

CHANDER PAL @ RAJ PAL

A

v.

STATE OF HARYANA

OCTOBER 16, 2003

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

B

*Penal Code, 1860 :*

*Ss. 302/149, 326/149—Common object—Unlawful assembly—Members armed with deadly weapons—Attacking the victims—Meanwhile one more person from the side of victims appeared on the scene and accused started assaulting him—One of the accused shot him as a result of which he died later—Conviction u/s 302/149 by courts below—Accused who shot at the deceased not filing appeal—Held, there is no evidence to show that the unlawful assembly had any common object to do away with the deceased—No motive or enmity on the part of accused alleged against deceased—No evidence to indicate that the other accused were aware that one of them was armed with a pistol—It cannot be said that unlawful assembly was to cause death of the deceased—Object of unlawful assembly must have been to cause injuries to complainant party—So, the offence committed by appellants would come u/s 326/149—Appellants convicted accordingly.*

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CRIMINAL APPELLATE JURISDICTION : Criminal appeal No. 744 of 2003.

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From the Judgment and Order dated 18.9.2002 of the Punjab and Haryana High Court in Crl. A. No. 174-DB of 1999.

WITH

Crl. A. No. 745 of 2003.

G

P.S. Mishra, A.T.M. Rangaramanujam, Rakesh K. Khanna, Rajeev Singh, Ms. Ritu Jalali, H. Tatakhat, Amitesh, Ms. Ranjana Narayan, Adv. for Rajesh Prasad Singh, Aftab Ali Khan and V. Balalji for Variner Kumar Sharma for the Appellants.

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A D.P. Singh, V.K. Garg and Avneet Toor for the Respondent.

The Order of the Court was delivered :

Eleven accused persons were tried by the Additional Sessions Judge,  
B Faridabad for the offence punishable under section 148, 302/325 324, 323  
and 412 read with section 149. The Sessions Judge convicted seven out  
of eleven for the offence punishable under section 302 read with section  
149 and also for the various other offences for which they were charged.  
C These seven appellants filed appeal before the High Court and the Division  
Bench of the Punjab & Haryana High Court acquitted two of them. As  
regards the five other accused, the High Court confirmed the conviction  
and sentence imposed on them. Criminal Appeal No. 744/2003 is the  
appeal preferred by one of the convicted persons, namely Chander Pal @  
Raj Pal. Criminal Appeal No. 745/2003 is filed by the Rakesh, Shiv Kumar  
D alias Shibbu and Anang Pal. Sunder, who was also convicted along with  
these appellants, has not filed any appeal challenging his conviction and  
sentence.

The incident took place on 11.7.1996 at about 4.00 a.m. at place  
called Ballabhgarh in Haryana State. PW-4 Mann Singh and PW-6  
E Surinder Singh were milking their cows in their cattle shed. According to  
the prosecution about 10 to 12 persons including these appellants came to  
that place and attacked PW-4 Mann Singh and PW-6 Surinder Singh with  
lathi and ballam. At this time Megh Shyam came to the place and on seeing  
him all the accused surrounded him and attacked him with Ballam, Pharsa  
F and Lathi. Accused Surinder was armed with a country made Pistol and  
he shot Megh Shyam and caused injury on his head. All the appellants left  
the place with their weapons of offence. PW-4 and PW-6 and one Giani  
Singh also sustained injury. PW-4 and PW-6 and Megh Shyam were taken  
to B.K. Hospital and as the condition of Mann Singh was serious, he was  
G referred to Safdarjung Hospital, Delhi. On a telephonic information being  
received by ASI Ram Avtar, he went to the hospital and recorded the  
statement of Mann Singh. Pursuant to that, crime was registered against  
accused persons. PW-16 conducted the investigation and questioned the  
witnesses and finally filed the charge-sheet implicating all the eleven  
H accused.

We heard Shri P.S. Mishra, the learned senior counsel for the appellant Chandra Pal @ Raj Pal and Mr. A.T.M.. Rangaramanujam, the learned senior counsel for appellants Rakesh and Ors. and also counsel for the State. The counsel for the appellant contended that the evidence adduced by the prosecution would only show that the object of the unlawful assembly was not to cause the death of Megh Shyam and reliance was placed on the testimony of PWs. 4 and 6. Our attention was drawn to the injuries sustained by Megh Shyam, PW4 and PW6 and also Gian Singh, who was not examined in this case. It was pointed out that the motive for committing this crime was that the daughter of Beera eloped with some person and Beera Singh had filed a complaint against PW4 Mann Singh and his brother Surinder and on account of this there was enmity between Beera Singh and his sons on the one hand and Mann Singh and his brother on the other. We have carefully considered the evidence adduced and it would show that the appellants came to the place of incidence to teach a lesson to PW-4 and PW-6. These two witnesses had not suffered very serious injuries. Of course, one of the injuries sustained by PW-4 is grievous in nature. When these witnesses were being attacked Megh Shyam came there and the accused persons turned against him. There is no evidence to show that the unlawful assembly had any common object to do away with the Megh Shyam. Prosecution has not even alleged any motive or any enmity on the part of the accused persons against Megh Shyam. It is also important to note that incident happened at 5.00 a.m. and all the appellants allegedly came with various types of weapons. There is no evidence to indicate that these appellants were aware that Surinder was armed with a country made gun. It is quite possible in that frenzy, Surinder must have taken weapon and caused injury to Mann Singh and that resulted in his death. Under these circumstances, it is difficult to assume that the unlawful assembly was to cause death of Mann Singh and in our opinion the sessions Judge as well as the High Court erred in convicting these appellants for the offence under section 302 read with section 149.

The next question that would arise for consideration is what would be the common object of the unlawful assembly. We have gone through the medical certificate of the PW-4 and PW-6 and deceased Megh Shyam. It is clear that these appellants had caused grievous injuries to these Megh Shyam and PW-4. These appellants were carrying weapons like Phrasa, Ballam and Lathi. They are admittedly weapons of offence. It is clear that

A the object of the unlawful assembly must have been to cause grievous injuries either to PW-4 or PW-6 or Megh Shyam. That being so, the offence committed by these appellants would come under section 326, IPC read with section 149.

B In the result, we acquit the appellants for the offence punishable under Section 302 read with section 149 and instead convict the appellants for the offence punishable under section 326 read with section 149. These appellants have also been convicted for various other minor offences, and we are not interfering with the conviction and sentence on these counts.

C For the offence punishable under section 326 read with section 149 they are sentenced to undergo imprisonment for a period of 5 years and a fine of Rs. 20,000 each, in default they have to suffer sentence of one year.

The appeals are disposed of to the above extent.

R.P.

Appeals disposed.