

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1984 OF 2009

KULWANT RAI SHARMA	Appellant(s)
VERSUS	
STATE OF PUNJAB & ORS.	Respondent(s)
WITH	
CRIMINAL APPEAL NO. 1973 OF 2009	
JARNAIL SINGH @ CHAUDHARY & ANR.	Appellant(s)
VERSUS	
STATE OF PUNJAB	Respondent(s)

O R D E R

1) These appeals are directed against the common judgment and order dated 20.01.2009 passed by the Division Bench of the High Court of Punjab and Haryana, whereby the High Court while modifying the order of the trial Court dismissed the appeals insofar as accused Jarnail Singh alias Chaudhary and Veer Singh alias Gola are concerned and partly allowed the appeals qua accused namely, Dalbir Singh, Jarnail Singh son of Thoru Ram,

Joginder Singh, Bakshish Singh alias Chamkila, Bachittar Singh Shinda and Karnail Singh thereby acquitting them under Section

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R.NATARAJAN

Date: 2016.03.12

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Reason:

302/149 of the Indian Penal Code, 1860 (in short 'the Code')

but directed them to undergo imprisonment for the offences

2

punishable under Sections 148, 449, 326, 324 and 382 of the

Code. They have been further directed to pay Rs. 20,000 each

as fine and the amount recovered has been directed to be paid

as compensation to the widow of Nirmal Kumar, the deceased.

2) The relevant facts which are necessary for the purpose of deciding these appeals are narrated hereunder:

i) Kulwant Rai Sharma, the appellant/Complainant, who is the owner of a truck, is the resident of Machhi Chowk, Kapurthala. His brothers Nirmal Kumar (the deceased), Mohal Lal and his nephews were also owning trucks and they had started Truck Union in the name of Local Mandi Truck Operators Union. The office of the Truck Union was in the shop of one Rajinder Singh @ Pala, in the area of Kapurthala.

ii) On 25.02.2004, a special train, for transporting rice, was stationed at the railway station. The drivers of the Local Mandi Truck Operators Union (including the Complainant) were busy transporting the rice for loading in the train. The officials of the Janta Truck Operators Union, Kapurthala, however, stopped the trucks of Local Mandi Truck Operators Union,

iii) On 25.02.2004, at about 5.30 p.m., Kulwant Rai, the Complainant, his brother Nirmal Kumar (the deceased), Balwinder Singh, Kans Raj, Gurnam Singh and Mangi @ Anil Kumar were present in the office. At that time, Jarnail Singh @ Chaudhary, son of Joginder Singh, one of the accused persons, armed with a kirpan came in front of the office of Truck Union

3

of the Complainant and exhorted his companions not to allow the complainant's party to escape alive. On hearing the exhortation of Jarnail Singh @ Chaudhary, 8/9 persons armed with different weapons attacked the complainant party with an intention to kill them. Jarnail Singh @ Chaudhary gave kirpan blow on the head of Nirmal Kumar. Veer Singh @ Gola gave a gandasi blow to Nirmal Kumar on his head. On receipt of these injuries, Nirmal Kumar fell down inside the office. Then, Karnail Singh, son of Thoru Ram gave a datar blow on the head of the Complainant. When Jarnail Singh son of Thoru Ram aimed a barchha blow, the complainant raised his hand to ward off the same and as a result whereof, the same fell on the upper side of his right head. As soon as Balwinder Singh tried to come outside the office, Dalbir Singh @ Kala gave a datar blow,

which hit his head and he fell down outside the office. As

Gurnam Singh also tried to come outside the office, Shinder

Singh gave blow with an iron rod on his forehead. Bachittar

Singh gave a gandasi blow on the head of the Complainant.

Bakshish Singh @ Chamkila gave a dang blow on the right shoulder of complainant. Jarnail Singh @ Chaudhary gave

another kirpan blow on the head of Nirmal Kumar. Nirmal Kumar

became unconscious. Joginder Singh gave gandasi blows to

Balwinder Singh and Gurnam Singh. Accused also gave more blows

to the complainant party. Mangi @ Anil Kumar and Kans Raj

raised an alarm when Bakshish Singh snatched gold chain from

the neck of the complainant. Jarnail Singh had also snatched

4

gold chain from the neck of Nirmal Kumar. Jarnail Singh and

Karnail Singh removed Rs.8050/- from the cash box of the Union.

On hearing raula, a number of persons from the surrounding

locality gathered. On seeing them, accused persons fled away

from the spot with their respective weapons. Vehicles were

arranged by Mangi @ Anil Kumar, Kans Raj and Sonu. All the

injured were shifted to Civil Hospital, Kapurthala. Kulwant

Rai and Nirmal Kumar were referred to Hospital at Jalandhar, as

their condition was serious. Occurrence was witnessed by

Pappu, Mangi @ Anil Kumar, Kans Raj and Sonu. It was stated

that the trucks of local Mandi Truck Operators Union were

transporting the rice for loading the same in special train,

but the accused were stopping them. Earlier too, a criminal

case was got registered against the accused, by the complainant

and others and on account of this grudge, with an intention to

kill, the accused caused injuries on the persons, in connivance

with each other.

iv) On 25.02.2004 from Control Room, Kapurthala, a message

was given on telephone by ASI Prem Kumar regarding admission of

Kulwant Rai and Nirmal Kumar in Vasal Hospital, Jalandhar.

