

BALWANT SINGH AND OTHERS

v.

STATE OF PUNJAB

(Criminal Appeal No. 621 of 2006)

FEBRUARY 6, 2008

[P.P. NAOLEKAR AND MARKANDEY KATJU, JJ.]

Penal Code, 1860 – ss. 302 and 34 – Accused armed with deadly weapons causing fatal injuries – Conviction under s. 302 by courts below – On basis of testimony of two witnesses – Correctness of – Held: Testimonies of two witnesses corroborated each other – Though one of the witnesses did not see fatal injuries caused to deceased, but there is strong circumstantial evidence that they were caused by accused – Accused armed with deadly weapons had gone to the house of deceased indicates their deadly intentions – More so, particular injury not being attributable to particular accused is not material because on facts, s.34 is attracted – Hence, conviction upheld.

It is the prosecution case that PW 1 and PW 3 are sisters. On the fateful day, PW 1, her sons along with PW 3 and her son KS went to a village where PW 3 had a house. When they reached there, the accused persons- BS, HS, MS and BL were present near the house of PW 3 with deadly weapons. PW 1, her son and KS remained in the house while PW 3 along with her son and her nephew went out to purchase vegetables. Meanwhile, accused persons inflicted injuries to KS with deadly weapons. HS inflicted injuries on the head and forehead of KS as a result he fell down. BS inflicted injuries on the right ear of KS while MS on the right cheek and the ear of KS. PW 1 was also inflicted injuries when she intervened to save KS. When PW 3 and others returned to the house, they saw KS lying on the ground and BL and MS giving gandasa

- A** blow to KS. Thereafter, all the accused gave thrust blows as well as kick blows to KS. The motive was to usurp the property of PW3 by killing KS. PW3 and others raised an alarm. On hearing the same the accused persons ran away. KS succumbed to his injuries. PW 1 lodged FIR.
- B** Investigations were carried out. Accused were arrested. They made disclosure statement and weapons were recovered. The trial court convicted the appellant-accused persons under section 302 IPC. The High Court upheld the order. Hence the present appeal.
- C** Appellant-accused persons contended that PW1 who lodged the FIR turned hostile as also PW2-son of PW 1 and as such only the testimony of PW3 and PW8-the mother and the sister of deceased was left; that from the evidence of PW 3 it appears that she did not see the
- D** main incident in which the fatal injuries were caused; and that it was not clear which of the accused caused which particular injury.

Dismissing the appeal, the Court

- E** HELD: 1.1 Having gone through the testimony of PW3 and PW8-the mother and the sister of deceased, there is no reason to disbelieve the same, especially since they broadly corroborate each other. The evidence of PW 3 has been corroborated by the evidence of the doctor and
- F** PW8-daughter of PW 3 and there is no reason to disbelieve their evidence also. PW8 stated in her evidence that she saw the accused armed with kirpans and gandasas going towards the house of her father. From this an inference can be drawn that the accused armed with weapons were
- G** going with deadly intentions towards the house. PW8 also stated that when they came back after 30 to 45 minutes they were armed with the same weapons with blood stains and the clothes also had blood stains which they later
- H** changed and ran away. This evidence of PW 8 corroborates the evidence of PW 3 though it is true that

she did not see the main incident in which the fatal injuries were caused. [Paras 9 and 12] [502-E, F; 504-G, H; 505-A, B]

1.2 From the evidence of PW 3 it appears that she did not see the main incident in which the fatal injuries were caused. These fatal injuries are mentioned in the evidence of the doctor who conducted the post mortem. Thus, it appears that there were three injuries on the head of KS. It may be that PW 3 was not present when these injuries were caused to KS, but there is strong circumstantial evidence that they were caused by the accused. The circumstantial evidence mentioned therein is sufficient to uphold the conviction because it contains all the links in the chain which connect the accused with the incident. [Paras 10 and 11] [503-D; 504-A, B, C]

1.3 It will not matter that which of the accused caused which particular injury because section 34 IPC is clearly attracted to the facts of the case. When persons go together armed with deadly weapons and fatal injuries are caused to the deceased, all of them are equally liable in view of section 34 IPC. [Para 13] [505-C, D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 621 of 2006.

From the final Judgment and Order dated 4.5.2005 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 636-DB of 2002.

K.B. Sinha, Kawaljit Kochar, Sweta Rani and Kusum Chaudhary for the Appellants.

Kuldip Singh and R.K. Pandey for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal has been filed against the impugned judgment of the Punjab & Haryana High Court dated 4.5.2005 in Criminal Appeal No. 636-DB of 2002.

A 2. Heard learned counsel for the parties and perused the record.

B 3. The appellants are one Balwant Singh and his three sons Balwinder Singh, Harbans Singh and Malkiat Singh. They were convicted under section 302 and other provisions of the Indian Penal Code by the Additional Sessions Judge, Bathinda on 30.7.2002. Against that judgment they filed an appeal in the High Court which was dismissed and hence this appeal.

