
(2006) 1 RCR(Criminal) 827

High Court Of Punjab And Haryana At Chandigarh

Case No: Murder Reference No. 5 of 2005

State of Haryana

APPELLANT

Vs

Krishan

RESPONDENT

Date of Decision: Sept. 8, 2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 357

Citation: (2006) 1 RCR(Criminal) 827

Hon'ble Judges: Kiran Anand Lall, J; Amar Dutt, J

Bench: Division Bench

Advocate: Baldev Singh, with Mr. Harinder Singh, Mr. Ashit Malik and Mr. B.S. Rana, Deputy A.G., Haryana, for the Appellant; Ashit Malik, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Amar Dutt, J.

Krishan, Ranjit and their father Balbir have filed Criminal Appeal No. 339-DB of 2005 for challenging the conviction and

sentence recorded against them by the Additional Sessions Judge, Sonapat on 11/12.4.2005. Since the death sentences have been awarded to all

the three Appellants, this Court has also received from the trial Court, Murder Reference No. 5 of 2005 for seeking confirmation of the sentences.

2. The widow of Mohinder, one of the deceased, has filed Criminal Revision No. 904 of 2005 seeking enhancement of fine and payment of

compensation u/s 357 Code of Criminal Procedure

3. Briefly stated, the facts of prosecution case as brought out from the testimony of its witnesses are that case against the Appellants was registered

on the statement of Satbir son of Lakhan in Police Station, Sadar Gohana on 1.12.2001 at 1.40 P.M. According to the complainant, he and his

three brothers Mohinder, Hawa Singh and Suresh were residing at village Anwali, which is situated about 19 Kilometers towards the East of the

Police Station. They were separate in residence and his parents used to live with his younger brother Hawa Singh. Their father Lakhan had taken 5

killas of land on mortgage from Satbir son of Umra. Apart from this, the family of Satbir had other agricultural land adjacent to the fields of the

complainant party. On 29.11.2001 Satbir and his brother Balbir son of Umra had closed the khal passing near the fields, which was jointly used

for providing water to their fields as well as to the complainant party but Lakhan and his sons had started irrigating their land from another

watercourse. On 1.12.2001 Satbir along with his father Lakhan, brothers Mohinder and Suresh and servant Shamsher had reached their fields. In

the meantime, at about 7.30 A.M., Balbir son of Umra, Krishan son of Balbir and Ranjit son of Balbir also reached there on a tractor from the side

of the fields of Satbir, which had been taken by the complainant side on lease. At that time, the wives of Krishan and Balbir were already present

in the fields for cutting sugarcane crops. Lakhan had stopped the tractor and enquired from Balbir, Krishan and Ranjit as to why they had brought

the tractor through his fields, whereupon Balbir, who was armed with a Jelwa, Krishan, who was armed with a Lathi and Ranjit, who was armed

with a ballam alighted from the tractor and after raising lalkara gave a lathi blow of the head of Lakhan, which hit him on the right side of his temple.

As a consequence thereof Lakhan fell down. In the meantime, Mohinder and Suresh came there and Krishan, Balbir and Ranjit gave injuries with

lathi, ballam and Jelwa on the head, left arm and right shoulder of Mohinder. Ranjit and Balbir gave injuries with their weapons to Suresh, when he

tried to rescue Mohinder, as a result whereof, Suresh and Mohinder both fell down. The wives Krishan and Balbir also gave lalkara that no one

should be allowed to escape. On hearing noise, Prabha, the elder brother of Lakhan came there and all the three assailants had chased the

complainant party but to save themselves, they rushed towards the drain. When the complainant party came back to the site, they found that

Lakhan and Mohinder had succumbed to their injuries and Suresh was lying injured. Hawa Singh had taken Suresh to P.G.I.M.S., Rohtak for

treatment. In the meantime, SI Ram Chander reached the spot after receipt of a telephonic message and there he recorded the statement of Satbir

on the basis whereof formal FIR was recorded at 1.40 P.M.

4. On completion of the investigation, the details whereof need not be spelt out by us at this stage, a challan was put in the Court of Illaqa

Magistrate, who committed the case to the Court of Sessions as the offences were exclusively triable by it. On going through the papers sent up

with the challan, the Sessions Judge, had framed the following charges against the Appellants:

That on 1.12.2001 in the area of village Anwali you all were members of unlawful assembly and did in prosecution of the common object of such

assembly and at that time you were armed with deadly weapon like Gandasas and jellies and thereby committed an offence punishable u/s 148 of

IPC and is within the cognizance of this Court.

