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GURDIAL SINGH & ORS.

v.

STATE OF PUNJAB

(Criminal Appeal No. 261 of 2006)

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JANUARY 24, 2011

[HARJIT SINGH BEDI, P. SATHASIVAM AND
CHANDRAMAULI KR. PRASAD, JJ.]

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Penal Code, 1860 – s.304 Part I read with s.34 – Attempt made by accused to construct drain towards the victim's house in violation of injunction order passed in favour of the victim – Altercation between the parties – Accused and others armed with 'gandasa' and 'dangs' inflicting injuries on the victim and on the eye-witnesses – Conviction of accused u/s.302/34 with life imprisonment by courts below on the basis of evidence of the injured eye witnesses – On appeal held: Incident took place all of a sudden – No prior intention on part of the accused to commit murder – Thus, conviction modified from s.302/34 to s.304 Part I read with s.34 with 5 years rigorous imprisonment – Evidence – Witnesses – Sentence/Sentencing.

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Despite an injunction order of the court, the appellants made an attempt to construct a drain towards the house of 'BT'. This led to an altercation between the parties. The appellants- 'BS', 'GS' and 'DS' and others armed with 'gandasi' and 'dangs' caused injuries to 'BT' and the eye-witnesses. 'BT' later succumbed to his injuries in the hospital. The trial court convicted the appellants for offences punishable under Section 302/34 IPC and sentenced them to life imprisonment, however, acquitted the others. The High Court upheld the order passed by the trial court. Therefore, the appellants filed the instant appeals.

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Dismissing the appeals, the Court

HELD: 1.1 The conviction of the appellants cannot be faulted in the light of the fact that the prosecution story rests on the evidence of three injured witnesses. The incident is virtually admitted by both sides although in different circumstances. However, a case under Section 302 IPC is not spelt out. It is clear from the prosecution story that the incident happened all of a sudden when 'BT' objected to the construction of the drain by 'GS' and others in violation of an injunction order in operation. 'BT' was apparently attacked as he was making his way to his fields when he objected to the taking of measurements as a prelude to the diversion of the drain. The evidence shows that some altercation took place on which the three appellants - 'GS' armed with a 'gandasi' and the other two with 'dangs', caused injuries to 'BT' and the prosecution witnesses. However, the weapons used were in fact implements of common use which are normally carried by villagers all over India and they do not reflect any prior intention on the part of the accused to commit murder. It also appears that 'GS' had used the 'gandasi' from its blunt side as would be clear from the evidence of the doctor. PW4, the doctor who had examined 'BT' in the Hospital opined that both the injuries on the deceased were caused by a blunt weapon. Therefore, if the appellants had intended to murder 'BT' there was nothing to stop 'GS' from using the 'gandasi' from its true side as that would have made it a much more effective weapon. Therefore, the appellants are liable for the offence under Section 304 Part I read with Section 34 IPC. Keeping in view the fact that the appellants have already undergone about 5 years of the sentence and also the age factor of 'GS' in particular, the ends of justice would be met if the appellants are imposed a sentence of 5 years R.I., under Section 304 Part I read with Section 34 of the IPC. [Para 5] [561-F-H; 562-A-F]

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A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 261 of 2006.

From the Judgment & Order dated 31.05.2005 of the High
Court of Punjab & Haryana at Chandigarh in Criminal Appeal
No. 205-DB of 1997.

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WITH

Crl. A. No. 878 of 2007.

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R.P. Wadhvani, Dharam Bir Raj Vohra, Kuldeep Singh,
Ajay Pal, Sanjay Jain, Vinay Arora, Vivek Kochal for appearing
parties.

The Judgment of the Court was delivered by

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HARJIT SINGH BEDI, J. 1. The appellants herein, Gurdial
Singh now aged 85 years, his brother Bakshish Singh, now
aged 70 years, and Darshan Singh now aged about 35 years
were brought to trial and convicted for offences punishable
under Section 302/34 etc. of the IPC and sentenced to life
imprisonment by the Trial Court. The High Court dismissed the
E appeal filed by them and the matter is before us after grant of
special leave.

