

(1994) 02 P&H CK 0013

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal A. No. 149-DB of 1992

Bhola Singh and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Feb. 24, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 342, 464
- Penal Code, 1860 (IPC) - Section 120B, 302, 307, 324, 34

Citation: (1995) CriLJ 1830 : (1994) 2 RCR(Criminal) 548

Hon'ble Judges: S.S. Grewal, J; A.S. Nehra, J

Bench: Division Bench

Advocate: A.P.S. Deol, for the Appellant; M.S. Gill, DAG and T.S. Sangha, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Grewal, J.

Bhola Singh, aged 18 years, his brother Jagga Singh, aged 32 years, Kaila Singh son of Kishan Singh, aged 20 years and Jaggar Singh son of Jit Singh aged 62 years, were tried u/s 302/307 read Section 120B of the IPC for committing the murder of Ram Singh and for attempting to commit the murder of Harbans Singh in furtherance of their common intention. Both Bhola Singh and Kaila Singh were convicted u/s 302 of the IPC and each of them was sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/-. In default of payment of fine each one of them was ordered to undergo further rigorous imprisonment for two months. Both Bhola Singh and Kaila Singh were further convicted u/s 324 of the IPC and each of them was sentenced to undergo rigorous imprisonment for six months. The substantive sentences of imprisonment were ordered to run concurrently. Jagga Singh and Jaggar Singh accused were, however, acquitted vide order of Additional Sessions Judge, Bathinda dated 28th January, 1992. Aggrieved against the order of conviction and sentence passed against them by the learned trial Court, both Bhola Singh and

Kaila Singh have filed the present appeal.

2. In brief facts of the prosecution case as emerge from the first information report lodged by Maghar Singh, first informant, an eye-witness and brother Ram Singh deceased are that he and Ram Singh were married in village Jajjal. On 24-9-1989, Harbans Singh, their father-in-law's brother's son came to their house to purchase he-goat for offering at the Majaar of Peer of Malerkotla. At about 7-30 p.m. Maghar Singh, Ram Singh (deceased) and Harbans Singh PW went to abadi of Harijans in search of he-goat and also for engaging labour. While they were returning back to their home, Ram Singh and Harbans Singh were going ahead of Maghar Singh PW who was following them at a distance of few paces. As they reached ahead of the water tap of Bir Singh, Bhola Singh and Jagga Singh accused armed with Gandasas Kaila Singh accused armed with Gandhali came there and raised lalkaras that they would leach a lesson to Ram Singh for quarrelling with Bhola Singh at the time when the drama was staged in their village a few days earlier. Bhola Singh accused opened the attack and gave a Gandasa blow to Ram Singh on his head. Jagga Singh gave a Gandasa blow on the back of the head of Harbans Singh. Both Ram Singh and Harbans Singh fell down on receipt of the said injuries. Thereafter Bhola Singh gave a second blow on the fore-head of Ram Singh, whereas, Jagga Singh gave two Gandasa blows on the head of Harbans Singh, one from the sharp and the other from blunt side. Kaila Singh gave a Gandhali blow on the fore-head of Ram Singh. Thereafter the accused inflicted more injuries to the complainant party. Maghar Singh complainant then ran towards his house to bring more persons to rescue Harbans Singh and Ram Singh from the clutches of the accused. When he returned to the spot after some time along with Boota Singh and Hari Singh, all the accused had fled away from the spot along with their respective weapons. Ram Singh died at the spot due to receipt of as many as 17 injuries. Hari Singh stayed behind at the spot whereas Maghar Singh and Boota Singh took Harbans Singh injured to Talwandi Sabo in the tractor trolley of Darshan Singh took Habans Singh to Talwandi Sabo hospital where he was medically examined at 10-20 p.m. on the next morning of the occurrence. Maghar Singh and Boota Singh went to the police Station Talwandi Sabo where Magher Singh PW lodged the first information report. It was mentioned in the first information report that three days prior to the present occurrence Bhola Singh accused and Ram Singh deceased had a quarrel with each other while drama was staged in their village.

3. Out of that grudge the accused committed the murder of Ram Singh and caused injuries to Harbans Singh. All the accused were arrested on 14-10-1989 and alleged weapons of offence were, recovered from their possession. After completion of the investigation, Bhola Singh and Kaila Singh were tried, convicted and sentenced as stated earlier, whereas, Jagga Singh and Jaggar Singh accused were acquitted by the learned trial Court.

