Jagdev Singh Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 25, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 173, 313
Penal Code, 1860 (IPC) â€" Section 120B, 148, 149, 300, 302

Citation: (2011) 3 RCR(Criminal) 255

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.
Jagdev Singh son of Chand Singh has filed the present appeal. He was nominated as an accused in case FIR

No. 117 dated 22.9.1987, registered at Police Station Dirba, under Sections 302, 326, 324, 323, 148, 149 and 120-B IPC along with his co-

accused Satnam Singh, Kewal Krishan, Amrik Singh, who died during trial, whereas his other co-accused Maghar Singh and Bhupinder Singh

were acquitted of the charges by the trial Court.

2. Vide impugned judgment dated 23.9.200"2, the Court of Additional Sessions Judge (Ad hoc), Patiala, held the appellant guilty of offence u/s

304 Pat-II IPC and sentenced him to undergo rigorous imprisonment for a period of five years.

3. Case of the prosecution has emerged in the statement made by Hardev Singh. He stated that he was an agriculturist. In the morning at about

5.30 A.M. on 22.9.1987, he was going to answer the call of nature. At that time, Gurcharan Singh son of Bhagta Singh was following him. At the

bus stand of Toorwanjara, Saran Dass son of Birbal Dass, who was Member of Panchayat and President of Truck Union, Dirba, was standing

along with his children Brij Bhushan, aged about 7 years and Seema Rani, aged about 5 years. They were waiting for School Van of General

Gurnam Singh School, Sangrur. At that time, appellant Jagdev Singh armed with Ghapwala Khunda, Kewal Krishan son of Amar Nath armed with

Gandasa, Satnam Singh son of Kesar Singh armed with Soti, all residents of Toor-wanjara, came towards Saran Dass. Kewal Krishan raised a

lalkara that they would teach a lesson to Saran Dass for making a complaint against him regarding embezzlement of Panchayat funds. At that time,

appellant Jagdev Singh gave a blow with his ghapwala khunda in the right leg of Saran Dass, as a result of which he fell down. Satnam Singh gave

a dang blow in the legs of Saran Dass, Kewal Krishan gave a gandasi blow on the shank of his right leg. Appellant Jagdev Singh gave another

blow with his ghapwala khunda in the right leg of Saran Dass and also in the left arm from the sharp side of his ghapwala khunda. The appellant

also gave two more blows in left arm of Saran Dass with his ghapwala khunda. Kewal Krishan and Satnam Singh gave a number of blows with

their respective weapons. Brij Bhushan and Seema, children of Saran Dass raised a noise, upon which all the accused fled away from the spot.

The complainant took care of Saran Dass and got him admitted at Civil Hospital, Sangrur.

4. The above said FIR was investigated and a report u/s 173 Cr.P.C. was submitted.

5. The Court of Additional Sessions Judge, Sangrur, vide order dated 4.6.1988, charged the appellant for the offence under Sections 148 and 302

IPC. The first charge was that on 22.9.1987 at about 5.30 A.M. in the revenue area of village Toorwanjara, all the accused were members of an

unlawful assembly and in furtherance of common object, they committed murder of Saran Dass son of Birbal Dass and committed an offence of

rioting and thereby committed an offence punishable u/s 148 IPC. The charge further stated that all the accused, by causing injuries, did commit

murder of Saran Dass and accused Kewal Krishan, Satnam Singh and Jagdev Singh committed an offence punishable u/s 302 IPC, whereas

accused Amrik Singh, Maghar Singh and Bhupinder Singh committed an offence with the aid of Section 149 IPC.

6. PW. 1 Dr. K.S. Rekhi stated that on 22.9.1987 on the request of police, he declared the patient namely Saran Dass son of Birbal Dass unfit to

make a statement, vide endorsement Ex.PA. Thereafter, on 24.9.1997, he again declared the patient unfit to make a statement, vide his

endorsement Ex.PB. On 9.10.1987, Saran Dass expired. On the same day, autopsy on the dead body of Saran Dass was conducted by PW.8

Dr. Harbans Lal. He found the following injuries on the person of Saran Dass :

1. A wound measuring 2 cm x 0.5 cm bone deep present on the antero medial aspect of right leg, 8 cm above the ankle joint. On dissection blood

clot was present. There was comminuted fracture of both bones were present.

2. Stitched wound was present on right knee joint extending for medial to lateral aspect anteriorly and it was 18 cm long, on dissection P.O.P. was

removed.