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2. The facts are as under:

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3. A drain carrying the village sewage ran across the house
of Gurdial Singh appellant. He attempted to divert the course
of the drain away from his house towards the house of Buta
Singh deceased. A civil suit was accordingly filed by Buta Singh
against Gurdial Singh for restraining him from constructing the
new drain. It appears that the appellants had a grudge against
G Buta Singh and his family on that account. At about 8 a.m. on
the 10th September 1995, as Buta Singh and his brother
Gurbachan Singh were going towards their fields, they were
way-laid in front of the village Gurdwara by Gurdial Singh,
Bakhshish Singh, Darshan Singh, the appellants herein, and in
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addition Amrik Singh, Joginder Singh, Kulwant Singh and Balwant Singh. Gurdial Singh was armed with a Gandasi whereas the others were armed with Dangs. As the accused were taking measurements for the construction of the drain, Buta Singh raised an objection on which Gurdial Singh raised a lalkara exhorting the others to teach a lesson to Buta Singh. Gurdial Singh then gave a Gandasi blow on the head of Buta Singh whereas the other accused attacked Buta Singh with their dangs. PW5 Kulwinder Kaur, daughter-in-law of Buta Singh witnessed the occurrence. She raised an alarm which attracted her husband PW-7 Gurmeet Singh. Kulwant Singh and Darshan Singh gave injuries to him. PW Kulwinder Kaur also intervened but was chased away by Gurdial Singh, Balwant Singh, Amrik Singh and Joginder Singh and after entering her house Joginder Singh gave a dang blow on her left upper arm and when Mohinder Kaur, sister of PW Gurmeet Singh attempted to intervene Gurdial Singh gave a gandasi blow from its reverse side on Kulwinder Kaur and Balwant Singh and Amrik Singh caused dang blows to Kulwinder Kaur. Chint Kaur, wife of Buta Singh was also inflicted injuries by Gurdial Singh. The injured were thereafter removed to the hospital and information about their admission was conveyed to the police post. PW11 Rajesh Kumar, ASI also received the Medico-legal reports in respect of Buta Singh, Gurmeet Singh, Chint Kaur, Mohinder Kaur and Kulwinder Kaur in the Police Station. The ASI immediately reached the hospital and moved an application at 11.30 a.m. to find out if the injured were fit to make a statement. The doctor opined that they were unfit to do so. The ASI again went to the hospital at 8.30 p.m. and moved another application as to the fitness of the injured and the doctor reiterated that Buta Singh and Gurmeet Singh were unfit to make their statements but Kulwinder Kaur, Mohinder Kaur and Chint Kaur were found fit for the purpose. The ASI then recorded the statement of Kulwinder Kaur and on its basis the First Information Report under Section 307 etc. of the IPC was registered. The injured were also medically examined and it was found that Gurmeet Singh had 8 injuries in all, with injury No.1 being caused by a

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A sharp edged weapon and injury No.2 being grievous in nature. Chint Kaur was found to have two simple injuries, Mohinder Kaur one simple injury and Kulwinder Kaur three simple injuries. The doctor also examined Buta Singh at 11.20 a.m. and found two injuries on his person;

B 1. A lacerated wound 3.5 cm x ½ cm x bone deep on the left side of the scalp 8 cm lateral to the mid-line and 5 cm behind the anterior hair line. Bleeding was present.

C 2. A lacerated wound 2 cm x ½ cm x bone deep on the left side of the scalp 3 cm lateral to the midline and 5 cm medial (sic) to injury No.1. Bleeding was present.

