

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 286 OF 2013

MADAN SINGH & ORS. ... Appellants

VERSUS

STATE OF HARYANA ... Respondent

O R D E R

The instant matter is filed against the impugned order dated 15th January, 2009. On 07.07.2009, notice was issued in the special leave petition limited to the question of nature of offence. Therefore, we have heard the matter on this aspect only.

As many as eight persons were made to stand trial for having committed murder of one Kuldip Singh which included two appellants before us, viz., Madan Singh, son of Raghunath, and Madan Singh, son of Bakhtawar. The incident alleged took place on May 24, 1996. As per the prosecution, Kuldip Singh (hereinafter referred to as the 'deceased') along with Mahesh (PW-8) and Sunil Kumar (PW-7) who are the residents of Wazirpur, Police Station Sadar, Gurgaon, had gone to Gurgaon for some personal work. Earlier in the day, Ram Avatar father of Sunil Kumar had also left the village for Gurgaon.

All four of them returned to the village on a bus. Bus

stand in the village is at a place which is in the front of Hotel belonging to Raghunath Singh. When they alighted at the bus stand at about 6.15 p.m., Raghunath Singh (one of the accused persons) and his co-accused emerged from the Hotel. Raghunath Singh gave '*lalkara*' that they had got the opportunity to now get revenge from these four persons and therefore, they should be finished. On this, the accused persons emerged from the Hotel armed with different kinds of *lathis*. These were Raghunath Singh himself, his three sons Gajraj Singh, Madan Singh-I and Hari Om and four sons of his brother Bakhtawar, viz., Ajit V., Pratap Singh, Madan Singh-II and Mitter Pal. They surrounded Kuldip Singh and others. Kuldip Singh was hit on the head by Madan Singh-I and Madan Singh-II with the *lathi* blows. Pratap Singh, Ajit Singh and Kuldip Singh fell down but accused persons continued to give blows to them. Sunil Kumar was also hit by Gajraj Singh, Hari Om and Ajit Singh. Mitter Pal ran over Mahesh with his tractor crushing his legs. Mahesh was also hit by *lathis* by Gajraj, Hari Om and Ajit. Ram Avtar was hit with *lathis* by Gajraj and Mitter Pal. When alarm was raised by injured persons, one Dharminder, who lived in the neighbourhood, tried to intervene but he was also hit by Madan Singh-I and Madan Singh-II.

The injured persons were taken to the hospital and were medically examined. Case was also reported to the police.

Kuldip Singh succumbed to the injuries. On this basis, case under Sections 302, 307, 148 and 149 of the Indian Penal Code(IPC) was registered against the aforesaid eight accused persons. The Trial Court, after examining the witnesses, gave its verdict convicting all the accused persons. These eight persons filed appeal. In the appeal, the High Court has, by the impugned judgment, acquitted Partap (Appellant-4), Mitter Pal (Appellant-5) and Hari Om (Appellant-6). Ajit Singh and Raghunath (Appellant-1 and Appellant-8) had expired during the pendency of the appeal and therefore, appeal qua them had been abated. The High Court, however, affirmed the conviction of Gajraj Singh (Appellant-7) as well as Madan Singh-I and Madan Singh-II (Appellant-2 and Appellant-3 respectively). Even Appellant-7 has passed away during the pendency of this appeal.

In these circumstances, the appeal survives only in respect of two appellants Madan Singh-I and Madan Singh-II (Appellant-2 and Appellant-3 respectively).

We have heard learned counsel for the parties at length. We may record at this stage that a specific defence was raised by the appellants/accused persons to the effect that it is the complainant party which had come to the place of the accused persons, i.e., at the Hotel of Raghunath and attacked the accused party and therefore, the accused persons had also attacked the complainant party in self-defence.

This version, however, is not accepted by the Courts below. Notwithstanding that, one fact which stands admitted is that even some of the accused persons had suffered injuries. These are described in the judgment of the High Court as well. In fact, after the incident, the accused persons had also gone to Civil Hospital, Gurgaon (which is a Government Hospital) and were examined by Dr. B. B. Aggarwal and Dr. Krishan Kumar, who were examined as defence witnesses, i.e., as DW-1 and DW-2 respectively. The accused persons had also examined Randhir Singh ASI as DW-3 and one Sunder Singh as DW-4.

