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SURJIT SINGH AND ANR

v.

STATE OF PUNJAB

MAY 18, 2007

B

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

C

Penal Code, 1860—ss.302, 148, 149 and 450—Conviction under—Sustainability of—Held: Prosecution case that accused had a role in killing the deceased not proved, thus, conviction u/s 302 not sustainable—However, accused committed criminal trespass, formed unlawful assembly and had ill motive though nature not proved—Thus, conviction u/s 450 and other sections upheld—Accused having served about 5 years imprisonment, hence sentence awarded substituted by sentence of imprisonment for period already undergone.

D

According to the prosecution case, on the fateful day appellant along with other co-accused-policemen forcibly entered into the house of H-labourer. H's son-MS witnessed the same. He saw from the window that his mother was lying without her salwar and accused LS was in the process of wearing his trouser. On seeing the incident MS shouted but accused DS threatened to kill him if he shouted. Thereafter, SR exhorted that H should be killed and HS gave a blow on head of H resulting in her death. Accused ran away. FIR was lodged. Appellants were convicted and sentenced u/ss. 302/148/149/450 IPC. High Court upheld the order. Hence the present appeal by SS and DS.

E

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Partly allowing the appeal, the Court

HELD: 1.1. The version of the witnesses before the trial court is believed and the order of High Court in rejecting the version given in the FIR for the reasons given by it is concurred with. [Para 6] [325-A]

G

1.2. It seems the accused were not successful in raping H as her sons shouted for help. As regards the allegation of causing death of H, there is no evidence that the appellants had any role in the killing of H. There was no evidence of common intention either. Hence, the conviction of the appellants u/s 302 IPC cannot be sustained and is set aside. However, the conviction of the appellants under the other provisions is upheld as there is no doubt that

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the appellants along with other co-accused committed criminal trespass into the house of deceased and also formed an unlawful assembly, though such attempt was frustrated by the presence of deceased's sons. They surely had an ill-motive, although the nature thereof was not known nor has been proved. Forcible entry of the appellant in the house of H stands established. Thus, the ingredients of s. 450 IPC stand fully satisfied. Therefore, the trial Judge as also the High Court rightly convicted the appellants under section 450.

[Paras 7, 8 and 9] [325-B, C, D, E]

1.3. Appellants have already served out about 4 or 5 years' imprisonment and hence the sentence awarded by the trial court and the High Court is substituted by the sentence of imprisonment for the period already undergone.

[Para 10] [325-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 644 of 2006.

From the Final Judgment and Order dated 01.12.2005 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 9-DB of 2002.

Bimal Roy, Sunita Pandit and B.K. Khurana for the Appellants.

Kawaljit Kochar and Arun K. Sinha for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal has been filed against the impugned judgment and order dated 1.12.2005 of the Punjab and Haryana High Court in Criminal Appeal No. 9-DB/2002 by which the appeal of the appellants against the judgment of the Additional Sessions Judge Gurdaspur dated 6.12.2001 have been dismissed and the conviction and sentence of the appellants under Sections 302/148/149/450 IPC have been maintained.

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

3. There were five accused in this case before the trial court, but this appeal has been filed only on behalf of two accused viz., accused No. 3 Surjit Singh, son of Gian Singh and accused No. 5 Daljit Singh, son of Assa Singh. It may be mentioned that there is another co-accused named Surjit Singh @ Bagga, son of Kartar Singh, but we are not concerned with him in this case. It may also be mentioned that all the five co-accused are policemen.

