

SURESH SINGH AND ANR.

v.

STATE OF HARYANA

OCTOBER 1, 2007

[C.K. THAKKER AND D.K. JAIN, JJ.]

*Penal Code, 1860:*

*s. 304 (part-II) r/w s. 149—Conviction under—Plea for a liberal view in awarding punishment—Conviction u/s 302/149 converted by High Court into one u/s 304 (part-II) with regard to one accused and 304 (part II) r/w s. 149 with regard to other five accused—Sentence of 7 years RI imposed on all the six accused—Accused convicted u/s 304 (part II) died—Three others having served the sentence, their appeal became infructuous—Remaining two pleading for a liberal view in awarding punishment on the ground that they were not convicted for the substantive offence but with the aid of s. 149—HELD : On facts, sentence reduced to RI for 5 years.*

The two appellants (A-3 and A-6) were prosecuted with four others (A-1, A-2, A-4 to A-5) for causing the death of the son of the complainant (PW-3) and grievous injuries to PW-3 and PW-5. The trial Court convicted all the six accused *inter alia* u/s. 302 r/w s. 149 IPC and sentenced each of them to imprisonment for life. On appeal, the High Court converted the conviction of A-1 to one u/s. 304 (part-II) IPC and that of A-2 to A-5 to one u/s. 304 (Part-II) read with s. 149 IPC, and sentenced all the accused to rigorous imprisonment for seven years. However, the accused, not satisfied with the judgment of the High Court, filed the instant appeal.

During the pendency of the case before the Supreme Court, A-1 died; and A-2, A-4 and A-5 having already undergone the sentence awarded, their appeal became infructuous.

- A It was contended for the remaining two appellants (A-3 and A-6) that since the conviction as recorded by the High Court against them was not for a substantive offence punishable u/s. 304 (part-II) IPC, but, as members of unlawful assembly, for an offence punishable u/s. 304 (Part-II) r/w s. 149 IPC, a liberal view be taken in awarding the  
B punishment.

### Disposing of the appeal the Court

- C HELD : 1.1. It cannot be said that by recording a finding of guilt against the appellants, any illegality has been committed either by the trial court or by the appellate court. both the Courts considered the evidence on record, including substantive evidence of two injured eye-witnesses, PW3 and PW5 and believed them. Injuries have been established through the evidence of the doctor (PW-11).

[Para 16] [504-F, G]

- D 1.2. Regarding sentence, however, it has to be kept in mind that neither of the appellants has been convicted for a substantive offence punishable under Section 304 (part II) IPC. Both of them were convicted under the vicarious liability mentioned in Section 149, IPC and they were  
E accordingly convicted for an offence not amounting to murder punishable under Section 304 (part II) read with Section 149, IPC along with other offences. Therefore, ends of justice would be met if instead of rigorous imprisonment for seven years as imposed by the High Court for the said offence, the appellants are ordered to undergo rigorous imprisonment  
F for five years. Accordingly, the conviction recorded by the High Court against the appellants for an offence punishable under Section 304 (part II) read with Section 149, IPC is maintained, but they are ordered to undergo rigorous imprisonment for five years instead of seven years. Conviction, sentence and fine for other offences, imposed on the  
G appellants by the High Court call for no interference and accordingly that part of the order is confirmed.

[Paras 17 and 18] [505-A, B, C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1313 of 2007.

From the Judgment and Order dated 28.02.2006 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 50-DB of 1997 and Criminal Revision No. 528 of 1997. A

Kawaljit Kochar and Kusum Chaudhary for the Appellants.

