

A

INDER SINGH
v.
STATE OF PUNJAB

FEBRUARY 23, 1995

B

[DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

C

Indian Penal Code, 1860 : Section 302—Pre-planned murder—Accused assaulting the deceased with determination—Extensive injury—Instantaneous death of deceased—These factors disclosed intention of the accused to cause fatal injury to the deceased—Conviction upheld.

The appellant was convicted under section 302 of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for life.

D

According to the prosecution, the deceased had gone to see off a tractor driver and did not return home till night. His father, PW4 and mother, PW5 went out in search for him. They met the deceased on the way and started towards their home. The appellant suddenly emerged from behind a heap of manure and assaulted the deceased on his neck. He also did not spare PW4, his own brother. On alarm being raised the appellant fled away with his weapons. When PW4 and PW5 went near the deceased they found him dead. A First Information Report was lodged and a post-mortem was held.

E

On the basis of the evidence adduced on behalf of the prosecution including that of PW4 and 5, the Trial Court came to the conclusion that the charge levelled against the appellant was fully established.

F

In the appeal before this Court, on behalf of the appellant it was contended that the intention of the appellant was only to give a thrashing to the deceased as he was suspected to have stolen his cauliflowers; and that he could not have intended the death of the deceased.

G

Dismissing the appeal, this Court

H

HELD : 1.1. It is established that the appellant was lying in wait, duly armed with a barchha and emerged all of a sudden to attack the deceased. The very fact that he did not even spare PW4 his own brother by causing injuries to him when he tried to intervene to save the deceased

shows the determination of the appellant. The nature of the weapon and the seat of the injury, which had caused such extensive damage that the deceased died instantaneously is also indicative of the intention of the appellant. [293-GH, 294-A] A

1.2. The deceased had fallen down on receipt of a dang blow and was unarmed. The injury on the neck was caused by the appellant to the deceased while he lay on the ground. The force with which the injury was given, is amply exhibited by the damage caused and the instantaneous death of the deceased. All these factors disclose the intention of the appellant to cause the fatal injury to the deceased and there is nothing on the record to suggest that the particular injury was "intended" on the particular part of the body of the deceased. [294-B] B C

2. The blow aimed by the appellant on the deceased was with the intention of causing the death of the deceased and in any event the appellant must have known that the injury that he was causing with the barcha on the neck of the deceased was so dangerous that it must in all probability result in the death of the deceased. [294-C] D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 36 of 1985.

From the Judgment and Order dated 10.11.84 of the Judge, Special Court at Ferozepur in Sessions Case No. 31 of 1984 and Sessions Trial No. 24/84 and F.I.R. No. 184 of 1.4.1984. E

M.S. Gujral and P.N. Puri for the Appellant.

R.S. Suri for the Respondents. F

The following Order of the Court was delivered :

For the murder of Amar Singh - nephew of appellant Inder Singh, being the son of his brother Goma Singh, PW4, on 31st March, 1984, at about 11.30 p.m. the appellant alongwith Guddar Singh and Banta Singh, were tried for offences under Section 302/34 IPC. The Trial Court acquitted Guddar Singh and Banta Singh but convicted the appellant for an offences under Section 302 IPC and sentenced him to suffer life imprisonment. Through this appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984, the appellant questions his conviction H

A and sentence.

According to the prosecution case, on the night intervening 31st March, 1984, Amar Singh (deceased) had gone to see off the tractor driver of Seth Madanlal to Jalalabad. He did not return till about 11.30 p.m. His father Gama Singh, PW4 and mother Smt. Rano, PW5 went out in search for his towards the bus stand. They met Amar Singh on the way near the bus stand and started towards their home. When they reached near the house of Khushal Singh, the appellant armed with a Barchha, Banta Singh armed with a Dang and Guddar Singh armed with a Kirpan suddenly emerged from behind the heap of manure. The appellant raised a lalkara that Amar Singh should not be spared and attempted to assault him when Goma Singh PW4 tried to intervene. The appellant gave a blow with the Barchha on the chest of Goma Singh, PW4. Banta Singh gave a dang blow on the right thigh of Goma Singh. At that stage, Smt. Rano, PW5 pleaded with the assailants not to assault her husband and her son and intervened to save them. Guddar Singh gave her a kirpan blow which hit her on her left hand. Banta Singh then gave a dang blow on the right leg of Amar Singh who fell down and as Amar Singh lay fallen on the ground, Inder Singh appellant gave a Barchha blow on his neck. Banta Singh also gave dang blows to Smt. Rano and Goma Singh, PWs and on alarm being raised, the appellants and his co-accused fled away with their respective weapons. When Goma Singh, PW4 and Smt. Rano, PW5 went near Amar Singh, they found him already dead. Leaving the Chowkidar and come other persons, including the widow of Amar Singh who had by then arrived at the scene of occurrence, to guard the dead body, Goma Singh, PW4 went to the hospital to get his injuries treated. He arrived at the hospital at about 1.20 a.m. Doctor Amarjit Singh, Medical Officer, PW2 examined Goma Singh at 1.45 a.m. and found the following injuries on him :