4. The learned counsel for the parties were heard.

5. It was mainly contended on behalf of the appellants that there is no legal, cogent or reliable evidence on the record to prove that the present appellants intentionally committed murder of Ram Singh or caused injuries to Harbans Singh P.W. It was further submitted that the trial Court had disbelieved the testimony of Maghar Singh and Harbans Singh, the two alleged eye-witnesses concerning the presence and participation of Jagga Singh in the main occurrence and that the murder of Ram Singh and injuries to Harbans Singh were caused, in pursuance to the criminal conspiracy hatched up by Jaggar Singh and other co-accused.

6. The argument is devoid of any merit. The first and the fore-most question which arises for determination is whether the presence of Maghar Singh first informant who is real brother of Ram Singh deceased, and, Harbans Singh whose father's wife's brother's daughter is married to Maghar Singh PW and Ram Singh (since deceased) at the time of the occurrence is natural, probable and convincing. Both Maghar Singh and Harbans Singh have given cogent explanation concerning their presence at the spot at the time of the occurrence. Harbans Singh PW whose father is elder brother of the wives of Maghar Singh PW and Ram Singh (deceased) had come to see them in village Jeon Singhwala. He also wanted to purchase a he-goat for offering the same at the Majaar of a Peer in Malerkotla as even after 4/ 5 years of his marriage Harbans Singh PW was not blessed with a son. For this purpose Ram Singh, Maghar Singh and Harbans Singh went to Harijan colony. They could not purchase any he-goat. At about 8 p.m while they were returning to their house, they were waylaid and attacked by the accused party. Apart from that Harbans Singh PW is a stamped witness who received as many as five injuries on his person during the occurrence. Out of these injuries three injuries are on the head of Harbans Singh PW. Two of the head injuries of Harbans Singh are incised wounds. Such like injuries on the vital part of body cannot normally be self-suffered or self-inflicted. Maghar Singh PW too has given cogent reason for his presence at the spot at the time of the occurrence. Besides after the occurrence, he lodged the first information report with the police within two hours of the occurrence after covering a distance of six miles. Conduct of Maghar Singh is thus quite consistent with the natural human conduct. It is true that Maghar Singh PW admitted in his cross-examination that Jagga Singh, Boota Singh and Pamma sons of Ram Singh had kept 15/16 goats and sheep and that Ram Singh deceased used to graze those as well as 50/60 goats and sheep owned by Baghela. However, this fact alone would not be sufficient to disbelieve the version given by Maghar Singh and Harbans Singh PWs that in order to get a he-goat for Harbans Singh PW, Maghar Singh PW and Ram Singh deceased had accompanied on the evening of the occurrence to the Harijan abadi. Nature and extent of injuries received by Harbans Singh PW lends independent corroboration concerning his presence at the spot at the time of the occurrence. The prosecution has thus been able to affirmatively establish on the record that both Harbans Singh and Maghar Singh PWs were present at the spot at the time of the occurrence.

7. The next question which arises for determination is as to whether testimony of Maghar Singh and Harbans Singh PWs on the salient features of the prosecution story is worthy of reliance.

8. It is in evidence that Maghar Singh PW was earlier on sentenced to undergo imprisonment for life for committing the murder of Kartar Singh whereas Ram Singh deceased was acquitted. Ram Singh deceased along with his other co-accused too was earlier on challaned for committing murder of Budh Ram alias Budha Mahajan of Village Mahi Nangal. Ram Singh and Gurcharan Singh were acquitted whereas Joginder Singh and Bhola Singh were convicted. It is also in evidence that Ram Singh deceased was challaned u/s 307 of the IPC for causing injuries to Bali Mohd. who was working as Siri with Narinder Singh village Sarpanch. In view of the fact that both Maghar Singh and Harbans Singh PWs are closely related to Ram Singh deceased, it would be prudent to seek independent corroboration on material aspects of the prosecution story.