3. A scab 2.5 cm x 0.5 cm was present in the upper 3rd and anterior aspect of left leg.

4. A scab 0.5 Cm x 0.5 cm in diameter was present in the middle of left leg.

5. A scab 1.0 cm x 0.5 cm was present on the lateral aspect of right arm just above the elbow joint.

6. A healed depigment linear area was present on the anterior aspect of right arm 8 cm in length.

7. A scalp measuring 0.5 cm x 0.25 cm was present on left deltoid region near in its insertion...

7. The doctor opined that the cause of death was cardio respiratory failure, as a result of pulmonary embolism, which is sufficient to cause death in

the ordinary course of nature. The injuries were ante mortem in nature.

8. Brij Bhushan, son of deceased Saran Dass, appeared as PW.2. He was examined on 27.4.2002. He stated that on 22.9.1987 he was a student

of General Gumam Singh School, Sangrur. His sister Seema Rani is younger to him. He and his sister accompanied by their father Sarah Dass had

gone to the Bus Stand, Toorwanjara where they were waiting for the school bus. Kewal Krishan armed with a gandasa, Jagdev Singh armed with

a ghapwala khunda and Satnam Singh was armed with a Soti, came there. Kewal Krishan raised a lalkara to the effect that Saran Dass should be

taught a lesson for complaining against him for embezzlement of Panchayat funds. Saran Dass was also a member of Panchayat, of which Kewal

Krishan was a Sarpanch. Jagdev Singh gave a blow with his ghapwala khunda in the lower portion of right leg of his father, due to which he fell

down. The khunda blow was given thrust wise. Kewal Krishan gave a gandasa blow from its reverse side. Satnam Singh also gave a soti blow on

the same leg. Saran Dass, his father, was also a President of Truck Union, Dirba. In cross- examination, he stated that on the day of occurrence he

was a student of third standard and his sister was studying in second standard. He was nine years old, whereas his sister was seven years old. The

school used to start at about 8.30 A.M. and finish at 1.30 P.M. Complainant Hardev Singh, who had lodged the FIR, appeared as PW.3. He had

not supported the prosecution version and was declared as hostile. Seema Rani, daughter of deceased Saran Dass, appeared as PW.4. She also

deposed regarding the occurrence, which had taken place 15 years ago from the date of her appearance in the witness box. PW.5 Gurcharan

Singh had taken the deceased to the hospital along with PW.3 Hardev Singh. He has also not supported the prosecution version and has been

declared as hostile. PW.6 Om Parkash had investigated the case. He deposed regarding various facets of the investigation. PW.7 Sukhdev Singh,

Kanungo, Dhuri, has prepared the rough site plan of the place of occurrence Ex.PW.7/A; Thereafter, the statements of accused, u/s 313 Cr.P.C,

were recorded. They denied all the incriminating circumstances put to them and pleaded innocence.

9. The trial Court held that the statement of de ceased Saran Dass was not recorded by any Executive Magistrate as at that time, nobody

visualized that he would expire. The trial Court further held that Amrik Singh, Bhupinder Singh and Maghar Singh were not named in the FIR and

no overt role has been attributed to them. Jagdev Singh had given injuries with his ghapwala khunda i.e. a dang fitted with an iron rod. The trail

Court held that since Saran Dass remained admitted in the hospital for about 18 days. Had his condition not deteriorated he would not have died.

Thus, only knowledge can be attributed to appellant Jagdev Singh.

10.I have taken note of the findings, recorded by the trial Court.

11. Learned counsel for the appellant has submitted that it is not a case of pulmonary embolism. He has further submitted that the appellant had

given injuries only on the non vital parts of the body of deceased Saran Dass and that too below his knees. Therefore, at the most it can be

construed that the accused intended to give beatings to deceased Saran Dass but there was no intention to murder him. He has further submitted

that the very fact that the deceased died after a period of 18 days, a medical negligence can be attributed and the injuries by the appellant has not

contributed to the cause of death. He has further submitted that the offence, if any, will fall u/s 325 IPC.

12. I have perused the evidence of PW.8 Dr. Har-bans Lal, who had conducted the autopsy. Injury No. 1 is compound fracture of both bones of

ankle joint. On dissection, blood clot was found present. According to medical opinion, cardio respiratory arrest had occurred due to pulmonary

embolism.