C 4. The prosecution case is that on 17.7.1998 at about 10/10-30 A.M., Bharpur Kaur(PW1) wife of Jarnail Singh r/o village Khokhar, Police station Kalawali had along with her sons Vakil Singh, Gurjant Singh and Nachhattar Singh gone to village Gill Patti, Bathinda to meet her sister's daughter Amarjit Kaur (PW-3), who was at that time residing in street No. 6, Janta Nagar, Bathinda. From there along with Amarjit Kaur and her son D Kuldeep Singh alias Gurtej Singh they had gone to the house of Amarjit Kaur in village Gill Patti. When they alighted from the jeep in front of the house of Amarjit Kaur, they found the appellants E Balwant Singh and his sons Harbans Singh, Malkiat Singh and Balwinder Singh armed with kirpans and gandasas sitting in the Deodi of the house of Natha Singh son of Wazir Singh. Amarjit Kaur along with Gurjant Singh and Nachhattar Singh left the house to bring milk and vegetable while Bharpur Kaur PW1, deceased Kuldeep Singh and Vakil Singh remained in thehouse. In the mean time, Balwant Singh and his son Harbans F Singh armed with swords and Malkiat Singh and Balwinder Singh armed with gandasas and Natha Singh empty handed trespassed into Amrit Kaur's house. Natha Singh allegedly raised a lalkara "Inna Noo Jaggar Singh Noo Katai Karan Atte Ghar To Kabza Karan Da Maja Chakhaounde Haan, Ajj Ahe G Bach Ke Na Jaan". Thereupon, Kuldeep Singh and Vakil Singh sons of Bharpur Kaur tried to go out of the house in order to save themselves but Harbans Singh gave a blow with the kirpan on the left side of the forehead and on the head of Kuldeep Singh, as a result of which he fell down on the ground. Thereafter, H Balwant Singh gave a kirpan blow which resulted in infliction of

injury on his right ear. Malkiat Singh gave a gandasa blow from its reverse side on the right cheek and ear of Kuldeep Singh. When Bharpur Kaur PW1 intervened to save Kuldeep Singh, Balwinder Singh and Malkiat Singh gave gandasa blow from reverse side, which resulted in injuries on her left wrist joint, left knee joint and nose. Vakil Singh raised a shout "Na Maro Na Maro" whereupon Malkiat Singh and Balwinder Singh gave gandasa blows on the person of Kuldeep Singh on his right and left thigh and below the knee joint when he was lying on the ground. In the meantime, Amarjit Kaur, mother of the deceased Kuldeep Singh, Gurjant Singh and Nachhattar Singh returned to the scene of occurrence and they also raised an alarm on hearing which the assailants fled away from the spot taking their respective weapons with them. Kuldeep Singh succumbed to the injuries.

5. Bharpur Kaur PW1 proceeded for the Police Station and on the way met SI Chand Singh SHO of Police Station Sadar, Bathinda, who was present at Aeroplane Chowk, Bathinda where he had set up a Naka for special checking of vehicles and got reduced her statement into writing. On the basis of the statement, which was completed at 12.30 PM on 17.7.1998, a formal FIR Ex PA/2 was recorded in Police Station Thermal Bathinda at 12.45PM on the same day. He himself proceeded to the spot where he prepared inquest report and during the investigation took into possession blood stained earth vide recovery memo Ex PR, recorded the statements of the witnesses and forwarded the dead body to Civil Hospital, Bathinda through Constable Joginder Singh along with request for Post Mortem Examination Ex PE. On 18.7.1998 he took into possession clothes of the deceased, which were handed over to him by Constable Joginder Singh.

6. On 21.7.1998 he arrested Balwant Singh and Malkiat Singh, who made disclosure statements pursuant whereof the Kirpan Ex P12 and gandasa Ex P13 were taken into possession through recovery memo Ex PU/2 and Ex PU/3. Harbans Singh and Balwinder Singh were apprehended on 22.7.1998 and they

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A too made disclosure statements Ex PU/4 and Ex PU/5
respectively pursuant whereof Kirpan Ex P/14 and gandasa Ex
P/15 respectively were taken into possession vide recovery
memo Ex P/6 and Ex PU/7 respectively. Balwant Singh and
Malkiat Singh, appellants made separate disclosure statements
B Ex PU/16 and Ex PU/17 pursuant whereof their shirts Ex P/16
and Ex P/17 which were blood stained were taken into
possession through recovery memos Ex PU/18 and Ex PU/19
respectively. The same were forwarded to the Chemical
Examiner for examination and on receipt of the report of
C Chemical Examiner, the challan was put in Court against the
appellants before the Illaqa Magistrate, who upon finding that
the offences disclosed were exclusively triable by the Courts of
Sessions, committed the same to the Court of Sessions for trial.

7. The incident in question occurred on 17.7.1998 at 10.30
D AM and the FIR was filed at 12.45 PM. Hence there was no
delay in filing the FIR.

8. Learned counsel for the appellants submitted that PW1
Bharpur Kaur who lodged the FIR turned hostile as is evident
from her statement in court on 28.2.2000. PW2 Gurjant Singh
E also turned hostile. Hence we are left only with the testimony of
PW3 Amarjit Kaur and PW8 Sukhjait Kaur. We have, therefore,
to see whether conviction on their testimonies would be safe.