9. The ocular account given by Maghar Singh and Harbans Singh PWs has been consistent throughout. Both of them deposed during the trial that Bhola Singh opened the attack and gave a Gandasa blow to Ram Singh on his head. Bhola Singh was attributed another Gandasa blow on the head of Ram Singh, whereas, Kaila Singh gave a Gandhali blow on the fore-head of Ram Singh. Jagga Singh (since acquitted by the trial Court) is alleged to have given three Gandasa blows on the head of Harbans Singh one with sharp and the others with blunt side. Both Ram Singh and Harbans Singh fell down on receipt of the injuries and were given further blows by the accused. Post-mortem examination reveals presence of 17 injuries on the body of Ram Singh deceased. Out of these 16 injuries which are on the face and head of the deceased are mostly incised wounds and only three injuries below the right angle of the mouth in front of the right ear and in the middle of the forehead are penetrating wounds, which in the opinion of Dr. Balbir Singh who conducted autopsy on the dead body of Ram Singh could be caused by a Gandhali whereas the remaining injuries on the body of the deceased could be caused by a Gandasa. The said doctor further opened that the cause of death in this case was due to shock and haemorrhage as a result of multiple injuries which were sufficient to cause death in the ordinary course of nature. Testimony of Dr. Pawan Bansal further reveals presence of two incised wounds on the head and one lacerated wound on the back of the skull of Harbans Singh PW whereas the other two are minor injuries one on the back of the shoulder and the other a pinkish bruise near lumbar area. The incised injuries on the person of Harbans Singh in the opinion of the said doctor could be caused by Gandasa, whereas, blunt injuries" could be caused from the reverse side of Gandasa or Gandhali if used dangwise. Thus the medical evidence produced on the record lends independent corroboration to the ocular account given by Maghar Singh and Harbans Singh PWs concerning the presence and participation of Bhola Singh and Kaila Singh appellants during the occurrence.

10. It is significant to note that after the occurrence leaving Hari Singh to guard the dead body at the spot, Maghar Singh, Darshan Singh and Boota Singh removed Harbans Singh injured in a tractor trolley to Talwandi Sabo. At Talwandi Sabo crossing Maghar Singh and Boota Singh alighted from the tractor trolley and went to the police station where Maghar Singh PW lodged the first information report at 9-40 p.m. i.e. after two hours of the occurrence, whereas, Harbans Singh PW was taken to the nearby hospital by Darshan Singh PW. Special report in the instant case was received by the Ilaqa Magistrate at 1-30 a.m. on 25-9-1989. Postmortem examination was conducted must later in the after-noon at 1-15 p.m. It is thus quite evident that the first information report has been lodged with all promptitude. The first information report contains all the salient features of the prosecution story i.e. the names of the eye-witnesses and the accused, weapons carried by them and the manner in which the occurrence took place. This aspect of the case lends further corroboration to the ocular account given by Harbans Singh and Madhar Singh PWs.

11. It was contended on behalf of the appellants that it was a night time occurrence and there is no legal, cogent or reliable evidence on the record concerning the identity of the assailants and the defence plea that Ram Singh received injuries at the hands of unknown assailants because of his enmity with other persons or that the appellants have been falsely implicated on suspicion is quite probable and convincing.

12. The argument is devoid of any merit. Maghar Singh PW deposed that he had a torch with him which was on when the occurrence took place and they had identified the accused in torch light. To the similar effect is the testimony of Harbans Singh PW. Besides, it is in evidence that Bhola Singh and Kaila Singh has also raised a lalkara for teaching a lesson to Ram Singh for quarrelling with Bhola Singh in the terms (which was staged in the village a few days earlier). Both the appellants are the co-villagers of the complainant Maghar Singh and were known to Harbans Singh PW. Harbans Singh PW had also received injuries at the hands of the appellants. Thus both the eye-witnesses had ample opportunity to identify the appellants from close quarters. It is difficult to believe that Maghar Singh PW would exculpate the real culprits and would falsely implicate the appellants with whom they had no serious enmity except the altercation which took place a few days earlier between the deceased and Bhola Singh appellant when a drama was staged in their village. The defence plea about false implication of the appellants has not been substantiated on the record and we have not the least hesitation in rejecting the same.

13. Mere fact that plea of alibi of Jagga Singh was accepted or Jaggar Singh accused who is only alleged to have entered into criminal conspiracy for commission of the murder of Ram Singh had been acquitted by the trial Court, per se, would not afford any cogent reason to disbelieve the ocular account given by Maghar Singh and Harbans Singh P. Ws, as far as presence and participation of Bhola Singh and Kaila

Singh appellants during the main occurrence is concerned. The ocular account given by Maghar Singh and Harbans Singh P. Ws. is credit worthy and the same reads consistent with the first information report which has been lodged with all promptitude and other circumstantial evidence referred to above.