Rajeev Gaur 'Naseem', Rajesh Ranjan, and T.V. George for the Respondent. B

The Judgment of the Court was delivered by

**C.K. THAKKER, J.** 1. Leave granted. C

2. The present appeal arises out of judgment and order dated February 28, 2006 in Criminal Appeal No.50-DB of 1997 passed by the High Court of Punjab and Haryana convicting the appellants and other accused persons for various offences. The said appeal was filed by the accused persons against their conviction and sentence recorded by the Addl. Sessions Judge, Bhiwani on December 12, 1996 and December 17, 1996 in Sessions Case No. 5 of 1994. D

3. The case of the prosecution was that on June 29, 1993 between 7.00 and 8.00 a.m., one Daryav Singh (PW3) and his two sons, Sajjan Singh (since deceased) and Gaje Singh (PW5) were weeding out the wild grass from their cotton field. Devender Singh (accused No.1), Suresh Singh (accused No.3), Shamsher Singh (accused No.5), Jai Bhagwan (accused No.2), Jai Pal Singh (accused No.4), Jagbir Singh (accused No.6) and one Raj Kumar (a juvenile whose case had been referred to the Juvenile Court) came there. Devender Singh and Jagbir Singh were armed with *pharsas* and other four accused were armed with *jaillies*. They challenged Daryav Singh, Sajjan Singh and Gaje Singh, and exhorted that they would teach a lesson to the complainant side for getting the land of one Pooran transferred in favour of the sons of Daryav Singh and they would also uproot their *Bajra* crops. They also stated that they would cause injuries to complainant side and would obtain land of Pooran. PW3-Daryav Singh told the accused persons not to quarrel and to go back. The accused persons, however, refused to do so. Deceased Sajjan Singh and PW5-Gaje Singh also told the accused persons to refrain from giving abuses E F G H

A but accused No.6 (appellant No.2) gave a *pharsa* blow on the head of Sajjan Singh. Accused No.5 gave a *jailly* blow on the neck of PW5-Gaje Singh. Accused No.3-Suresh Singh (appellant No.1) gave a blow from the reverse side of *jailly* on the shoulder of PW3-Daryav Singh. Raj Kumar also administered a *jailly* blow on the right knee of PW3-

B Daryav Singh. Daryav Singh fell down. Accused No.2-Jai Bhagwan gave a *jailly* blow to deceased Sajjan Singh on his shoulder. Accused No.5-Shamsher Singh also gave a *jailly* blow to deceased Sajjan Singh which hit on his back. Accused No.2-Jaipal gave a *jailly* blow to deceased Sajjan Singh. Sajjan Singh fell down. Accused No.1-Devender Singh gave

C a *pharsa* blow on the left foot of PW5-Gaje Singh. Accused No.3-Suresh Singh (Appellant No.1) gave a *jailly* blow on the shoulder of PW5-Gaje Singh. Accused No.4-Jai Pal Singh gave a *jailly* blow to PW5-Gaje Singh. Accused No.5-Shamsher Singh gave a *jailly* blow on the back of PW5-Gaje Singh. The injured raised an alarm which attracted Rajbir and

D Raghbir who rescued the injured. The accused then fled away with their weapons. Rajbir and Raghbir took the injured to General Hospital, Charkhi Dadri where PW11-Dr. S.C. Gupta examined PW3 Daryav Singh on the same day i.e. on June 29, 1993 and found the following injuries.

E “On general examination:- General condition of the patient was guarded. Patient was conscious. B.P. Was 110/70 mm of Hg.

(Blood from the nose and mouth was present).

1. An incised wound size 6 cms x 1.5 cms bone deep on the middle of the skull extending from the middle to the occipital region of the skull. Margins were smooth and regular. Hair parts were present inside the wound. Profused bleeding was present. Advised Xray skull AP and lateral view.
2. Reddish contusion on the anterior aspect of the right thigh size 6 cms x 4 cms extending above downward. Movements were painful but were not restricted.
3. Reddish contusion on the dorsal aspect of the left forearm near the wrist joint. It was tender on touch and size was 4 cms x 2 cms. Movements were painful but not restricted”.

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All the injuries were kept under observation. Their probable duration was within 24 hours. Injury No.1 was found with sharp weapon while injuries Nos. 2 and 3 were found with blunt weapon. Exhibit P.J is the copy of medico-legal report. Exhibit P.J/1 is the pictorial diagram showing the seats of the injuries.

