
Malkiat Singh Vs State of Punjab

Criminal Appeal No. 238 of 1986

Court: Supreme Court of India

Date of Decision: Aug. 7, 1996

Acts Referred:

Penal Code, 1860 (IPC) " Section 300, 302, 325

Citation: AIR 1996 SC 2590 : (1996) 2 ALD(Cri) 572 : (1996) CriLJ 3583 : (1996) 3 Crimes 112 : (1996) 7 JT 586 : (1996) 5 SCALE 670 : (1996) 2 SCALE 400 : (1996) 10 SCC 274 : (1996) 2 UPLBEC 827

Hon'ble Judges: S. P. Kurdukar, J; M. K. Mukherjee, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.K. Mukherjee, J.

The judgment and order dated December 6, 1984 rendered by the Judge, Special Court, Ferozepur in trial No. 42

of 1924 is under challenge in this appeal. By the impugned judgment the learned Judge convicted and sentenced the appellant under Sections 302

and 325 of the Indian Penal Code.

2. (a) Shorn, of details the prosecution case is that Darbara Singh (the deceased) was the driver of a truck and Uttam Singh (P.W. 5) was its

conductor. On March 31, 1984 at or about 7 P.M. when they were consuming liquor near the poultry from of the appellant, he also came there

and shared the drinks. Mit Singh (P.W. 4) and Kartar Singh, father and brother of Darbara Singh respectively, were then irrigating their land

nearby. After finishing his drinks the appellant went back to his poultry farm. He however came back a little later and told Darbara Singh that he

would teach him a lesson as he had forcibly taken away one of their cows. He then picked up a kassi and started assaulting Darbara Singh with it.

On being so assaulted Darbara Singh fell down dead. In the mean time Uttam Singh had taken up a small toki which was lying nearby and attacked

the appellant. The appellant then inflicted a number of blows on Uttam Singh with the kassi. When Mit Singh and Kartar Singh rushed to the spot

the appellant fled away with the kassi. After deputing Kartar Singh to look after the dead body of Darbara Singh, Mit Singh went to Bagha Purana

Police Station and lodged a first information report whereupon a case was registered against the appellant. Uttam Singh had in the meantime been

taken to the hospital for treatment of his injuries.

(b) After registering the case, Madan Gopal (P.W. 6), Station House Officer, came to the spot accompanied by Mit Singh, held inquest upon the

dead body and sent it for post-mortem examination. He seized some blood-stained earth from the spot and prepared a sealed packet in respect

thereof. During investigation the appellant was arrested on April 7, 1984 and pursuant to his statement made before S.I. Mukhtiar Singh (P.W. 7)

a kassi was recovered. Mukhtiar Singh took possession of the kassi and sent it to the Forensic Science Laboratory for examination. After his

arrest the appellant was also sent to the hospital as there were some injuries on his person. After receipt of the report of the Forensic Science

Laboratory and completion of investigation Mukhtiar Singh submitted charge-sheet against the appellant and in due course the case was committed

to the Designated Court.

3. The defence of the appellant, who pleaded not guilty to the charges leveled against him, was that on the date of the incident Uttam Singh (P.W.

5) and the deceased Darbara Singh quarrelled with each other which ultimately ended in a mutual assault and injuries to both of them. When he

(the appellant) tried to intervene he also sustained some injuries. He then went to Surjit Singh of his village and informed him about the incident and

he (Surjit Singh), in his turn, informed Mit Singh. Accompanied by Surjit Singh and Mit Singh he went to the spot where the dead body of Darbara

singh was lying. They then took Uttam Singh, who was injured, in a car to the Police Station. Leaving him (the appellant) behind at the Police

Station to narrate the incident Surjit Singh took Uttam Singh to the hospital. He then narrated the incident to the police but instead of recording his

version they wrongfully detained him for several days and falsely implicated him.

4. In support of its case the prosecution examined seven witnesses of whom Mit Singh (P.W. 4) and Uttam Singh (P.W. 5) figures as eye-

witnesses. The appellant also examined Surjit Singh (D.W.1) to prove his version of the incident. On consideration of the evidence the Designated

Court accepted the version of the prosecution in preference to that of the defence and accordingly passed the impugned order of conviction and

sentence.

5. That Darbara Singh met with a homicidal death stands conclusively proved by the unimpeachable testimony of Dr. Jawahar Lal Aggarwal (P.W.

1) who held autopsy on the dead body of Darbara Singh on April 1, 1984 and found ten injuries. The doctor opined that the death was due to

shock and haemorrhage as a result of the injuries sustained and that the injuries were sufficient in the ordinary course of nature to cause death. The

evidence of Dr. Aggarwal further reveals that on March 31, 1984 at 11.30 P.M. he had examined Uttam Singh (P.W. 5) and found three

lacerated wounds and a swelling on his person which, according to him, were freshly caused by blunt weapon. Dr. S.P. Bansal (P.W. 2), a

Radiologist testified that on April 4, 1984 Uttam Singh was X-rayed by him and the skiagram showed fractures of both parietal and occipital

bones.

6. In the context of the above trustworthy medical evidence the question that now falls for our determination is whether the appellant was

responsible for causing the death of Darbara Singh and grievous injuries on the person of Uttam Singh (P.w. 5). As, earlier noticed, to prove this

part of its case the prosecution rested primarily upon the evidence of P.Ws. 4 and 5. On perusal of their evidence we find that even though they

were cross examined at length, nothing could be elicited by the defence so as to discredit them. The presence of Uttam Singh at the material time

cannot be disputed having regard to the fact that he had sustained injuries and also the fact that the appellant admitted his presence and of his

having sustained injuries, although he had his own explanation for his injuries. We do not however find any material in support of his explanation.

Though Surjit Singh (D.W.1) came to support his version of the incident he was admittedly not present at the time thereof and, therefore, he was

not competent to speak about the same. It is, of course, true that Surjit Singh testified that the appellant told him immediately after the incident that

the deceased and Uttam Singh sustained injuries while fighting between themselves but in absence of any material in support thereof we are unable

to place any reliance thereupon. While on this point it is pertinent to mention that the appellant"s, as well as D.W.1"s, claim that they went to the

Police Station immediately after the incident but the police did not record the appellant"s statement is belied by the fact that the appellant was

arrested a week after the incident. On the contrary, we find that the evidence of Mit Singh gets ample corroboration from the facts that within

almost an hour of the incident he lodged the F.I.R. wherein he not only detailed the prosecution case as to how Darbara Singh and Uttam Singh

were assaulted by the appellant but also stated that the appellant had sustained minor injuries at the hands of Uttam Singh when he tried to rescue

Darbara Singh. The medical evidence corroborates the ocular version of P.Ws. 4 and 5 and the recovery of the kassi pursuant to the statement of

the appellant which was found to contain human blood, when examined by the Forensic Science Laboratory, also lends credence to the

prosecution story.

7. It was, however, contended on behalf of the appellant that even if it was assumed that the entire prosecution case was true still then it could not

be said that the offence committed by the appellant by causing the death of Darbara Singh was one of the murder as it took place in course of a

drinking brawl. We do not find any substance in this contention for there is not an iota of material on record to show that the appellant caused the

death of Darbara Singh in a sudden fight in the heat of passion nor can it be said, considering the nature, number and situs of the injuries sustained

by Darbara Singh, that in causing his death the appellant did not act in a cruel manner so as to entitle us to bring the case of the appellant within

Exception IV of Section 300 IPC.

8. On the conclusions as above we dismiss this appeal. The appellant, who is on bail, will now surrender to his bail bonds to serve out the

sentence.