

State Of Punjab vs Mann Singh And Anr. on 4 January, 1983

Equivalent citations: AIR1983SC172, 1983CRILJ229, 1983(1)CRIMES645(SC), 1983(1)SCALE5, (1983)1SCC207, AIR 1983 SUPREME COURT 172, 1983 (1) SCC 207, 1983 UJ (SC) 244, 1983 CRIAPPR(SC) 179, 1983 SCC(CRI) 165, (1983) SC CR R 257, (1983) ALLCRIR 387, (1983) 1 CRIMES 645

Bench: A.P. Sen, V. Balakrishnan Eradi

JUDGMENT

Sen, J.

1. This appeal by special leave is directed against the judgment passed by Punjab and Haryana High Court dated January 10, 1975 setting aside the judgment and sentences passed by the Sessions Judge Hoshiarpur dated February 13, 1974 convicting Respondent No. 1 Mann Singh for having committed an offence punishable under Sections 304 Part II and 323 of the Indian Penal Code, 1860 and sentencing him to undergo rigorous imprisonment for 7 years and 9 months respectively, and his son Balbir Singh, respondent No. 2, for an offence under Sections 304 Part II and 323 both read with Section 34 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 3 years and 6 months respectively. On appeal, the High Court has upheld the conviction of respondent No. 1 Mann Singh but reduced his sentence to the period already undergone i.e. for a period of 20 months and to a fine of Rs. 2000/- or in default to suffer further rigorous imprisonment for two years, but acquitted his son Balbir Singh, respondent No. 2 of both the offences.

2. The prosecution in brief is as follows. On the date of occurrence i.e. on June 22, 1973, early in the morning Mst. Lila Wanti, wife of the accused Mann Singh and one Mst. Rekhi had an altercation leading to exchange of abuses, at which Mst. Lila Wanti snatched away the veil from the head of Mst. Joginder Kaur, PW. 9, daughter of the deceased Pala Singh, who tried to intervene. At about 12.30 p.m. the deceased Pala Singh returned from his field and Sewa Singh, PW. 4, a neighbour, took him to the house of the accused Mann Singh to protest over the incident and made a demand for return of the veil from the accused Mann Singh at which Mann Singh got infuriated and started abusing the deceased Pala Singh. On seeing him in an agitated mood, both of them returned and the deceased Pala Singh lay down on a cot under a mulberry tree in front of his house.

3. The prosecution case is that after about an hour, the accused Mann Singh armed with a Dang and his son Balbir Singh armed with a Gandasi, arrived at the scene of occurrence and hurled abuses at the deceased Pala Singh, who thereupon got up from his cot and asked them to desist from abusing him. Upon this, both the accused made a joint assault on the deceased Pala Singh Mann Singh dealt a blow with his Dang on the head of the deceased Pala Singh, and the accused Balbir Singh gave a Gandasi blow on his head as a result of which the deceased fell down unconscious at the spot. On

hearing the alarm raised by the deceased Pala Singh, Mst. Joginder Kaur, P.W. 9 rushed out of the house and laid herself on her father in order to save his life. The accused Mann Singh gave her a couple of blows with the Dang and both the accused then left the place of occurrence. The deceased was taken in an unconscious condition to Civil Hospital, Mukerian where he was examined by Dr. Randhiraj Singh, P.W. 1 who found the following two external injuries:

1. A verticle lacerated wound $2\frac{3}{4}$ " X $1\frac{1}{4}$ " X $1\frac{1}{6}$ " on the left side of the head. It was 4" away from left pinna and 3" above the left eye-brow.
2. A transverse incised wound 1" X $1\frac{1}{8}$ " X $1\frac{1}{8}$ " on the top of the head, 3" from the root of the nose and 5" above the left pinna.

These injuries were bleeding head injuries and the deceased was in a precarious condition. Dr. Randhiraj Singh, P.W. 1 found that the deceased was in a serious condition and therefore referred him to Cancer Hospital, Talwara for treatment, but the deceased died on his way because of the head injuries. In his opinion, Dr. Randhiraj Singh stated that the injury No. 1 was caused by a blunt-edged weapon and the injury No. 2 by a sharp-edged weapon.

4. Dr. Ram Lubhaya, Medical Officer, Cancer Hospital, P.W. 2 performed an autopsy on the dead body of the deceased and found the following two internal injuries:

1. A wound 7 cm long on the left side of the head, verticle direction about 10 cm from the left pinna, and 7.5 cm above the left" eye. The skull bone underneath showed crack fracture at right angle to the injury.
2. A wound 2.5 cm in length on the top of the head, transverse direction, about 7.5 cm from the root of the nose and 12 cm above the left pinna.

According to Dr. Ram Lubhaya, P.W. 2, the injury No. 1 was sufficient in the ordinary course of nature to cause death.

