

A

THE STATE OF PUNJAB
v.
TEJINDER SINGH AND ANR.

AUGUST 21, 1995

B

[M.K. MUKHERJEE AND G.T. NANAVATI, JJ.]

Indian Penal Code, 1860:

C

S. 304(Part-I) read with s.34—Victim assaulted by two accused—Death caused—Trial by Special Court—Motive—Nature of Injuries—Conviction of one accused u/s. 302—Acquittal of other for lack of motive and on probabilities of injuries being handiwork of one person—Held, if eye witness account sustains the prosecution case, motive pales into insignificance—Evidence of eye witnesses supported by medical evidence and other factors establishing participation by both—Accused in the crime—Accused not intending to commit murder—Both convicted u/s. 304(Part-I).

D

Legal Maxims : 'Falsus in uno Falsus in omnibus'—Discussed.

E

Accused no. 1 and 2 were charged under s.302 IPC for committing murder of the son of P.W.4 who possessed land adjoining to that of A.1. The prosecution case was that four days prior to the incident an altercation took place between the son of P.W. 4 and A.1 over the boundary of their plots. On the fateful day, at about 8.45 a.m. P.W. 4, his wife (P.W.5), and son were in their field. P.W. 4 was at the handpump when he saw A.1 and A.2 armed with *gandasasa* approaching towards his son from the nearby plot shouting that would not spare him. Both the accused started assaulting the son of P.W. 4 with their *gandasasa*, as a result of which the latter fell down. P.Ws.4 and 5 raised alarm and both the accused ran away. The victim was taken to the hospital where he succumbed to his injuries in the afternoon. The investigation led to the arrest of A.1 and A.2 and to their trial before the Special Court. The trial Court convicted A.1 under s.302 IPC and sentenced him to imprisonment for life. A.2 was acquitted. Aggrieved, A.1 filed the appeal against his conviction, where the State filed the other appeal against acquittal of A.2.

F

G

H Court

Dismissing the appeal of A.1 and allowing that of the State, this

HELD : 1.1. The trial Court was right in fully relying upon the evidence of the two eye witnesses, PWs. 4 and 5, as against A.1 and was fully justified in concluding that A.1 had assaulted the deceased with a *gandasa* causing injuries on his person. But disregarding the evidence of P.Ws. 4 and 5 as against A.2 on the ground that he had no motive does not stand to any reason and militates against one of the postulates of criminal trial that if the eye-witnesses' account of an incident sustain the prosecution case, question of motive pales into insignificance. The finding of the trial court that all the injuries found on the person of the deceased could be the handiwork of one person is a speculative one. [860-H; E-F]

1.2. PWs.4 and 5 unequivocally stated that both A-1 and A-2 inflicted *gandasa* blows on the deceased, which necessarily meant that similar injuries would be caused thereby. In spite of searching cross-examination the defence could not succeed in eliciting any favourable answer so as to indicate that the evidence of PWs. 4 and 5 was unworthy of credit. On the contrary, the injuries found on the person of the deceased on post mortem examination fit in with the evidence of the two eye witnesses. Besides, presence of human blood on the earth collected from the spot and on the *gandasasa* seized from A.1 and A.2 as disclosed by the report of chemical examination, lends assurance to the evidence of PWs. 4 and 5.

[859-G-H; 860-A-B]

1.3. It is true that in a given case ocular version may be believed against one and not against others arraigned for justifiable reasons as the maxim "Falsus in uno, Falsus in omnibus" is not applicable in criminal trials but in the instant case, the reasons given by the trial Court for disbelieving the evidence of P.W. 4 and P.W. 5 so far as A-2 is concerned, being patently wrong, he is also liable to be convicted along with A-1 for assaulting the deceased with *gandasa* resulting in his death. [860-H; 861-A]

2.1. The evidence of P.W. 4 and P.W.5 and the nature of injuries indicate that the deceased was assaulted both with the sharp edge and blunt edge of the *gandasas*. If the appellants had intended to commit murder, they would not have used the blunt edge when the task could have been expedited and assured with the sharp edge. Further, except one injury on the head, all other injuries were on non-vital parts of the body. Post-mortem report also shows that even the injury on the head was only muscle deep. In these circumstances, the offence committed by the appellants is one under Section 304 (Part I) IPC and not under Section 302 IPC. [861-B-D]

A 2.2. The acquittal of A.2 and the conviction of A-1 under s.302 IPC are set aside, and both of them are convicted under s.304 (Part-I) read with s.34 IPC. As more than 11 years having elapsed since the offence was committed, a lesser sentence of 7 years of imprisonment is awarded. [861-E]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 533 of 1985 etc.

