

(.ITEM NO.101  
(P.H.)

COURT NO.3

SECTION IIA

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS  
CRIMINAL APPEAL NO(s). 305 OF 2002

BHAG SINGH Appellant (s)

VERSUS

JANG BAHADUR SINGH & ORS. Respondent(s)

(With office report )

Date: 06/11/2008 This Appeal was called on for hearing today.

CORAM :

HON'BLE Dr. JUSTICE ARIJIT PASAYAT  
HON'BLE Dr. JUSTICE MUKUNDAKAM SHARMA

For Appellant(s) Mr. Sudhir Walia, Adv.  
Mr. N.L. Ganapathi, Adv.

For Respondent(s) Mr. K.G.Bhagat, Adv.  
Ms. Manju Bhagat, Adv.  
Mr. Vineet Bhagat, Adv.  
Dr. Manohar Singh Bakshi, Adv.  
Mr. Ehrasz Zafar, Adv.  
Mr. Debasis Misra, Adv.  
Mr. Ajay Pal ,Adv

Mr. Kuldip Singh, Adv.  
Mr. R.K.Pandey, Adv.  
Mr. T.P.Mishra, Adv.  
Mr. H.S.Sandhu, Adv.

UPON hearing counsel the Court made the following  
ORDER

The appeal is allowed in terms of the signed order.

(Shashi Sareen)  
Court Master

(Shashi Bala Vij)  
Court Master

(signed order is placed on the file)  
IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 305 OF 2002

BHAG SINGH ... Appellant(s)

Versus

JANG BAHADUR SINGH & ORS. ... Respondent(s)

ORDER

Heard.

This is an appeal filed by the complainant questioning correctness of the judgment of acquittal passed by a Division Bench of the Punjab & Haryana High Court. Four accused persons were convicted for offence punishable under Sections 302 and 323 read with Section 34, Indian Penal Code, 1860 (in short 'IPC') by Learned Additional Sessions Judge, Rupnagar. The trial court on the basis of the evidence adduced, more particularly, the eye-witnesses 7,8 and 9 held that that the accusations against the respondents have been established. The background facts need to be noted in brief:

On 23rd May, 1993 Gurcharan Singh (hereinafter referred to as the 'deceased') was attacked by the respondents with various weapons. Gurdev Kaur, wife of Sarara Singh Pw8 was also injured in the incident. The trial court taking note of the version of the eye-witnesses found that the prosecution had established the accusations.

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The primary stand before the High Court was that there was delay in lodging the FIR and the injuries on the accused persons were not explained. It was also highlighted that the investigation as conducted initially was not held to be proper and further investigation was directed. The High Court accepted the stand as noted above directed acquittal. In support of the appeal, learned counsel for the appellant submitted that there was absolutely no delay in lodging the FIR. The trial court has dealt with this aspect in detail in paragraph 28 of its judgment.

Similarly, so far as the purported injuries on the accused persons are concerned, on the basis of a private complaint filed, the so-called injuries surfaced for the first time and the private complaint was lodged after about 4 and ½ months and the treatment was at a private hospital. It is further submitted that the cogent and credible evidence of the eye-witness has been completely lost sight of. It is pointed out that picking out a sentence out of context the presence of one of the accused persons has been held to be improbable. Even if it is conceded to be for the sake of arguments, so far as the other accused persons are concerned, there was no material to direct their acquittal. Learned

counsel for the respondents supported the judgment of the High Court.

We find that the High Court has not really focused its attention on the relevant aspects. The evidence so far

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Respondent No. 1 Jang Bahadur is concerned does not suffer from any infirmity and the evidence of the eye-witnesses Pws 7,8 and 9 clearly establish the accusations so far as he is concerned. So far as the other accused persons are concerned, the High Court has referred to several factors which renders their presence at the place of occurrence improbable.

In the circumstance we are satisfied that the order of acquittal so far it relates to respondent Nos. 2,3 and 4 i.e. A-2 Harbhajan Kaur, A-3, Gurjeet Singh and A-4 Inderjeet Kaur does not suffer from any infirmity. So far as respondent No. 1 Jang Bahadur is concerned, he was responsible for the death of Gurcharan Singh. Considering the background facts, the nature of injury and weapon used, the appropriate conviction would be under Section 304 P-II IPC. Considering the fact that the occurrence took place in May, 1993, custodial sentence of six years would be appropriate. Respondent No. 1 shall surrender to custody forthwith to serve the remainder of sentence, if any.

The appeal is allowed to the aforesaid extent.

.....J.  
(Dr. ARIJIT PASAYAT)

.....J.  
(Dr. MUKUNDAKAM SHARMA)

New Delhi,  
November 06, 2008.