1. Punctured wound 1 cm x 1/4cm muscle deep with fresh bleeding on the lateral aspect of left upper arm in its middle.
2. Contusion 10 cms x 3 cms on the front and upper part of the left thigh, reddish in colour.
3. Abrased wound 3 cms x 1 cm with swelling in an area of 5 cms x 5 cms on the infra scapular region of the right side of the chest with oozing of blood.

The doctor sent information to the police station about the arrival of Goma Singh, PW4 in an injured condition. Harbans Singh, Station House Officer, Police Station, Jalalabad, on receipt of the information proceeded to the hospital alongwith Kuldip Singh ASI, PW6 and some other police officials. After reaching the hospital, he recorded the statement of Goma Singh, Exhibit P.6 at about 3.20 a.m. and sent the same to the police station for registration of the case and the formal FIR, Exhibit P.6/A on its basis was recorded at 3.30 a.m. The copy of the first information report was forwarded to the Ilaqa Magistrate, which was received by him at 6.30 a.m. on 1st April, 1984. The investigation was taken in hand and the investigating officer reached the spot where he collected the blood stained earth and prepared the inquest report and sent the dead body of Amar Singh for post-mortem examination. The rough site plan was also prepared. Doctor Inder Mohan Challana, PW1 conducted post-mortem on the dead body of Amar Singh on 1st April, 1984 at 10.45 a.m. and found the following injuries :

- (i) Stab wound in the right side of the neck 3.5. cms below the angle of the mandible measuring 3.5 cms x 1 cm, 5.5 cm deep going towards thyroid cartilage in a slight downward direction. The margins of the wound were inverted.
- (ii) Reddish abrasion 9 cms x 2 cms at the back of the chest on right side at the level of the posterior axillary line going on the back at 5th/6th rib.
- (iii) Abrasion 2 cms x 1 cm anteriorly over right leg at upper one third."

On dissection, the doctor found the tissues, muscles, vessels and the thyroids cartilage were cut and ruptured. The thyroid was cut at the lower end. The trachea was also cut. The subcutaneous tissues were found congested under injury No. 2. In the opinion of the doctor, the death was caused due to shock and haemorrhage on account of injury No. 1, which was sufficient in the ordinary course of nature to cause death.

With a view to connect the appellatant and his co-accused with the crime, the prosecution examined, besides the medical witnesses, PW1 and PW2, Sunder Singh, PW3, Goma Singh, PW4 and Kuldip Singh ASI, PW6. Smt. Rano, PW5 was offered for cross-examination by the accused. The

A prosecution also tendered in evidence the report of the Chemical Examiner and the Serologist. The affidavit of the police officials whose evidence was of a formal character and from whom the defence had no questions to ask, were also filed. The accused when examined under Section 313 Cr. P.C. pleaded innocence and denied the prosecution allegations against them.

B The Trial Court noticed the injuries suffered by Goma Singh, PW4 and Smt. Rano, PW5 but opined that those injuries could have been manufactured to acquire the label of being stamped witnesses. The Trial Court also found that the prosecution evidence regarding the participation of Banta Singh and Guddar Singh was not established beyond a reasonable
C doubt and gave them the benefit of doubt and acquitted them. The appellant, however, was convicted and sentenced as already noticed.