4. Dr. Gupta also examined deceased Sajjan Singh and found the following injuries.

“On general examination:- General condition of the patient was guarded. Patient was unconscious. Pupils were sluggishly reacting to light. Bleeding from the nose and mouth was present. B.P. Was 110/70 mm of Hg. Pulse was 96 per minute.

1. An incised wound size 8 cms x 1.5 cms into bone deep on the middle of the skull extending introposteriorly. Margins were smooth and regular hairfullicles were cut and embedded in the wound. Profused bleeding was present. Advised X-ray skull A.P and lateral view.
2. Multiple reddish contusions of varying size on the back at the various places.
3. Reddish contusion 6 cms x 3 cms on the left calf region. Tender on touch. Movements were painful but not restricted.
4. Reddish contusion on the top of the right shoulder joint. Movements were painful. Size was 4 cms x 2 cms extending above-onward towards the back.”

Injuries Nos.1 and 4 were kept under observation while injury Nos. 2 and 3 were found simple. Probable duration of all the injuries was within 24 hours. Injury No.1 was caused with sharp weapon while injuries Nos. 2, 3 and 4 were caused with blunt weapon.

5. Dr. Gupta also medically examined injured Gaje Singh (PW5) and found the following injuries.

“General condition was guarded. Patient was conscious. No neurological deficient. Pupils were normal and well reacting to light

A both sides. B.P. Was 116/80 mm of Hg. Pulse was 86 per minute.

1. A punctured wound of size .75 in diameter depth (?) on the left side of the neck laterally 4 cm below the angle of the mandible. Margins were irregular. Fresh bleeding was present. Injury was kept under observation subject to Surgeon's opinion.

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2. Contusion on the dorsal aspect of the left hand reddish in colour. Size was 3 cms x 2 cms. Tender on touch. Movements were painful. Injury was kept under observation.

C

3. A lacerated wound on the middle of the left hand on the palmer aspect. Bleeding was present. Movements were painful but not restricted.

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4. An abrasion with contusion having clotted blood on the left foot. Movements were painful but not restricted.

5. A reddish contusion 3 cms x 12 cms extending medio-laterally on the back. Tender on touch.”

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Injuries Nos.1 and 2 were kept under observation. Injuries Nos.3, 4 and 5 were found simple in nature. Probable duration of all the injuries was within 24 hours. Injury No.1 was found with blunt weapon while injuries Nos.2, 3, 4 and 5 were found with blunt weapon.

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6. After usual investigation, charge-sheet was submitted. The matter was committed to the Court of Sessions and charges were framed against the accused persons for offences punishable under Sections 147, 148, 149, 302, 323, 324 and 326 of the Indian Penal Code (IPC).

7. The accused pleaded not guilty to the charges and claimed trial.

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8. The Addl. Sessions Judge (1st), Bhiwani appreciated the evidence on record and held that the charges against the accused persons were proved. He, therefore, recorded an order of conviction against the accused on December 12, 1996. In the operative part of the order, the learned Judge observed:

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“As such, in view of the above discussion, I find that all the six A  
accused are guilty of the offence under Section 302 read with  
Section 149 IPC for the murder of Sajjan Singh, son of Daryav  
Singh; under Section 148 IPC for the offence of rioting; under  
Sections 323, 324 read with Section 149 IPC for causing injuries  
to Daryav Singh and Gaje Singh, PWs. I convict all the six accused B  
under these sections accordingly”.

9. The learned Judge, after recording the finding of guilt, adjourned  
the matter to December 17, 1996 for the purpose of considering the  
quantum of sentence. On that day, i.e. on December 17, 1996, he heard C  
the accused persons on quantum of sentence and passed the following  
order.