Secondly, on the same date, time and place you all in prosecution of common object caused the murder of Lakhan, Mohinder and Suresh and

thereby you committed an offence punishable u/s 302/149 of IPC and is within the cognizance of this Court.

5. When the Appellants pleaded not guilty to the charges, the prosecution was called upon to lead its evidence.

6. To bring home the charges, the prosecution examined Satyanand, Patwari as PW-1, Paras Ram PW-2, Vinod Kumar as PW-3, Satbir Singh

as PW-4, Prabha as PW-5, Suresh as PW-6, Ram Kumar PW-7, Dr. S.S. Gupta as PW-8, HC Azad Singh as PW-9, Lekh Raj as PW-10,

EHC Raj Pal as PW-11, HC Rajinder Singh as PW-12, C. Zile Singh as PW-13, EHC Satbir Singh as PW-14, HC Ramesh Chander as PW-15,

HC Sandeep Singh as PW-16, SI Ram Chander as PW-17, ASI Ram Prakash as PW-18 and Amarjeet Singh as PW-19.

7. When incriminating circumstances appearing in the prosecution case against them were put to the Appellants during recording of statements of

the accused u/s 312 Code of Criminal Procedure, they denied all of them and claimed that they were innocent. Krishan took the following plea:

I am innocent. I have been falsely implicated in this case. I was not present at that time of occurrence even.

While Ranjit took the following plea:

I am innocent. I have been falsely implicated in this case. I was not present at the time of occurrence even.

and Balbir took the following plea:

I and my wife had gone to cut sugarcane and clean the same to bring it in Sugar Mill. I went to ease myself and my wife was working with the

sugarcane, then Mohinder son of Lakhan came and started to abuse my wife. She protested and he slapped her. He was threatening her with dire

consequences if we did not give up the possession of the land, they had taken on mortgage from my brother. In the meantime, I appeared on the

scene and feeling provoked, assaulted Mohinder with Gandasi. I gave several blows bladewise as well as from blunt side. Mohinder fell down. My

wife intervened and did not allow me to inflict any injury upon Mohinder after he had fallen down. In the meantime, Lakhan came with lathi in his

hand. He tried to assault me. I snatched his lathi and gave a blow to him and he fell down. Immediately thereafter Suresh came. He attacked me

but I successfully avoided his assault and counter attacked him and gave 3/4 injuries with lathi. Thereafter Suresh also fell down. Then we both left

for the village leaving all the three lying there in our sugarcane field. None else was there either from side or from the complainant side.

In defence, Appellants examined Balbir Singh as DW-1.

8. The trial Court after hearing the arguments came to the conclusion that prosecution has not been able to prove its case against Kavita and Murti.

Accordingly, Kavita and Murti were acquitted of the charges while the prosecution had very well been able to prove its case against the Appellants

Balbir, Krishan and Ranjit and the trial Court convicted them u/s 302 IPC read with Section 34 IPC and awarded death penalty to all three

accused and to pay a fine of Rs. 5,000/- each. Hence, the present Murder Reference, Criminal Appeal and Criminal Revision.

9. We have heard Mr. B.S. Rana, learned Senior Deputy Advocate General, Haryana, Mr. Baldev Singh, learned Senior Counsel appearing on

behalf of the Appellants and Mr. Ashit Malik, Advocate appearing on behalf of the Petitioner and with their assistance have perused the record.

10. One of the flaws in the proceedings conducted by the trial Court which has come to light during the course of arguments is the fact that though

three persons had died in the incident yet a composite charge for all the three murders had been framed. According to Section 218 of the Code of

Criminal Procedure, which reads as under:

218. Separate charges for distinct offences: (1) For every distinct offence of which any person is accused there shall be a separate charge and

every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be

prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in Sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223.

a separate charge has to be found for each of the offences, which have been committed in an incident. In the present case, there persons namely,

Lakhan, Mohinder and Suresh are alleged to have been killed by the Appellants Krishan, Ranjit and Balbir.