From the Judgment and Order dated 10.5.85 of the Special Court, Ferozepure, in Case No. 345 of 1984.

C Ms. Amita Gupta, for R.S. Suri, for the Appellant in Crl. A No. 533/85 & for Respondent in Crl A. No. 481/85.

M.S. Gujral, Kuldip Singh and P.N. Puri for the Respondent in Crl. A. No. 533/85 & for the Appellants in Crl. A. No. 481/85.

D The Judgment of the Court was delivered by

E **M.K. MUKHERJEE**, J. Tejinder Singh and Darshan Singh (hereinafter referred to as A-1 and A-2 respectively) were tried by the Judge, Special Court, Ferozepore for the murder of Jasbir Singh. The trial ended in the conviction of A-1 under Section 302 of the Indian Penal Code ('IPC' for short) with a sentence of imprisonment for life and the acquittal of A-2. Aggrieved by his conviction and sentence A-1 has filed one of these two appeals (Criminal Appeal No. 481 of 1985) while the other one (Criminal Appeal No. 533 of 1985) has been filed by the State of Punjab against the acquittal of A-2 and for enhancement of sentence imposed upon A-1. Both the appeals have been heard together and this judgment **F** will dispose of them. Shorn of details the prosecution case is as under :

G A-1 and Jagjit Singh (PW-4), father of the deceased, own and possess adjoining plots of cultivable lands. Four days prior to the incident in question, an altercation took place between the deceased and A-1 over the *watt* (boundary line) of their respective plots. On July 19, 1984, at or about 6.45 A.M. the deceased accompanied by his father had gone to cultivate their plot. Daljit Kaur, wife of the deceased also reached there at or about 8.30 A.M. carrying breakfast for her husband and son. On seeing Daljit Kaur (P.W. 4) coming P.W. 4 went to the hand-pump to bring water in a pitcher when he saw A-1 and A-2 coming from the side of the nearby field **H** armed with *gandasas*, shouting that Jasbir Singh would not be spared.

Immediately thereupon both of them started assaulting Jasbir Singh with their respective *gandasas* as a result whereof Jasbir Singh fell down. On alarms being raised by PW 4 and PW 5 both the accused ran away. Jasbir Singh was then put in a trolley and taken to hospital at Raman. Dr. Mittal (PW-1), the Senior Medical Officer, Civil Hospital, Raman, found the condition of Jasbir Singh serious and, therefore, referred him to Civil Hospital, Bhatinda and simultaneously sent a written information to Station House officer, of Raman police Station. Accordingly Jasbir Singh was taken to the Bhatinda hospital, where he expired in the afternoon. A B

In the meantimes ASI Harbhajan Singh (PW-6) had reached the hospital at Raman on receipt of the written information from the doctor. As Jasbir Singh was not in a position to make a statement he recorded the statement of Jagjit Singh (Ex.P9) and sent it to police station for registration of the case. While in the hospital he also recorded the statement of Daljit Kaur and then left for the spot. He prepared a rough site plan, collected some blood stained earth from the spot and after preparing a sealed parcel made arrangement to forward the same for chemical examination. From there he went to Civil Hospital, Bhatinda only to learn that Jasbir Singh had already expired. He then prepared inquest report upon his dead body and sent it for post-mortem examination. Thereafter the investigation of the case was taken by Inspector Rattan Singh (PW 8). During the course of investigation he arrested A-1 and A-2 on July 22, 1984 and seized from their possession two blood stained *gandasas*. He made two separate parcels in respect of the *gandasas*, sealed them and forwarded to the Chemical Examiner for examination and report. On completion of investigation, he submitted charge sheet against both the accused and in due course the case was committed to the Special court for trial. C D E F

Both the accused pleaded not guilty to the charge levelled against them and contended that they had been falsely implicated. A-1, however, admitted that their field and that of Jasbir Singh adjoined but denied that there was any altercation over its boundary. G