“Above mentioned six accused have been convicted by me under  
Section 302 read with Section 149 IPC, 324, 323 read with  
Section 149 IPC and 148 IPC vide my detailed judgment of D  
12.12.1996. All the accused have been heard on the question of  
sentence. All the accused are young persons between the age of  
25 and 35. They have stated that they are the bread winners for  
the family and their dependents. Taking into consideration all the  
aspects of the case including the responsibilities of the accused E  
towards their dependants and their young age etc., I take a lenient  
view and sentence each accused to imprisonment for life under  
Section 302 read with Section 149 IPC. Each accused shall also  
pay a fine of Rs.1000/- (Rupees one thousand only) under the said  
sections. In default of payment of fine, the defaulting accused shall F  
suffer further rigorous imprisonment for two years.

2. Each accused is sentenced to rigorous imprisonment for one year  
under Section 148 IPC.

3. Each accused is sentenced to rigorous imprisonment for one year G  
under Section 324 read with Section 149 IPC. Each of accused  
is also punished with fine of Rs.500/- (Rupees five hundred only)  
under the said sections. In default of payment of fine, the defaulting  
accused shall suffer further rigorous imprisonment for three months. H

- A 4. Each of six accused is sentenced to the rigorous imprisonment for six months under Section 323 read with Section 149 IPC.
5. All the substantive sentences against each of the accused shall run concurrently.
- B 6. The case property be disposed of according to rules. File be consigned to record room”.

10. Being aggrieved by the order of conviction and sentence, all the accused approached the High Court of Punjab and Haryana by preferring an appeal. The Division Bench of the High Court agreed with the finding of guilt recorded by the trial Court. It observed that there was no infirmity so far as conviction recorded by the trial Court was concerned. The High Court, however, partly allowed the appeal filed by the accused altering the conviction from Section 302 read with Section 149 IPC to Section 304, Part II and Section 304, Part II read with Section 149 IPC. The High Court observed:

“So, in this case, in our opinion, offence under Section 304, Part II of the Code is made out. Offence under Section 302 of the Code is not made out.

E The appeal is, therefore, partly allowed. The impugned judgment and sentence order are modified. Devender Singh (appellant) is convicted under Section 304, Part II of the Code. All the remaining appellants are convicted under Section 304, Part II read with Section 149 of the Code. Each of them is sentenced to undergo R.I for seven years and to pay Rs.1,000/- (each) as fine and in default of payment of fine to further undergo R.I for six months. Each of them is also convicted under Section 148 of the Code and sentenced to undergo R.I for one year. Each of them is also convicted under Section 324 read with Section 149 of the Code and sentenced to undergo R.I for one year and to pay Rs.500/- (each) as fine and in default of payment of fine to further undergo R.I for three months. Further, each of them is convicted under Section 323 read with Section 149 of the Code and is sentenced to undergo R.I for six months. All the substantive

sentences are ordered to run concurrently. The amount of fine, if realized, would be paid to the heirs of Sajjan Singh. A

Appellants Suresh Singh, Shamsher, Jai Bhagwan, Jai Pal and Jagbir Singh are on bail. The Chief Judicial Magistrate, Bhiwani, would issue their warrants of arrest and would commit them to jail to undergo the remaining part of their sentence. Appellant Devender Singh is confined in jail. The Chief Judicial Magistrate, Bhiwani, would issue fresh warrants of Devender Singh and send the same to jail, where he is lodged". B

11. Being aggrieved by the above order, all the six accused approached this Court. On September 14, 2006, when the matter was placed before the learned Chamber Judge, a prayer for exemption from surrendering was made which was rejected. Four weeks time was granted to the appellants to file proof of surrender. C