A 4. The prosecution case was that the deceased Harbans Kaur was living in village Beri along with her sons Mohan Singh and Rattan Singh. It is alleged that on 21.2.1997 at about 6 P.M. Harbans Kaur went out to ease herself when the accused said some indecent words to her and she returned to her home. At that time Mohan Singh, son of the deceased Harbans Kaur was outside in the field and when he came home he found his younger brother already in the house. Mohan Singh saw the accused coming to his house and he followed them. He heard some screaming in the house and saw from the window that his mother was lying without her salwar and accused Lakhwinder Singh was in the process of wearing his trouser. All the accused were present in the said room at that time. On seeing this Mohan Singh shouted but the accused Daljit Singh is said to have pointed a pistol towards him and threatened that if he shouts he will be finished off. Surjit Singh @ Bagga, son of Kartar Singh allegedly said that in case Harbans Kaur remains alive she would implicate all the accused and hence she should be killed. It is alleged that thereupon Harinderjit Singh gave a brickbat blow on the head of Harbans Kaur, as a result of which she died. It is alleged that after throwing the body of Harbans Kaur in the courtyard the accused ran away.

E 5. It may be mentioned that in the FIR dated 21.2.1997 the version given by Rattan Singh, younger brother of Mohan Singh is different from the depositions of the witnesses before the trial court. In the FIR it is only stated that when Rattan Singh returned home at about 6 P.M. he saw the dead body of his mother Harbans Kaur lying in the courtyard. None of the accused were named in the FIR and the version given therein indicates that nobody saw the assailants. However, as rightly noted by the trial court as well as by the High Court, the accused were all police men, while the family of the deceased are poor labourers. The FIR was signed by Rattan Singh who was only 12 years' old at that time. We agree with the High Court that Sub Inspector Swaran Singh appears to have deliberately concocted a false FIR not naming the accused since he belongs to the same department viz. police department and hence he wanted to help the accused. It was only on 14.4.1994 when Mohan Singh (PW1) went to hear the argument of the bail application moved by one of the accused that he came to know that names of the accused have not been mentioned in the FIR. On the same day he sent registered letters to the Chief Minister and Director General of Police, Punjab stating that the police are not investigating the case fairly. Receiving no response he filed a criminal complaint on 17.4.1997 before the Magistrate. The Police Case and the Criminal Case were clubbed together and heard by the trial court.

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6. We are inclined to believe the version of the witnesses before the trial court and we agree with the High Court in rejecting the version given in the FIR for the reasons given by the High Court. A

7. It seems that the accused were not successful in raping Harbans Kaur as her sons Mohan Singh and Rattan Singh shouted for help. As regards the allegation of causing death of Harbans Kaur, the prosecution case, as is evident from the depositions of the witnesses, is that Surjit Singh @ Bagga, son of Kartar Singh (not Surjit Singh son of Gian Singh who is appellant No. 1 before us) exhorted that Harbans Kaur should be killed, and thereupon Harinderjit Singh, another co-accused gave the fatal blow on the head of Harbans Kaur. Thus there is no evidence that the appellants before us had any role in the killing of Harbans Kaur. There was no evidence of common intention either. Hence, the conviction of the appellants under Section 302 IPC cannot be sustained and they are set aside. B C

8. However, we uphold the conviction of the appellants under the other provisions mentioned in the trial court judgment as there is no doubt that the appellants along with other co-accused committed criminal trespass into the house of Harbans Kaur and also formed an unlawful assembly, though such attempt was frustrated by the presence of Mohan Singh and Rattan Singh. D

9. The appellant along with other associates entered the house of the deceased. They surely had an ill-motive, although the nature thereof has not been proved. What could, however, be the nature thereof was not known. Forcible entry in her house, however, stands established. The ingredients of Section 450 IPC in a case of this nature, thus, stand fully satisfied. We are, therefore, of the opinion that the learned Trial Judge as also the High Court have rightly found the appellants guilty of commission of the offence under the said provision. E F

10. We are informed that the appellants have already served out about 4 or 5 years' imprisonment and hence we substitute the sentence awarded by the trial court and the High Court by the sentence of imprisonment for the period already undergone. The appellants should be released forthwith unless required in connection with some other case. G

11. With these observations the appeal stands allowed in part.

N.J.

Appeal allowed.

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