On the basis of the medical evidence, it has come on record that Madan Singh-I suffered as many as five injuries and two of these are lacerated wounds on the head. Likewise, Madan Singh-II suffered 15 injuries which include three lacerated wounds on the head and one incised wound on left upper arm, just above elbow of lateral side 1.5 X 0.5 c.m. muscle deep. Ajit Singh had suffered three injuries and Gajraj Singh had suffered five injuries. Therefore, as many as four accused persons had suffered injuries which shows that the accused party was also attacked by the complainant party.

In the FIR, no such attack by the complainant party on the accused persons is mentioned. However, the Investigating Officer (I.O.) as well as PW-7 and PW-8 accepted that the

accused persons had also suffered the injuries. PW-7 and PW-8 in their statements in the Court have tried to explain this by stating that they had attacked the accused persons in self-defence. It has also come in the statement of the I.O. that when he reached the spot and investigated, he came to know that the accused persons had also suffered injuries and had gone to Civil Hospital, Gurgaon. However, he simply arrested the accused persons and for the injuries which were caused to the accused persons, no action was taken against the complainant party.

The aforesaid facts give rise to various questions which remain unanswered and some of them are baffling. In the first instance, it may be noticed that even as per the prosecution, four persons including Kuldip Singh had gone to Gurgaon and on return, they had alighted at the bus stand at 6.15 p.m. This bus stand is situated in the front of the Hotel of Raghunath Singh. It would show that it was not within the knowledge of Raghunath Singh and other accused persons that the complainant party would be coming by bus and would be there at 6.15 p.m. No doubt, there is a previous animosity between the parties inasmuch as some of the persons belonging to complainant party were charged with offences under Section 307 of the IPC, i.e., attempt to murder and the victim in the said case belonged to the accused party but at the same time, it cannot be said that the act was

pre-meditated. It appears that fight between the two factions erupted at the spur of moment and it is difficult to state as to who took the first step. Both sides are saying that they attacked other party in self-defence. This coupled with the fact that both sides had attacked each other inasmuch as four persons belonging to the accused party had also suffered injuries further shows that neither the prosecution has come out with complete truth nor the version of the defence is completely believable. To some extent, even the investigating officer is to be blamed who did not take any action against the complainant party insofar as injuries suffered by the aforesaid four accused persons are concerned and it gives an impression that the investigation carried out by him was also not completely impartial.

We may also observe that the High Court has gone totally tangent and indulged in self imagination by observing that there could be two separate incidents and the four accused persons got injuries in the second incident. No such case of second incident was projected by the prosecution. Rather this theory propounded by the High Court is contrary to the specific version of the prosecution witnesses who admitted inflicting injuries on the persons of the four accused in the same incident; *albiet* in self-defence.

Having regard to this and other attendant circumstances, we are of the opinion that it is a fit case

where the appellants should have been convicted for an offence under Section 304-II IPC instead of Section 302 IPC, as intention to commit murder does not get established beyond reasonable doubt. We, thus, modify the impugned judgment by convicting the appellants under Section 304-II IPC and for this, impose the sentence of 10 years Rigorous Imprisonment. In case, the appellants have not undergone the aforesaid sentence, they shall undergo the remaining the sentence. On the other hand, if the sentence already undergone is 10 years or more, they shall be released forthwith, if not wanted in some other case.

The appeal stands disposed of in the aforesaid terms.

....., J.
[A.K. SIKRI]

....., J.
[S.A. BOBDE]

....., J.
[ASHOK BHUSHAN]

New Delhi;
September 01, 2016.

ITEM NO.111

COURT NO.11

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. 286/2013

MADAN SINGH & ORS.

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

(With office report)

Date : 01/09/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)

Ms. Kawaljit Kochar, Adv.
Ms. Krishna Parkhani, Adv.
Ms. Vasundhra Singh, Adv.
Ms. Kusum Chaudhary, Adv.
Mr. Shreyas Mehrotra, Adv.

For Respondent(s)

Mr. Arun Bhardwaj, Adv.
Mr. Sumit Sharma, Adv.
Mr. Ronak Karanpuria, Adv.
Mr. Ashish Pandey, Adv.
Mr. Vishwa Pal Singh, Adv.

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

The appeal stands disposed of in terms of the signed
order.

(Nidhi Ahuja)
Court Master

(Tapan Kr. Chakraborty)
Court Master

[Signed order is placed on the file.]