5. The prosecution based its case on the direct testimony of the three eye-witnesses, viz. Sewa Singh, P.W. 4, Harbans Singh, P.W. 8, and Mst. Joginder Kaur, P.W. 9, brother and daughter of the deceased. The learned Sessions Judge relied on the testimony of the eye-witnesses and found that both the accused Mann Singh and Balbir Singh came together, armed with a Dang and a Gandasi and made a joint assault on the deceased leading to a fracture of the skull. He held that although both the accused may not have intended to cause the death of the deceased, both of them acted in furtherance of their common intention. The accused Mann Singh and Balbir Singh came armed with deadly weapons and when they struck the deceased on the head with a Dang and Gandasi, they must necessarily be attributed with knowledge (that it was likely to cause such bodily injury as was likely to cause death, having regard to the fact that the deceased was an old man of 65 years. The learned Sessions Judge accordingly convicted the accused Mann Singh for having committed culpable homicide not amounting to murder punishable under Section 304 Part II and Section 323 for having voluntarily caused hurt to Mst. Joginder Kaur, and sentenced him as stated above. He further

convicted the accused Balbir Singh for having committed an offence punishable under Sections 304 Part II and 323 read with Section 34, and sentenced him as already stated.

6. On appeal by the respondents against their conviction and sentence, there was no attempt made by them to challenge the conviction of the accused Mann Singh before the High Court and indeed the High Court observes that counsel appearing for the respondents addressed no arguments on merits. The only contention advanced by him was as regards the conviction of the accused Balbir Singh and on the sentence passed on the accused Mann Singh. It appears that learned Counsel for the State did not object to the reduction of the sentence. The High Court set aside the conviction of the accused Balbir Singh observing that "only two injuries were inflicted on the deceased and the same could have been caused by one weapon like Dang which were attributable to the accused Mann Singh". As regards the sentence on the accused Mann Singh, it held that "it would meet the ends of justice if the sentence of imprisonment was reduced to that already undergone by him" i.e. for a period of 20 months together with a fine of Rs. 2000/-, or in default to suffer rigorous imprisonment for two years.

7. The order of acquittal of the accused Balbir Singh as recorded by the High Court has caused manifest miscarriage of justice. There was no basis for the assumption made by the High Court that both the head injuries caused to the deceased Pala Singh could be inflicted by one weapon like Dang and therefore could be attributed to the accused Mann Singh. The conclusion reached by the High Court proceeds on mere conjectures and surmises and is wholly unwarranted by the evidence on record. According to the evidence of Dr. Randhiraj Singh, P.W. 1 the deceased Pala Singh had two head injuries. One was a lacerated wound and the other was an incised wound. In his opinion, the lacerated wound was caused by a blunt-edged weapon and the incised wound was caused by a sharp-edged weapon. The unimpeachable testimony of the three eye-witnesses viz. Sewa Singh, P.W. 4, Harbans Singh, P.W. 8, and Mst. Joginder Kaur, P.W. 9 clearly shows that both the accused Mann Singh and his son Balbir Singh made a joint assault on the deceased Pala Singh by their weapons. In view of this, the learned Sessions Judge was right in convicting the accused Mann Singh for having committed culpable homicide not amounting to murder punishable under Sections 304 Part II and 323, and the accused Balbir Singh under Section 304 Part II read with Section 34. There can be no doubt whatever that both the accused Mann Singh and Balbir Singh acted with prior concert when they assaulted the deceased. Accordingly, we restore the judgment and sentence passed by the learned Sessions Judge, Hoshiarpur with regard to the accused Balbir Singh.

8. As regards the sentence imposed on the accused Mann Singh the High Court could not have reduced the sentence for an offence of culpable homicide not amounting to murder punishable under Section 304 Part II to the sentence already undergone i.e. for a period of 20 months only with a fine of Rs. 2000/- merely because counsel for the State did not oppose a reduction in the sentence. It is the duty of the Court in every case to award a proper sentence having regard to the nature of the offence, the manner in which it was committed and to all the attendant circumstances. The testimony of the eye-witnesses shows that the accused Mann Singh had struck the blow with sufficient force as a result of which the deceased fell down unconscious in a pool of blood. There can be no doubt that the accused Mann Singh hit the deceased Pala Singh with the Dang with great force because it resulted in a fracture of the skull, and ultimately caused his death. He must therefore bear

the consequences of his act. In all the facts and circumstances of the case, if there is to be a reduction of the sentence, the proper sentence to award on the accused Mann Singh would be a sentence of rigorous imprisonment for three years, and a fine of Rs. 3000/- or in default, to suffer rigorous imprisonment for two years more.

9. The result therefore is that the appeal must succeed and is allowed. The judgment of the High Court dated January 10, 1975 is set aside and instead the judgment and sentences of the learned Sessions Judge dated February 13, 1974 are restored subject to a modification in the sentence. Respondent No. 1 is convicted for having committed an offence punishable under Sections 304 Part II and 323 and sentenced to undergo rigorous imprisonment for three years, with a fine of Rs. 3000/-or in default to suffer rigorous imprisonment for two years more. The entire amount of the fine, if realized, be paid over to the heirs of the deceased. Respondent No. 2 Balbir Singh is convicted for having committed an offence punishable under Sections 304 Part II and 323, both read with Section 34 and sentenced to suffer rigorous imprisonment for 18 months.