D The doctor also kept the injuries under observation and opined that injury No.1 could be caused from the reverse side of a Gandasi. He also opined that both the injuries were grievous in nature. Buta Singh expired at the 7.30 p.m. on the 17th September 1995 and his body was subjected to a post-mortem examination and the two injuries, noted above, were found thereon. On the completion of the investigation, all seven accused were charged for offences punishable under Sections 148,302, 323 and 324 read with Section 149 of the Code. They pleaded not guilty, and were brought to trial. The trial court relying on the evidence of PW5, PW7 and PW10, the injured three eye witnesses, held that the prosecution story in so far as the three appellants was proved beyond doubt, but the other accused, namely Amrik Singh, Joginder Singh, Kulwant Singh and Balwant Singh were entitled to benefit of doubt and they were accordingly acquitted. The plea of the right of private defence and that, if at all, the case fell within the ambit of Section 304 Part II read with Section 34 of the IPC was repelled. An appeal was thereafter taken to the High Court by the three appellants. The appeal was dismissed, leading to the present proceedings.

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4. The learned counsel for the appellants has argued that in the light of the fact that Bakhshish Singh appellant had received an injury in the same incident which had not been explained by the prosecution, the prosecution story itself was in doubt and the accused-appellants were entitled to acquittal on that basis. It has also been pleaded that the trial court had found that four of the accused were not involved in the incident and it was thus apparent that the present case was one of false implication on account of animosity between the parties over the construction of the drain. It has finally been pleaded that there was absolutely no evidence to show that the appellants had an intention to commit murder as the Doctor had opined that the two injuries on Buta Singh had been caused by the reverse side of the Gandasi whereas the other injuries on the person of the PW's had been caused with dangs and as such the case fell under Section 304 Part II and not under Section 302 of the IPC. The learned State counsel and the complainant's counsel have, however, controverted the stand and pointed out that the trial court and the High Court had given categorical findings that the appellants were involved in a case of murder and had attempted to take the law into their hands and attempted to construct the drain despite the injunction order made by the Civil Court.

5. We have heard the learned counsel for the parties and gone through the record very carefully. We are of the opinion that no fault can be found with the conviction of the appellants in the light of the fact that the prosecution story rests on the evidence of three injured witnesses. The incident is virtually admitted by both sides although in different circumstances as the appellants' claim was that Bakhshish Singh had suffered injuries at the hands of the Gurdial Singh and others and that the prosecution had suppressed this part of the story. This plea has been rejected by the trial court as well as the High Court holding that the injuries suffered by Bakhshish Singh could not be related to the present incident. We are therefore of the opinion that the conviction of the appellants is fully justified on

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A the facts of the case. We, however, feel that a case under
Section 302 of the IPC is not spelt out. It is clear from the
prosecution story that the incident happened all of a sudden
when Buta Singh objected to the construction of the drain by
B Gurdial Singh and others in violation of an injunction order in
operation. Buta Singh was apparently attacked as he was
making his way to his fields when he objected to the taking of
measurements as a prelude to the diversion of the drain. The
evidence shows that some altercation took place on which the
three appellants Gurdial Singh armed with a Gandasi and the
C other two with dangs caused injuries to Buta Singh and the
PWs. We, however, see that the weapons used were in fact
implements of common use which are normally carried by
villagers all over India and they do not reflect any prior intention
on the part of the accused to commit murder. It also appears
D that Gurdial Singh had used the Gandasi from its blunt side as
would be clear from the evidence of the doctor. PW4 who had
examined Buta Singh on the 11th September 1995 in the
Dayanand Medical College Hospital, Ludhiana. He opined that
both the injuries on the deceased had been caused by a blunt
weapon. We, therefore, find that if the appellants had intended
E to murder Buta Singh, there was nothing to stop Gurdial Singh
from using the Gandasi from its true side as that would have
made it a much more effective weapon. We are, therefore, of
the opinion that the appellants are liable for the offence under
Section 304 Part I read with Section 34 of the IPC. We are told
F by the learned counsel that they have already undergone about
5 years of the sentence. In the light of this fact, and keeping in
view the age factor of Gurdial Singh in particular, we feel that
the ends of justice would be met if the appellants are imposed
a sentence of 5 years R.I., under Section 304 Part I read with
G Section 34 of the IPC, the other parts of the sentence being
maintained as it is. With this modification in the impugned
judgments, the appeals are dismissed.

R.P.

Appeals dismissed.

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