There is no appeal filed by the State against the acquittal of Banta Singh and Guddar Singh. It however, appears to us that the finding
D recorded by the Trial Court to the effect that the injuries of Goma Singh, PW4 and Smt. Rano, PW5 could be "manufactured", is not justified. The Trial Court apparently lost sight of the fact that Goma Singh, PW5, father of deceased Amar Singh, had reached the hospital at about 1.20 a.m. on 1.4.1984 and had even been examined by the Doctor at the hospital by 1.45
E a.m. in about two hours of the assault. It was on the ruca sent by the Doctor from the hospital about the arrival of injured Goma Singh to the Police Station that the investigating officer had arrived at the hospital and recorded the statement of Goma Singh, PW4. There was, thus, neither any time nor any occasion for Goma Singh, PW4 to have "manufactured" the injuries on himself and gone to the hospital. So far as Smt. Rano, PW5, the
F mother of deceased Amar Singh is concerned, it appears to us almost to be pre-posterous to think that while she was sitting near the dead body of her son, she would have "manufactured" injuries on herself so as to get the label of a stamped witness. It belies logic. The reasoning of the Trial Court is not at all sound. Even a look at the injuries suffered by Smt. Rano, PW5, which included incised wound 3 cms x 1-1/2 cm muscle deep between the
G root of the thumb and index finger of the left hand with swollen margins and swelling around the wound and a contusion 10 cms x 20 cm reddish in colour on the front and the middle of the right upper arm, also indicates that the injuries were not such which could have been suffered from a friendly hand or "manufactured" for the purpose of becoming a stamped
H witness. The prompt lodging of the FIR at 3.30 a.m. on the statement of

Goma Singh, PW4 who had arrived at the hospital as early as at 1.20 a.m. and the receipt of the copy of the FIR by the Ilaqa Magistrate at 6.30 a.m. on 1.4.84, also are indications of PW4 and PW5 to have received the injuries at the time of the occurrence and assault on Amar Singh. A

The prompt lodging of the FIR lends sufficient corroboration to the prosecution case. The statement of PW4 Goma Singh, the father of the deceased has impressed us. He appears to be a witness of truth. He has given in details the manner in which the assault took place. His statement is cogent and consistent with the earliest version contained in the FIR. Nothing has been brought out in the cross-examination of this witness, though he was subjected to searching cross-examination, which would in any way discredit his testimony. The medical evidence and the recovery of the Barchha, Exhibit M/O/4 on the disclosure statement of the appellant, Exhibit P-1, lends further corroboration to his testimony. The prosecution has, in our opinion, successfully connected the appellant with the crime and the Trial Court rightly found him guilty of the murder of Amar Singh. B C D

Mr. M.S. Gujral, the learned senior counsel appearing for the appellant submitted that the motive i.e. that about 13 days prior to the occurrence, cauliflower of the appellants had been stolen and he had suspected Amar Singh deceased to be the thief and since Goma Singh had appeared before the Gram Panchayat and stated on oath that Amar Singh had not stolen the cauliflowers and the case was dropped, was so trivial as could have led the appellant to commit the murder of his nephew. Learned counsel submitted that it could not be stated with any definiteness that the appellant intended to cause the particular injury on the neck itself, which has been found by the Doctor to be sufficient in the ordinary course of nature to cause death. According to Mr Gujral, the intention of the appellant was only to give a thrashing to the deceased on account of the suspicion of the deceased being the thief of his cauliflowers and that he could not have intended to cause the death of the deceased. E F G

From the material on the record, it is established that the appellant was lying in wait, duly armed with a barchha and emerged all of a sudden to attack the deceased. The very fact that he did not even spare PW4, his own brother by causing injuries to him when he tried to intervene to save the deceased shows the determination of the appellant. The nature of the weapon the seat of the injury, which had caused such extensive damage H

A that Amar Singh died instantaneously is also indicative of the intention of the appellant. According to the prosecution case, the deceased had fallen down on receipt of a dang blow and was unarmed. The injury on the neck was caused by the appellant to the deceased while he lay on the ground. The force with which the injury was given, is amply exhibited by the damage caused and the instantaneous death of the appellant. All these factors disclose the intention of the appellant to cause the fatal injury to the deceased and there is nothing on the record to suggest that the particular injury was "intended" on the particular part of the body of the deceased. We are, therefore, unable to agree with Mr. Gujral that the appellant would not be stated to have intended to cause the murder of Amar Singh.

C In our opinion, the blow aimed by the appellant on the deceased was with the intention of causing the death of the deceased and in any event the appellant must have known that the injury that he was causing with the barchha on the neck of the deceased was to dangerous that it must in all probability result in the death of the deceased. His conviction, therefore, D for an offence under Section 302 IPC is well merited, and does not call for any interference.

The appeal, therefore, fails and is dismissed. The appellant is on bail. His bail bonds are cancelled. He is directed to be taken into custody to undergo the remaining portion of the sentence.

VSS

Appeal dismissed.