9. We have carefully gone through the testimony of these
F two witnesses and we see no reason to disbelieve the same,
especially since they broadly corroborate each other. Amarjit
Kaur stated in her evidence that Bharpur Kaur and her son came
to her house in Janta Nagar, Bathinda in a rented jeep and there
she and her son Kuldeep Singh (deceased) accompanied them
G in the jeep and they went to village Gill Patti, where also Amarjit
Kaur has a house. The jeep was parked near the house of
Amarjit Kaur where they saw all the accused persons sitting in
the Deodi of Natgha Singh. Balwant Singh and Harbans Singh
accused were armed with kirpan and Balwinder Singh and
Malkiat Singh were armed with gandasa. Amarjit Kaur, Gurjant
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Singh and Nachattar Singh went out to purchase vegetables while Kuldeep Singh, Bharpur Kaur and her son Vakil Singh remained present in the house of Amarjit Kaur. When Amarjit Kaur and two others returned to the house at 10 or 10.30 AM they saw her son Kuldeep Singh lying on the ground. In their view Balwinder Singh gave gandasa blow on the leg of deceased Kuldeep Singh and Malkiat Singh gave a gandasa blow from its blunt side in his abdomen. All the accused gave thrust blows as well as kick blows to her son Kuldeep Singh. The motive behind the occurrence was said to be the desire to usurp the property of Amarjit Kaur by killing her son.

10. Learned counsel for the appellant submitted that from the evidence of Amarjit Kaur it appears that she only saw Balwinder Singh giving a gandasa blow on the leg of Kuldeep Singh and Malkiat Singh giving a gandasa blow from the blunt side in his abdomen. From this evidence learned counsel for the appellant has tried to infer that Amarjit Kaur did not see the main incident in which the fatal injuries were caused. These fatal injuries are mentioned in the evidence of the doctor who conducted the post mortem. The doctor mentioned the following injuries :

1. Lacerated wound present on frontal region of head 10 x 5 cm underlying bone was fractured. Brain matter exposed. On dissection multiple fracture were present pieces of the bone were present in the brain matter. Haemotoma was present on frontal region of head.
2. Fracture of mandible evident.
3. Incised wound 4 xm x 3 cm on right ear and back of head. Loss of part of right ear. On dissection underlying bone fractured. Haemotoma was present.
4. Incise wound 4 cm x 2 cm on frontal region of lower leg on right side. Underlying bone fractured. Clotted blood present. Multiple abrasions on right leg.

- A 5. Multiple abrasion on right arm.
6. Bruise 8 cm x 4 cm lower abdomen below umbilicus.
7. Bruise 4 cm x 3cm on left writ joint.

B 11. Thus it appears that there were three injuries on the
head of Kuldeep Singh. It may be that Amarjit Kaur was not
present when these injuries were caused to Kuldeep Singh, but
in our opinion there is strong circumstantial evidence that they
were caused by the accused. In our opinion this circumstantial
evidence is sufficient to uphold the conviction because it
C contains all the links in the chain which connect the accused
with the incident. These links are :

D (a) The accused persons were present with deadly
weapons near the house of Amarjit Kaur. When persons
come armed with deadly weapons to someone's house,
it is a strong circumstance to indicate that they had come
with deadly intentions.

E (b) When Amarjit Kaur and others returned to the house
at 10 or 10.30 AM, they saw Balwinder Singh giving
gandasa blow to her son on the right leg and Malkiat Singh
giving gandasa blow from the blunt side of gandasa in his
abdomen. These blows were evidently given after the fatal
injuries on the head of Kuldeep Singh.

F (c) All the accused thereafter gave thrust blows as well
as kick blows to Kuldeep Singh who was lying on the
ground. Hitting and kicking an injured man who is already
lying on the ground shows the deadly intent of the accused.

G (d) There was no one else other than the accused who is
said to have been on the spot at the time of the incident.

H 12. The evidence of Amarjit Kaur has been corroborated
by the evidence of the doctor and PW8 and we see no reason
to disbelieve their evidence also. PW8 Sukhjit Kaur has stated
in her evidence that she saw the accused armed with kirpans
and gandasas going towards the house of her father Jaggar

Singh (deceased husband of Amarjit). From this an inference can be drawn that the accused armed with weapons were going with deadly intentions towards the house. Sukhjit Kaur PW8 also stated that when they came back after 30 to 45 minutes they were armed with the same weapons with blood stains and the clothes also had blood stains which they later changed and ran away. This evidence of Sukhjit Kaur corroborates the evidence of Amarjit Kaur, though it is true that neither saw the main incident in which the fatal injuries were caused. However, as already stated above, there is strong circumstantial evidence to connect the accused with the crime.

13. Learned counsel for the appellant then submitted that it is not clear which of the accused caused which particular injury. In our opinion that will not matter because section 34 IPC is clearly attracted to the facts of the case. When persons go together armed with deadly weapons and fatal injuries are caused to the deceased, all of them are equally liable in view of section 34 IPC.

14. In view of the above, there is no merit in this appeal. The appeal is accordingly dismissed.

N.J.

Appeal dismissed.