Police party had gone to Vasal Hospital, Jalandhar but the

injured were declared unfit to make a statement. An entry was

made in the Roznamcha.

v) On 27.02.2004, the Police party had gone to Vasal Hospital, Jalandhar and doctor opined that Kulwant Rai was fit to make a statement but Nirmal Kumar was unfit to make his

5

statement and Statement of Kulwant Rai was recorded.

Police

recorded the statement of Kulwant Rai (PW-5) and Gurnam Singh (PW-6), eye witnesses of the occurrence on the basis of which

formal FIR was registered under Sections 148, 302, 302/149,

326, 326/149, 449 and 382 of the Code at P.S. Kapurthala

against accused persons.

Kulwant Rai, the injured, produced

the clothes of self and Nimal Kumar stained with blood to the

police which were sealed by the police vide separate memos duly

attested by the witnesses.

On 27.02.2004, police went to the

scene of occurrence and lifted blood stained earth and a rough

sketch of the site plan was prepared.

vi) All the eight accused, namely, Dalbir Singh @ Kala,

Jarnail Singh alias Chaudhary, Jarnail Singh, Joginder Singh

and Bakshish Singh, Veer Singh, Bachittar Singh and Karnail

Singh were taken into police custody and in pursuance of their

disclosure statement, different weapons used in the commission

of offence along with cash and gold chain were recovered.

By

supplementary challan, Shinder Singh was also arrested.

After

completion of investigation, case was committed to the Court of

Sessions. Charge under Sections 302, 326, 324, 449 read with

Section 149 of the Code was framed against the accused persons

to which they pleaded not guilty and claimed trial.

After the

closure of prosecution evidence,

statement

of the accused

persons was recorded under Section 313 Cr.P.C.

Accused denied

all the allegations of the prosecution and

pleaded

to be

innocent.

6

vii) In order to substantiate the charge, prosecution examined

as many as 19 witnesses out of which PWs 5, 6 and 7 are the eye

witnesses.

viii) The trial Court, after taking into consideration the evidence held that the prosecution had been able to prove the charge levelled against the accused persons and convicted them under Sections 302, 302/149, 326, 326/149, 324, 324/149, 449, 148, 382 of the Code and sentenced them to undergo imprisonment for life and shorter durations, offence wise and also to pay a fine of Rs. 2000/- each, in default, to suffer RI for one month. All the substantive sentences were to run concurrently.

ix) Being aggrieved, the accused persons and the Complainant preferred appeals before the High Court and the Division Bench of the High Court, after hearing the parties dismissed the appeals insofar as accused Jarnail Singh alias Chaudhary and Veer Singh alias Gola are concerned and partly allowed appeals of accused namely, Dalbir Singh, Jarnail Singh son of Thoru Ram, Joginder Singh, Bakshish Singh alias Chamkila, Bachittar Singh Shinda and Karnail Singh by acquitting them under Section 302/149 of the Code but directed them to undergo imprisonment for the offences punishable under Sections 148, 449, 326, 324 and 382 of the Code. They were further directed to pay Rs. 20,000 each as fine and the amount recovered was ordered to be paid as compensation to the widow of Nirmal Kumar the deceased.

3) We have heard learned counsel appearing for the parties at considerable length.

7

4) Learned counsel appearing for the appellant-accused contended that the conviction and sentence of the appellant is untenable being against the evidence on record and the Courts below have erred in not properly appreciating the evidence and arrived at a wrong finding and thus the conviction and sentence is liable to be set aside. He also contended that there is a delay in lodging the FIR, which is fatal. Further, some injuries on the person of the complainant were found to be simple in nature and presence of witnesses at the time of occurrence as well is unnatural and unbelievable.

5) On the other hand, learned counsel for the respondents

Crl.A. No. 1973/2009
(With Office Report)

Date : 02/03/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
 HON'BLE MR. JUSTICE AMITAVA ROY

For Appellant(s) Dr. Sandeep Singh, Adv.
 Mr. Pulkit Manuja, Adv.
 Mr. Sanchit Garga, Adv.

 Mr. Pahlad Singh Sharma, AOR

 Mr. P. N. Puri, AOR

For Respondent(s) Mr. Sanchar Anand, AAG
 Mr. Jagjit singh Chhabra, Adv.
 Mr. Saksham Maheshwari, Adv.
 Mr. Kuldip Singh, AOR

 Mr. P. N. Puri, AOR

 Mr. Jitendra Mohan Sharma, AOR

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

The criminal appeals are dismissed in terms of the signed
order.

(R.NATARAJAN)
Court Master

(SNEH LATA SHARMA)
Court Master

(Signed order is placed on the file)