



IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.388 OF 2001@@  
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Resham Singh and Anr. ...Appellants

Vs.

State of Punjab ...Respondent

With

Criminal Appeal Nos.389 of 2001 & 474 of 2001@@  
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J U D G M E N T@@  
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Thomas, J.@@  
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Singing of obscene ballad unfortunately became the genesis of a series of events which ultimately ended up in the murder of Malkiat Singh on the morning of 21.3.1991. A septuagenarian, Tarsem Singh, his son Resham Singh(A1) and his two grandsons-Harbans Lal (A2) and Sukhwinder Singh(A3) were arraigned for the said murder. The trial court acquitted the old man - Tarsem Singh, but convicted the remaining three of the offence under Section 302 read with Section 34 besides two lesser offences and awarded a sentence of imprisonment for life on the main count. The convicted persons filed an appeal before the High Court. The State of Punjab filed an appeal against the acquittal of Tarsem Singh. A Division Bench of the High Court of Punjab and Haryana heard all the appeals together. While upholding the conviction passed by the trial court, the Division Bench

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reversed the order of acquittal of Tarsem Singh and he was also brought within the dragnet of conviction along with others.

When A1- Resham Singh, A2-Harbans Lal and A3-Sukhwinder Singh, filed appeals in this Court by special leave. We wondered why the old man Tarsem Singh had not approached this Court in spite of his having the right to prefer an appeal under Section 379 of the Code of Criminal Procedure. When we made an enquiry in that regard on 6.11.2000, Mr. Rajiv Dutta, learned counsel for the State of Punjab was good enough to take cue and communicated the same to A4-Tarsem Singh. Pursuant to it, Tarsem Singh filed an appeal in this Court. Thus we have all appeals of the convicted persons.

We appointed Mr. S. Muralidhar, Adv. as Amicus Curiae. As usual he presented the case with all the details necessary for us to have a full conspectus of the evidence and the fact situation. We express our gratitude to him.

The prosecution case, in short, is the following:

A3-Sukhwinder Singh was in the habit of playing obscene songs with the help of a tape recorder. His house

was situated next to the house of the deceased. Probably fed up with the repetition of such obscene songs being played, Malkiat Singh remonstrated at it. As the singing emanated from the record player continued unabated, PW2 (father of the

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deceased) lodged a complaint with the local panchayat. This is the background of the incident which took place at 8.30 A.M. on 21.3.1991.

According to the prosecution version, all the four accused together went to the scene of occurrence which is just in front of the house of the deceased. A32-Sukhwinder Singh made an exhortation that Malkiat Singh should be killed. He, then inflicted three blows on him with a Gandasi. His grand father, A4-Tarsem Singh inflicted a deep stab injury on the belly of the deceased with the help of an object called Sua (it is said to be a needle shaped iron rod fitted on a wooden handle) At this stage the father and the brother PW2-Nanju and PW1-Jaswinder Pal) arrived at the scene. They too were attacked by the assailants. A1-Resham Singh inflicted a blow on PW2 with the handle of a water pump. A2-Harbans Lal inflicted a blow with a Kirpan on PW1. It is said that when the injured party started counter attacking the assailants the latter vanquished from the scene.

There can be no doubt that an encounter took place on the road (abutting the houses of the deceased as well as the house of the accused) at about 8.30 A.M. on the date of occurrence. The accused made a plea that the deceased and his kith and kin were the aggressors and they attacked A1-A3 while they were proceeding along the road. According to

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them, the grand father-Tarsem Singh was not present at the scene at all.

This is a case where both sides sustained injuries. Dr. Satish Kumar Dhall (DW1) deposed in court regarding the injuries on the persons of A1 - A3. Those injuries included lacerated wounds on the head, incised wound on the scapula and contusion as well as abrasion. The deceased's party also sustained similar injuries, but one on the deceased (a punctured wound which had perforated into the small as well as large intestine) seems to be the only exception. That punctured wound became fatal and resulted in the death of the deceased.

When the High Court has chosen to convict the father reversing the order of acquittal of A4-Tarsem Singh we expected strong reasoning for the same. PW1 and PW2 who attributed the fatal injury on the deceased to the old man (A4-Tarsem Singh) when they were examined in chief, have candidly admitted during the cross examination that they did not say that aspect when they were interrogated by the investigating officer. If so, the evidence of PW1 and PW2 could not have been used as against the 4th accused - Tarsem Singh.

Learned counsel for the State submitted that the evidence of PW3 being an independent witness would be enough to show that Tarsem Singh had inflicted the fatal blow with

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Sua. We have difficulty to accept the said contention mainly for two reasons. One is, PW3 in cross examination said that Tarsem Singh was not present at the scene at all as he was away. Of course, learned counsel for the State made an attempt to show that the reference to Tarsem Singh in cross examination can be to some other Tarsem Singh. We are not

ruling out such a possibility. But that is not enough to definitely conclude that PW3 did not mean A4 when he mentioned the name of Tarsem Singh in the said context. We are mindful of the fact that A4 secured an order of acquittal from the trial court.

The second reason is, PW3's version regarding the commencement of the occurrence, running counter to the version of PW1 and PW2. When PW3 said that he saw the deceased as well as PW1 and PW2 standing at the scene of occurrence right from the beginning of the occurrence PW1 and PW2 have said that they were inside the house during the beginning stage and they went out only after hearing the commotion and the cry made by the deceased for help.

For the above reasons it is difficult for us to place absolute reliance on the testimony of PW3 in so far as the involvement of A4-Tarsem Singh is concerned. We feel that the High Court wrongly interfered with the order of acquittal of A4-Tarsem Singh.

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Then we come to the next question as to the role played by A1, A2 and A3. We do not have satisfactory evidence as to who started the aggression. The prosecution case shows that both sides exchanged attack and counter attack. Both sides sustained injuries. We feel that the case can justifiably be brought within the ambit of Exception 4 of Section 300 of the Indian Penal Code. That Exception reads thus:-

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"Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner"~

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We, therefore alter the conviction passed on A1 to A3 to Section 304 Part II of the IPC.

On the fact situation, we are of the view that a sentence of RI for five years for each of the said accused would be sufficient to meet the ends of justice in respect of the offence under Section 304 Part II of IPC. Hence the said sentence is imposed on them. We direct the jail authorities to decide whether by now they have completed the jail sentence. If not they shall be released from the jail on completion of the period of rigorous imprisonment imposed by us in this judgment.

In the case of Tarsem Singh we allow the criminal appeal filed by him and set aside the conviction and sentence

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passed on him by the High Court. We restore the order of acquittal passed by the trial court. We direct the jail authorities to set him at liberty forthwith unless he is required in any other case.

The bail bond of Resham Singh stands cancelled and he is directed to get back to the jail for undergoing the remaining portion of the sentence, if any. If there is none remaining the jail authorities shall record it and allow him to go free.

All the appeals are disposed of in the above terms.

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(K.T. Thomas)@@

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New Delhi

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November 8, 2001

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