13. Modi"s Medical Jurisprudence and Toxicology in its 20th Edition has stated that in the cases of fracture of bones there is always a serious

danger to life from fat embolism. Fractures are not ordinarily dangerous, unless they are compound, when death may occur from the loss of blood,

if a big vessel is wounded by the split end of a fractured bone," or from fat embolism, septicemia, gangrene or tetanus. There is serious danger to

life from fat embolism when the brain is involved but not so in the lungs. Pulmonary embolism has been defined as blockage of arteries in the lungs

by fat or a blood clot. In case of a fracture of a long bone there always remains an apprehension that the fat from the bone may travel and block

the artery thereby causing cardio respiratory arrest. Thus, in the present case, the injury caused by the appellant did cause fracture of the leg and

the same was the cause of pulmonary embolism leading to the death of Saran Dass. In Gokul Parashram Patil v. State of Maharashtra 1981 cri AR

214 (SC), it was held as under :-

3. The learned counsel for the appellant has contended that the case does not fall within the ambit of section 302 of the Code and that the two

courts below erred in relying on Virsa Singh v. State of Punjab. The gist of the dictum of this Court in that case is that if an injury is held to have

been intended by the assailant and is further found to be sufficient in the ordinary course of nature to cause death, it would attract clause thirdly of

section 300 of the Code and that, therefore, its author would be liable to punishment u/s 302 thereof. The question thus is whether the particular

injury which was found to be sufficient in the ordinary course of nature to cause death, in the present case, was an injury intended by the appellant.

Our answer to the question is an emphatic no. The solitary blow given by the appellant to the deceased was on the left clavicle - a non-vital part -

and it would be too much to say that the appellant knew that the superior venacava would be cut as a result of that wound. Even a medical man

perhaps may not have been able to judge the location of the superior venacava with any precision of that type. The fact that the venacava was cut

must, therefore, be ascribed to a non-intentional or accidental circumstance. This was precisely the view taken in Harjinder Singh v. Delhi

Administration (2), by Sikri, J., and in Laxman Kalu Nikalji v. The State of Maharashtra (3) by Hidayatullah, C.J. In the former of these cases, the

injury in question was a stab wound on the left thigh which had cut the femoral artery and vessels. In the latter, the damage caused consisted of a

cut in the auxiliary artery and veins. In each of the two cases it was held that although the injury which was found to be sufficient in the ordinary

course of nature to cause death had resulted from a blow with a sharp-edged weapon, the same could not be said to have been intended, that the

only injury which could be regarded as intentional was the superficial wound resulting directly from the blow, that the assailant could not be held

guilty of an offence u/s 302 of the Code and that he was, on the other hand, guilty of a lesser offence falling under part II of section 304 thereof...

14. Since the injury caused by the appellant has contributed to the pulmonary embolism, which was the cause of death of Saran Dass, the trial

Court has rightly imputed knowledge of the appellant and held him guilty of Section 304 Part-II IPC. Learned counsel for the appellant has further

contended that in the present case PW.3 Hardev Singh, complainant, has not supported the prosecution version. Similarly PW.5 Gurcharan Singh,

who had taken the deceased to the hospital along with PW.3 Hardev Singh, has also been declared as hostile. Therefore, this Court should not

rely upon the testimonies of PW.2 Brij Bhushan, son and PW.4 Seema Rani, daughter of deceased Saran Dass as they were children at the time of

occurrence. It is stated that PW.2 Brij Bhushan was aged about nine years and PW.4 Seema Rani was aged about seven years. This Court cannot

ignore the fact that deceased Saran Dass was waiting for the school bus to board his children, therefore, their presence at the spot was natural.

Furthermore, when these witnesses were examined they had attained their majority. It cannot be said that they were tutored. They had witnessed

the occurrence as child and deposed against the appellant when they had attained majority. The memory of a child cannot be faulted at until a

material is placed on record that they were tutored. It is a settled legal position that if the testimony of a child aspire confidence, the same can be

relied upon.

15. Lastly, learned counsel for the appellant has submitted that occurrence in the present case took place in the year 1987 and a period of about

23 years has elapsed and therefore, the same be construed as a mitigating circumstance and some leniency in awarding sentence upon the appellant

may be considered. Learned counsel for the appellant has relied upon Hanmappa v. State of Karnataka 2009 (3) RCR 344 to say that the

sentence should be reduced to already undergone. In Hanmappa''s case (supra), the death was caused due to throw of a stone, therefore, that

case is not applicable at all. However, the pendency of trial can be construed as a mitigating circumstance.

16. Hence, sentence of five years rigorous imprisonment, awarded upon the appellant u/s 304 Part-II IPC, is reduced to that of four years.

However, the Sentence of fine and default clause is maintained.

17. With the modifications in the sentence, awarded upon the appellants, the present appeal is dismissed.