

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.667-669 OF 2001@@
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Bhup Singh & Anr. .. Appellants

Vs.

State of Haryana .. Respondent

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Prosecution was launched against Bhagmal and Bhup Singh alleging that at about 8 p.m. on June 25, 1995 when P.W.12-Raj Bir, P.W.13- Kaushalya and Prem Singh(deceased) were sitting in the outhouse in village Beriyawas, Bhagmal and Bhup Singh armed with lathis attacked Prem Singh(deceased)on the pretext that he had abused them; that Prem Singh begged their excuse with folded hands but Bhagmal caught hold of Prem Singh and Bhup Singh gave a lathi blow on his head as a result of which Prem Singh fell down on the ground; that Bhagmal gave several fist blows and kicks on the person of the deceased; that in the meanwhile Nihal Singh and Kaushalya(P.W.13) rescued Prem Singh from the accused and he was carried to the hospital at Rewari and, thereafter, to another hospital at Rohtak but he succumbed to the injuries. Thereafter, a First Information Report was lodged with the police and on investigation of the case charge-sheet was filed for offences punishable under section 302/34 and 452 IPC.

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The trial Court examined 14 witnesses and relied upon the eye witness account of Raj Bir(P.W.12) and Kaushalya (P.W.13) that the incident had taken place in the village at the time and in the manner indicated earlier and the defence theory that a fight had taken place between Dharam Pal and Rajbir on the one side and Prem Singh on the other side was not believed. Ultimately, the trial Court came to the conclusion that the two accused are guilty of an offence punishable under Section 325 read with Section 34 IPC and imposed upon each of them rigorous imprisonment for a period of five years with fine of Rs.15,000/-.

Both the State and the accused filed appeals. The High Court on examination of the material found no merit in the appeal of the accused.The High Court, however, allowed the appeal of the State particularly after referring to the nature of injuries sustained by the deceased and came to the conclusion that it is not number of injuries that would matter but the manner in which the same had been inflicted. It was noticed that Bhup Singh had given a lathi blow on Prem Singh's head with great severity.Bhagmal had given fist and kick blows on the various parts of the body of Prem Singh which had

been proved from the medical evidence and, further, found that the ferocity of the attack made by Bhup Singh is evident from the damage caused to the skull(injury No.1). It was also noticed that there were multiple fractures on the left frontal bone and left and right parietal bones and that some of fractured bone pieces were projecting underneath the brain tissues.The High Court,therefore, held that though injury No.1 inflicted by Bhup Singh was only one it was with intention of causing his death in furtherance of his common intention along with his co accused Bhagmal and, therefore, came to the conclusion that the accused must be convicted under Section 302 read with 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1000/- each and in default thereof to undergo further rigorous imprisonment for three months. It is against this order, the present appeal has been filed.

During the pendency of this appeal Bhup Singh-appellant No.1 is stated to have died and appeals filed by him stand abated. Hence, appeals filed by Bhagmal-appellant No.2 alone remain for consideration. What is necessary is to examine the role played by Bhagmal in the case and as to nature of offence committed by him. It is no doubt true that the injury inflicted by

Bhup Singh on Prem Singh was with great severity by using a lathi whereas Bhagmal held Prem Singh when Bhup Singh inflicted injuries. Though, the witnesses stated that both of them had come on the scene with lathis,yet Bhagmal did not use the lathi at any stage of the incident. All that is stated against him is that he held the deceased- Prem Singh when injuries were inflicted by Bhup Singh and, thereafter, he gave several fist and kick blows on various parts of the body of Prem Singh. The High Court stated that the medical evidence disclosed these facts. However, either in the Post mortem report or in the evidence of the Doctor there is nothing to show that there had been any fist and kick blows upon the body of Prem Singh(deceased). Thereby, we cannot draw an inference that Bhagmal-appellant No.2 intended that the said Prem Singh should be murdered or he used any weapon in any manner to give that indication,whatever may be intentions of Bhup Singh. In the circumstances, we think Bhagmal intended only to cause injuries to Prem Singh so that the deceased may be alerted to behave himself,and we cannot state that Bhagmal had caused injuries with intention to murder him or he shared the common intention with Bhup Singh to kill the deceased. Hence, the findings of the High Court that Bhagmal intended to kill

Prem Singh in concert with Bhup Singh so as to hold that he had common intention with him is not justified.

In the result we set aside the conviction of appellant No.2 under Section 302 read with 34 IPC and sentence rendered by the High Court and restore that of the Trial Court under Section 325 IPC. However, we reduce period of imprisonment to 3 years but the fine imposed by the trial Court shall stand maintained. The

(Meenu Sethi)
Court Master

(Om Prakash)
Court Master

Signed order is placed on the file