

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 476 OF 2006

ISHWAR SINGH

...APPELLANT

VERSUS

STATE OF HARYANA

...RESPONDENT

WITH

CRIMINAL APPEAL NO. 478 OF 2006

CRIMINAL APPEAL NO. 1315 OF 2006

ORDER

These appeals by special leave arise out of the common impugned judgment dated 27<sup>th</sup> January, 2005 passed by the Division Bench of Punjab & Haryana High Court in Criminal Appeal No. 572-DB of 1996.

2. The prosecution levelled allegation against the accused that on 28<sup>th</sup> June, 1991 at about 7 pm, the seven accused persons formed unlawful assembly and assaulted one Dharambir with deadly weapons resulting his death. During trial one accused has died and learned trial Court held all the other six accused guilty of the offence punishable under Section 302 read with Section 149, IPC and sentenced them to suffer life imprisonment. They were also sentenced to undergo rigorous

imprisonment for one year for the offence punishable under Section 323, read with Section 149, IPC.

3. Aggrieved by the punishment handed over by the Trial Court, all the six accused went in appeal to the High Court. By the impugned judgment the High Court acquitted four of the accused persons and converted the conviction of the accused Ishwar Singh (Appellant in Criminal Appeal No. 476 of 2006) and Jai Prakash (Appellant in Criminal Appeal No.1315 of 2006) from the offence punishable under Section 302, IPC as awarded by the Trial Court, to the offence punishable under Section 304, Part-I read with Section 34, IPC. Accordingly, the High Court sentenced them to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each, in default of payment of fine, to further undergo rigorous imprisonment for six months.

4. Aggrieved by the impugned order passed by the High Court, the State has filed Criminal Appeal No. 478 of 2006 before this Court against all the six accused persons, whereas two accused persons, namely, Ishwar Singh and Jai Prakash, filed Criminal Appeals 476 and 1315 of 2006 respectively.

5. We have heard learned counsel for the parties together and perused the material available on record.

6. Learned counsel appearing for the appellant in Criminal Appeal No. 476 of 2006 submitted that the accused- Ishwar Singh has died. Learned counsel appearing for the State has not disputed the same. Hence, Criminal Appeal No.

476 of 2006 stands dismissed as abated qua Ishwar Singh.

7. Insofar as Criminal Appeal No. 478 of 2006, preferred by the State against all the accused is concerned, learned counsel appearing for the State attempted to canvass that the impugned judgment is unsustainable as it is based purely on conjectures, ignoring the facts led in evidence by the prosecution. The High Court has, without proper explanation, let off the accused Rajinder, Shree Niwas, Kamal Singh and Ramphal giving them benefit of doubt and altered the conviction and sentence of accused Jai Prakash and Ishwar Singh. The prosecution has fully proved the case against all the accused as regards to their preplanning, common intention and involvement in the crime to cause death of the deceased, but the High Court has not assessed the evidence in right perspective.

8. We have meticulously gone through the material available on record. We find that the major injury on the body of the deceased was of a *gandasi* stated to have been inflicted by the accused Jai Prakash. The other injuries include small contusions on the left arm and left elbow and a little abrasion on the left buttock. The High Court clearly analyzed each and every aspect of the prosecution story testifying with the evidence of witnesses and came to the conclusion that only Ishwar Singh and Jai Prakash had participated in the occurrence and there was no strong evidence to establish the participation and role of other

accused. There were altogether five injuries on the body of the deceased including one major injury and seven persons have been prosecuted as accused. The medical evidence does not support the participation of other accused in the assault. Hence we do not find any valid reason to interfere with the conclusion arrived at by the High Court for discharging other four accused from the offence.

9. As regards to the role of Jai Prakash—appellant, as already noticed, as per medical evidence duly corroborated by the oral testimonies of prosecution witnesses, there was only one major injury on the body of the deceased which was caused with a *gandasi* and the same was ascribed to have been inflicted by Jai Prakash. The record shows that in the quarrel that took place on the previous day Jai Prakash had not participated, and it was occurred only between Ishwar Singh and others. It is imperative to note that as put forth by the prosecution it is the quarrel which led to the motive of the accused for attacking the deceased. Hence, we see no error on the part of High Court in coming to the conclusion that Jai Prakash has no intention to kill the deceased. As such, the High Court was right in concluding that it is not a case of murder but culpable homicide not amounting to murder, and accordingly the punishments were awarded to the guilty. In that view, the Criminal Appeal No. 478 of 2006 filed by the State of Haryana stands dismissed.

10. On the other hand, we are informed by the learned

counsel for the appellant—Jai Prakash that the accused has already served the sentence awarded by the High Court and also paid the fine amount imposed on him. In view of the same, the Criminal Appeal No. 1315 of 2006 filed by the accused Jai Prakash stands dismissed as having become infructuous.

11. Ordered accordingly.

.....J.  
[N.V. RAMANA]

.....J.  
[PRAFULLA C. PANT]

New Delhi,  
February 28, 2017

ITEM NO.102

COURT NO.10

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 476/2006

ISHWAR SINGH

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

WITH

Cr1.A. No. 478/2006  
(With office report)

Cr1.A. No. 1315/2006

Date : 28/02/2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA  
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s)      Kumar Kartikay, Adv.  
                                 Ms. Neelu Sharma, Adv.  
                                 Mr. Himanshu Singh Dhillon, Adv.  
                                 Mr. Aruneshwar Gupta, Adv.  
  
                                 Mr. Kamal Mohan Gupta, Adv.  
                                 Mr. Sanjay Sharawat, Adv.

For Respondent(s)      Mr. Amit Kumar, Adv.  
                                 Mr. Sanjay Kumar Visen, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Criminal Appeal No. 476 of 2006:

The appeal is dismissed as abated in terms of the signed order.

Criminal Appeal No. 478 of 2006:

The appeal is dismissed in terms of the signed order.

Criminal Appeal No. 1315 of 2006:

The appeal is dismissed as infructuous in terms of the signed order.

(Shashi Sareen)  
AR-cum-PS

(S.S.R.Krishna)  
Assistant Registrar

(Signed order is placed on the file)