

JAGGA SINGH AND ANR.

v.

STATE OF PUNJAB

(Criminal Appeal No. 807 of 2007)

FEBRUARY 03, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

*Penal Code, 1860: s.302, s.325 – Three accused – Two victims – Gunshot injury to first victim which hit him on the leg – Second victim taken away by the accused – 20 minutes later, the sound of 3 or 4 gun shots heard – Dead body of the second victim found next morning – Conviction by trial court u/s.307 – High Court, however, convicting them u/s.302 – Held: As per the post mortem report, there were only lacerated wounds on the dead body of the second victim – There was no gun shot wound on his body – Accused entitled to benefit of doubt and consequently acquitted of charge u/s.302, however, they were guilty u/s. 325 r/w s.34 as admittedly a gun shot was fired at first victim which hit him on the leg.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 807 of 2007.

From the Judgment & Order dated 4.12.2006 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 740-SB/1997 and Criminal Appeal No. 213 DBA/1998.

Rajiv Garg, Ashish Garg and Annam D.N. Rao for the Appellant.

Kuldip Singh for the Respondent.

The following Order of the Court was delivered

A

## O R D E R

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment of the High Court of Punjab and Haryana dated 04.12.2006.

B

The facts have been set out in the impugned judgment and hence we are not repeating the same here except where necessary.

C

In brief, the prosecution case is that on 24.4.92 at about 8.30 p.m., the 3 accused came to the house of Raja Singh. Later, one of them fired at Baggar Singh on his right thigh. Baggar Singh fell down. Then the accused took away the deceased Hoshiar Singh towards village Heerawala. After about 20 minutes the sound of 3 or 4 shots was heard. Next morning the dead body of Hoshiar Singh was found.

D

The trial Court convicted Jagga Singh to 7 years R.I. and a fine under Section 307 IPC. Jagtar Singh and Kaka Singh were also sentenced to 7 years R.I. and a fine. The appeals of the accused to the High Court were dismissed, but the appeal of the State regarding acquittal of the accused under Section 302 read with Section 34 was allowed, and they were convicted under Section 302. Hence, this appeal.

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On the facts of the case, we are of the opinion that the appellants are entitled to get the benefit of doubt so far as offence under Section 302 Indian Penal Code is concerned because the prosecution case was that Hoshiar Singh was taken away by the accused and after 15/20 minutes gun shots were heard. However, the post mortem examination on the dead body of the deceased found that there were only lacerated wounds. There was no gun shot wound on the body of the deceased. Hence, some doubt is created in the prosecution version regarding the charge under Section 302 IPC whose benefit will go to the accused. Thus the appellants

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H

are entitled to get the benefit of doubt on that charge and consequently they are acquitted of charge under Section 302 IPC. A

However, we are of the opinion that the appellants are guilty under Section 325 IPC read with Section 34 IPC because admittedly a gun shot was fired at Baggar Singh which hit him in the leg. On that count we award the sentence of the period already undergone by the appellants. B

The impugned judgment of the High Court is modified to the extent stated above. The Appeal is disposed of accordingly. C

On 14.09.2007 this Court had ordered that the sentence of imprisonment imposed on the appellants shall remain suspended during the pendency of the Appeal provided each of them furnishes personal bond in the sum of Rs. 20,000/- (Twenty Thousand Only) with two sureties in the sum of Rs. 10,000/- (Ten Thousand Only) each to the satisfaction of the trial court. Their bonds are discharged accordingly. D

D.G.

Appeal disposed of.