12. It appears that thereafter on January 22, 2007, Criminal Miscellaneous Petition No. 1497 was filed wherein it was stated that Devender Singh (accused No.1) had expired. Death certificate was also produced along with the application. It was further stated that Jai Bhagwan (accused No.2), Jai Pal (accused No.4) and Shamsher Singh (accused No.5) be permitted to withdraw from Special Leave Petition since all the three had already undergone the sentence and special leave on their behalf had become infructuous. The said application was allowed by the Court and the prayer was granted. Thus, out of six accused only two have remained viz., Suresh Singh-Appellant No.1 (accused No.3) and Jagbir Singh-Appellant No. 2 (accused No.6). D E F

13. We have heard learned counsel for the parties.

14. The learned counsel for the appellant submitted that so far as the fatal blow to deceased Sajjan Singh is concerned, it was administered by Devender Singh (accused No.1). The trial Court, therefore, recorded a conviction of all the accused for an offence punishable under Section 302 read with 149, IPC. An appeal against the said order was allowed by the High Court and the conviction from Section 302, IPC was altered to Section 304, Part II, IPC. Whereas Devender Singh was convicted G H

A under Section 304, Part II, IPC, other accused were convicted for an offence punishable under Section 304, Part II, read with Section 149, IPC. All the accused were ordered to undergo rigorous imprisonment for seven years. During the pendency of the matter in this Court, however, Devender Singh (accused No. 1) died and accordingly appeal, so far as  
B accused No.1-Devender Singh was concerned, got abated. Regarding Suresh Singh—appellant No.1 and Jagbir Singh—appellant No. 2 (accused Nos. 3 & 6 respectively), they had been convicted by the trial Court for an offence punishable under Section 302 read with Section 149, IPC and by the High Court, for an offence punishable under Section 304,  
C Part II read with Section 149, IPC. The counsel, therefore, submitted that the conviction as recorded by the High Court against the appellants is not for a substantive offence punishable under Section 304, Part II, IPC but as members of unlawful assembly for an offence punishable under Section 304, Part II read with Section 149, IPC. It was, therefore,  
D submitted that even if this Court is of the view that an order of conviction recorded by the trial Court and confirmed by the High Court is in consonance with law and the appellants are not entitled to acquittal, liberal view may be taken in awarding punishment. It was also submitted that the appellants were young when the offence was committed. They are  
E the only bread winners of the family and the other family members are dependent on them. Accused No.1 is dead and accused Nos. 2, 4 & 5 have already undergone the sentence imposed on them. All these considerations are relevant for reducing the sentence.

F 15. The learned counsel for the respondent-State submitted that the order passed by the trial Court and modified by the High Court calls for no interference.

G 16. Having heard the learned counsel for the parties, in our opinion, it cannot be said that by recording a finding of guilt against the appellants, any illegality can be said to have been committed either by the trial Court or by the appellate Court. Both the Courts considered the evidence on record, including substantive evidence of two injured eye-witnesses, PW3-Daryav Singh and PW5-Gaje Singh and believed them. Injuries have been established through the evidence of PW11—Dr. S.C. Gupta. We are,  
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therefore, of the opinion that both the Courts were right in recording a finding of guilt against the appellants. A

17. Regarding sentence, however, we are of the view that the learned counsel for the appellants is right in submitting that neither of the appellants has been convicted for a substantive offence punishable under Section 304, Part II, IPC. Both of them were convicted under the vicarious liability mentioned in Section 149, IPC and they were accordingly convicted for an offence not amounting to murder punishable under Section 304, Part II read with Section 149, IPC along with other offences. In our opinion, therefore, ends of justice would be met if instead of rigorous imprisonment for seven years as imposed by the High Court for the said offence, the appellants are ordered to undergo rigorous imprisonment for five years. Conviction, sentence and fine for other offences, imposed on the appellants by the High Court call for no interference and accordingly that part of the order is confirmed. B C D

18. For the foregoing reasons, the appeal is partly allowed. The conviction recorded by the High Court against the appellants for an offence punishable under Section 304, Part II read with Section 149, IPC is maintained, but they are ordered to undergo rigorous imprisonment for five years instead of seven years. E

19. The appeal is accordingly disposed of.

R.P.

Appeal disposed of.