11. Viewed in the light of the provisions of Section 218 Code of Criminal Procedure referred to here-in-before, the trial Court was required to

frame three separate charges against the persons arrayed as accused for the murders of Lakhan, Mohinder and Suresh. On the conclusion of the

trial, the trial Court was required to examine the evidence in the light of three separate charges and pass three different orders in relation to charges

so framed and thereafter, if so required, award sentences as per the provisions of Section 31 of the Code of Criminal Procedure. This is how the

corresponding provisions in the Code of Criminal Procedure, 1898, namely, Sections 35 & 233 have been interpreted by the Privy Council in

N.A. Subramania Iyer v. The King Emperor, The Calcutta Weekly Notes, Volume v. (Privy Council), 866 where dealing with the question

whether the defect, which occurs on account of non-compliance with the provisions of Section 233 of the Code of Criminal Procedure could be

cured u/s 537 of the Code of Criminal Procedure, the Court observed:

Their Lordships cannot regard this as cured by Section 537.

The remedying of mere irregularities is similar in most systems of jurisprudence, but it would be an extraordinary extension of such a branch of

administering the criminal law to say that when the Code positively enacts that such a trial as that which has taken place here shall not be permitted

that this contravention of the Code comes within the description of error, omission, or irregularity.

Some pertinent observations are made upon the subject by Lord Herschell and Lord Russel of Killowen in *Smurthwaite v. Hanny* (1). Where in a

civil case several causes of action were joined Lord Herschell says that ""if unwarranted by any enactment or Rule it is much more than an

irregularity"", and Lord Russel of Killowen in the same case says, ""such a joinder of Plaintiffs is more than an irregularity; it is the constitution of a

suit in a way not authorised by law and the Rules applicable to procedure.

With all respect to Sir Francis Maclean and the other Judges who agreed with him in the case of *Abdul Rahman v. The Empress* (2), he appears to

have fallen into a very manifest logical error in arguing that because all irregularities are illegal as he says in a sense and this trial was illegal that

therefore all things that may in his view he called illegal are therefore by that one adjective applied to them become equal in importance and are

susceptible of being treated alike. But this trial was prohibited in the mode in which it was conducted, and their Lordships will humbly advise His

Majesty that the conviction should be set aside. Their Lordships will make no order as to costs.

12. This view was followed by the Bombay High Court in *Krishanji Anant Dange and Anr. v. Emperor*, AIR 1932 Bom 277, by the Lahore High

Court in *Pahlad v. Emperor*, AIR 1921 Lah 381, by the Calcutta High Court in *Kanai Lal Paladi v. Emperor*, AIR (35) 1948 Cal 274 and

accepted by the Supreme Court in *Aftab Ahmad Khan Vs. The State of Hyderabad*, wherein it has been observed as under:

Section 233 embodies the general law as to the joinder of charges and lays down a Rule that for every distinct offence there should be a separate

charge and every such charge should be tried separately. There is no doubt that the object of Section 233 is to save the accused from being

embarrassed in his defence if distinct offences are lumped together in one charge or in separate charges and are tried together but the Legislature

has engrafted certain exceptions upon this Rule contained in Sections 234, 235, 236 and 239. Having regard to the facts and the circumstances of

this case, we are opinion that the present case falls u/s 235. It provides that if in one series of acts so connected together as to form the same

transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

xxx xxx xxx

xxx xxx xxx

No question of contravention of any express provision of the Code such as Section 233 arises and in the circumstances it is not necessary for us to

consider how far the violation of any express provisions of the Code relating to the mode of a trial or otherwise constitutes illegality which vitiates

the trial as distinguished from an irregularity which is curable u/s 537.

13. Looked at from another angle, if the provisions of Sections 218 and 31 Code of Criminal Procedure had been complied with, the Appellants

would have been convicted under three separate heads for the murders of Lakhan, Mohinder and Suresh and three sentences of imprisonment

would have been imposed on them, in addition where to the trial Court would also have had to impose the sentences of fine on each count. In the

present case, where the wife of one of the deceased Mohinder is seeking compensation u/s 357 Code of Criminal Procedure, additional fine which

would have necessarily been collected, could have been appropriated towards payment of compensation to the widow of the deceased.

14. For the reasons above, the conviction and death sentences imposed upon the Appellants Krishan, Ranjit and Balbir are set aside and the case

remanded to the Sessions Judge, Sonapat to be re-tried after proper charges have been framed as is required u/s 218 Code of Criminal Procedure

It is further directed that the Sessions Judge would deal with the trial as expeditiously as possible.

15. In view of the above, Criminal Revision No. 904 of 2005 is dismissed as infructuous as it would always be open to the Petitioner to approach

this Court again once the case is finally disposed of by the trial Court.

Order accordingly.