11) have stated about the occurrence and the overt act of the accused, the only question falling for consideration

is whether the accused-party acted in self-defence. In his questioning under Section 313 Cr.P.C., Manphool (A-1) has stated that on the date of occurrence when he reached near the house of Pirthi Singh at about 9 p.m., deceased-Gopi Chand (D-1) subjected him and questioned him about his sons and subsequently Manphool (A-1) was given a lathi blow on his head by Gopi Chand (D-1) along with Tara Chand and Lal Chand; and that Gopi Chand (D-1) was having a gun at that point. Appellant-Manphool has stated that having seen Gopi Chand (D-1) armed with the gun, he has to necessarily act in self-defence in order to protect himself. It is pertinent to point out that in the occurrence, appellant-Manphool has sustained as many as ten injuries, as may be seen from the evidence of Dr. P.K. Jain (PW-5) and Exhibit PN issued by him referring to the injuries sustained by the appellant-Manphool. On perusal of the evidence of Dr. P.K. Jain (PW-5), it is seen that the appellant-Manphool has sustained six lacerated wounds and; contusion and abrasion on the body including the lacerated wound on the parietal region and left forearm etc. The discrepancy in the medical evidence has not been properly explained by the prosecution.

(8) Seemingly there appears to be a contradiction in the medical evidence made on the person of the deceased-Gopi Chand who sustained the fatal injuries. As per the evidence of Dr. M.D. Sharma (PW-4) who issued post-mortem certificate, the deceased-Gopi Chand (D-1) had only one single injury on his

head. However, Dr. D.S. Dangi (PW-8) who examined the deceased Gopi Chand (D-1) has stated that the said deceased had two lacerated wounds on the left side of the scalp and six fractured wounds on his scalp. The contradiction about the number of injuries sustained by the deceased-Gopi Chand (D-1) has not been explained by the prosecution.

(9) Whenever accused-party sustains injuries in the same occurrence and when the injuries are grievous in nature it is incumbent upon the prosecution to explain the injuries on the person of the accused. In the present case, the prosecution has not chosen to explain the injuries sustained by the appellant-Manphool (A-1), meaning thereby that the real genesis of the occurrence has not been placed before the Court. Non-explanation of the injuries, which are ten in number, on the person of the appellant-Manphool, raises a doubt about the sequence of occurrence, as projected by the prosecution. After having considered the nature of injuries sustained by the appellant-Manphool (A-1), there is a possibility that the appellant-Manphool (A-1) has acted in self-defence and the defence plea cannot be rejected in toto. It may be noted that the appellant-Manphool (A-1) has exceeded his limit in private defence by firing at the deceased-Mahabir (D-2) and also causing head injuries on the person of the deceased-Gopi Chand (D-1). Considering the defence plea and the nature of the injuries sustained by the appellant-Manphool Singh (A-1), conviction of the appellants under Section 302 I.P.C. cannot be

sustained. In our considered view the conviction of the appellants has to be modified under Section 304 I.P.C.

(10) Considering the fact and circumstances of the case, and that the accused had acted in self defence which is proved to have exceeded, the conviction of the appellants under Section 302 I.P.C. has to be modified. As the occurrence happened in a free fight between both the parties, conviction of the appellants under Section 302 I.P.C. is modified to Section 304 Part II I.P.C.

(11) It is stated that the only surviving appellant-Surender (A-5) has already undergone imprisonment of 8-9 years. In these circumstances, sentence of the appellant-Surender Singh is reduced to the period already undergone by him however conviction is upheld, as above.

(12) The appeal is accordingly allowed.

(13) The appellant-Surender Singh is on bail. His bail bonds shall stand discharged.

Criminal Appeal NO(s).332 of 2009 :

Insofar as this appeal is concerned it is preferred by the State challenging the acquittal of Pawan Kumar (A-4), Vijay Singh (A-7) and Narender (A-3). Since the High Court has acquitted them by invoking Section 149 I.P.C., we do not find any good ground to interfere with the order of acquittal of the respondents.

The appeal is accordingly dismissed.

.....J.
(R. BANUMATHI)

.....J.
(VINEET SARAN)

NEW DELHI,
AUGUST 16, 2018.