14. Lastly, it was submitted by the learned counsel for the appellants that from the medical evidence on the record it has not been established beyond reasonable doubt that the death of Ram Singh was caused due to injuries inflicted by either of the two appellants and that the learned trial Court has erred in convicting them u/s 302 of the Indian Penal Code.

15. The medical evidence read as a whole indicates that death of Ram Singh was due to shock and haemorrhage as a result of multiple injuries which were sufficient to cause death in the ordinary course of nature. There were three penetrating wounds on the face and head of Ram Singh deceased. Bones underneath all the three penetrating wounds were fractured which as already discussed were most likely to have been caused by Kaila Singh appellant with a Gandhali, whereas, the other 13 incised wounds on the face and head of the deceased have been mainly attributed to Bhola Singh with a Gandasa. Both Bhola Singh and Kaila Singh appellants can be convicted u/s 302 read with Section 34 of the Indian Penal Code even though the present appellants have only been charged u/s 302 of the Indian Penal Code for intentionally committing the murder of Ram Singh in furtherance of their common intention which can be reasonably presumed in this case from the fact that the appellants came to the spot together and after committing the murder of Ram Singh and causing injuries to Harbans Singh left the spot together. All these tell tale circumstances were specifically put to both the appellants in their statements u/s 313 of the Code of Criminal Procedure and they were fully aware of the case they had to meet in their defence. Thus failure to mention Section 34 of the Indian Penal Code in the charge framed against the appellants by the learned trial Court in our opinion would not cause any material prejudice to the appellants.

16. We find support in our view from the authority of the apex Court in *Rawalpenda Venkalu v. State of Hyderabad*, AIR 1956 SC 171 : (1956 Cri LJ 338), wherein it was held that though Section 34 is not added to Section 302, the accused had clear notice that they were being charged with the offence of committing murder in pursuance of their common intention to put an end to the life of Moinuddin. Hence the omission to mention Section 34 in the charge has only an academic significance and has not in any way misled the accused. As already indicated, there is clear evidence that both the accused lighted a match stick and set fire to the cottage and each one of them therefore is clearly liable for the offence of murder. Their subsequent acts in repelling all attempts at bringing succour to the trapped person clearly show, their common intention of bringing about the same result, namely, the death of Moinuddin.

17. We find further support in our view from the authority of the Apex Court in [Bhoor Singh and Another Vs. State of Punjab](#), wherein conviction u/s 302 read with Section 34 of the Indian Penal Code was maintained by the apex Court even though no specific charge was framed u/s 34 of the Indian Penal Code. All the circumstances showing concert and participation in the joint criminal action by all the three appellants were duly put to them in their examination u/s 342, Cr. P. C. and the appellants were fully aware of the matter with which they were charged. It was observed in Bhoor Singh" case (1974 Cri LJ 929) (SC) (supra) that no question of prejudice arises in such circumstances.

18. Even otherwise offence u/s 34 of the Indian Penal Code, per se, is not a substantive offence and its omission amounts to a mere irregularity which is curable u/s 464 of the Code of Criminal Procedure, 1973. We are satisfied that such omission has not in any manner either caused failure of justice or has materially prejudiced the appellants in their defence in the present case. Both Bhola Singh and Kaila Singh appellants are convicted u/s 302 read with Section 34 of the Indian Penal Code for intentionally committing the murder of Ram Singh in furtherance of their common intention and each of them is sentenced to undergo imprisonment for life and to pay a fine of Rs. 500/-. In default of payment of fine each of them is ordered to undergo further rigorous imprisonment for two months. The prosecution has also been able to bring home charge u/s 324 read with Section 34 of the Indian Penal Code against both Bhola Singh and Kaila Singh appellants for causing simple hurt with sharp edged weapon to Harbans Singh PW, in furtherance of their common intention and each of them is sentenced to undergo rigorous imprisonment for six months. Both the substantive sentences of imprisonment shall run concurrently.

19. For the foregoing reasons, we do not find any merit in this appeal and the same is hereby dismissed.