Jagjit Singh (PW 4) and Daljit Kaur (PW 5), who were the two eye witnesses produced by the prosecution to prove its case, narrated the prosecution case as detailed earlier. On a careful perusal of their evidence we find that inspite of searching cross-examination the defence could not succeed in eliciting any favourable answer so as to persuade us to hold that H

A their evidence was unworthy of credit. On the contrary, we find that the injuries found on the person of the deceased on post-mortem examination by Dr. Subhash Chander (PW 3) fit in with the evidence of the two eye witnesses. Besides, the presence of human blood on the earth collected from the spot and on the *gandasa* seized from A-1 & A-2 as disclosed by the report of chemical examination (Ext. P-15) lends assurance to the evidence of P.W. 4 and P.W. 5. The trial Judge was therefore fully justified in concluding that the prosecution had succeeded in proving that Tajinder Singh had assaulted with a *gandasa* causing injuries on his person.

C The next question that falls for our determination is whether the trial Court was justified in recording the impugned order of acquittal in favour of A-2 on the basis of the following findings:

D "However, a look at the injuries would show that the same could be the handiwork of one person. The fact that the prosecution has not been able to bring motivating force which might have compelled Darshan Singh accused to join the crime or that Darshan Singh accused was friendly with Tejinder Singh accused makes the case of the prosecution against Darshan Singh accused doubtful. Giving the benefit of doubt I would acquit Darshan Singh accused."

E In our considered view neither of the above findings can be sustained. So far as the first finding is concerned P.W.4 and P.W. 5 unequivocally stated that both A-1 and A-2 inflicted *gandasa* blows on the deceased, which necessarily meant that similar injuries would be caused thereby. Considered in that perspective the finding of the trial Court that all the injuries found on the person of the deceased could be the handiwork of one person must be held to be a speculative one. The other finding that A-2 had no motive to commit the crime militates against one of the postulates of criminal trial that if the eye-witnesses account of an incident sustains the prosecution case, question of motive pales into insignificance. In the instant case the learned trial Judge has fully relied upon the evidence of P.W. 4 and P.W. 5 - and in our view rightly - as against A-1 and, therefore, to disregard their evidence as against A-2 on the ground that he had no motive does not stand to any reason. It is undoubtedly true that in a given case ocular version may be believed against one and not against others arraigned for justifiable reasons as the maxim "Falsus in uno, Falsus in omnibus" is not applicable in criminal trials, but then as in the instant

case the reasons given by the trial Court for disbelieving the evidence of P.W. 4 and P.W. 5 so far as A-2 is concerned are patently wrong he is also liable to be convicted along with A-1 for assaulting Jasbir Singh (the deceased) with *gandasas* resulting in his death. A

In view of our above findings we have now to ascertain whether for acts A-1 and A-2 are liable to be convicted under Section 302 read with Section 34 IPC. It appears from the evidence of P.W. 4 and P.W. 5 that the deceased was assaulted both with the sharp edge and blunt edge of the *gandasas* and the nature of injuries also so indicates. If really the appellants had intended to commit murder, they would not have certainly used the blunt edge when the task could have been expedited and assured with the sharp edge. Then against we find that except one injury on the head, all other injuries were on non-vital parts of the body. Post-mortem report further shows that even the injury on the head was only muscle deep. Taking these facts into consideration we are of the opinion that the offence committed by the appellants is one under Section 304 (Part I) IPC and not under Section 302 IPC. B C D

For the foregoing discussion we set aside the acquittal of Darshan Singh (A-2) and the conviction of Tejinder Singh (A-1) under Section 302 IPC and convict both of them under Section 304 (Part I) read with Section 34 IPC. Having regard to the fact that since the offence was committed more than 11 years have elapsed we feel inclined to pass a lesser sentence than they would have normally deserved. Accordingly, we sentence each of them to suffer rigorous imprisonment for 7 years. E

Both the criminal appeals are allowed to the extent indicate above., Darshan Singh (A-2) should be now taken into custody to serve out the sentence imposed by us and Tejinder Singh (A-1) who is on bail will now surrender to his bail bond to serve out the sentence as modified by us. F

R.P.

Appeal dismissed.