Hazara Singh & Ors vs State Of Punjab on 4 February, 1971

Equivalent citations: AIRONLINE 1971 SC 25, 1972 (1) SCC 529

Bench: K. S. Hegde, A. N. Grover

PETITIONER:
HAZARA SINGH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT04/02/1971

BENCH:
[K. S. HEGDE AND A. N. GROVER, JJ.]

ACT:
Indian Penal Code, ss. 307, 146, 148 and 349-Miscreants firing shots on police party in darkness-No evidence that shots were fired in direction of members of police party-Offence of attempt to murder could not be said to be made out-Firing of such shots is not use of force as defined in s. 349-Offenders even though more than five do not commit a riot within meaning of s. 146-Cannot be held guilty of offence under s. 148.
Evidence-Excessive similarity between evidence of two witnesses-Inference of tutoring can be drawn specially when the witnesses are clearly not independent.

HEADNOTE:
The six appellants were challenged by a police party when they were proceeding towards Pakistan territory with contraband goods. Two of them, H and B, had fire-arms with which they fired shots. No member of the police party was injured. There was darkness except for a temporary illumination created by the firing of two shots from a light pistol. The police claimed to have recognised H and B, in this light even though they fled away from the scene. The remaining four persons were arrested ,on the spot. H and B, were arrested later and on their pointing out, two unlicensed arms were recovered. The Sessions Judge held H and B, to be guilty under s. 307 of the Indian Penal Code as well as s. 25 of the Arms Act . The remaining four

appellants were convicted under s. 307 read with s. 149 I.P.C. All the appellants were convicted under s. 148. The High Court maintained the convictions of the appellants though in the ,case of those without fire arms it reduced the sentences., With special leave the appellants filed appeals in this Court,

HELD : (1) From the evidence it was quite clear that the shots which were fired by H and B, were not fired during the few seconds there was light as a result of the light pistol shots. In other words the shots were fired in complete darkness when it was not possible for any member of police party to see the direction in which they were fired or the aim which was taken by H and B. It was not possible to say from this evidence that H and B fired the shots in the direction of the police party or at them and the possibility that the shots were fired in the air could not be excluded. Thus the conviction under s.'307 of H and B and of the other appellants under s. 307 read with s. 149 could not be maintained.[678 B-D]

(2)Rioting is defined by s. 146 which provides that whenever force or violence is used by an unlawful assembly or any member thereof in prosecution of the common object of such assembly every member of such assembly is guilty of the offence of rioting. Section 349 gives the meaning ,of the word 'force'. In the present incident no force or violence was proved to have been used by the appellants in prosecution of the common ,object of the unlawful assembly of which they were members. With the exception of the firing of the shots in a direction which could not be determined, no attempt was made by any of the appellants to use any force or

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violence on any member of the police party. Accordingly, the conviction of the appellants under s. 148 must also be set aside. [678 F-G]

(3)The discloure statements made by H and B in respect of fire arms recovered at their instance could not be acted upon because the two witnesses produced in this connection gave statement which by their similarity appeared to be tutored and unconvincing. These witnesses were associated with the police raids over a long period. The other witness was proved to be inimical to H and B. The High Court erred in ignoring these facts. The conviction of H and B under s. 25 of the Arms Act could not be sustained. [679 B-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 139 to 141 of 1968.

Appeals by special leave from the judgments and orders dated January 31, 1968 of the Punjab and Haryana High Court in Criminal Appeals Nos. 653, 655 and 654 of 1967 respectively. R. L. Kohli, for the appellants (in all the appeals). Harbans Singh, for the resondent (in all the appeals). The Judgment of the Court was delivered by Grover, J.-Hazara Singh, his brothers Bachan Singh and Jamail Singh and three others Bhajan Singh, Baj Singh and Balwant Singh were tried under S. 148 of the Indian Penal Code for being members of an unlawful assembly and in prosecution of the common object of that assembly which was to attempt to murder the police party, while these persons were armed with deadly weapons Eke pistol and rifle, having committed the offence on the midnight intervening 21st and 22nd July 1964. Hazara Singh and Bhajan Singh were also charged under s. 307, Indian Penal Code, while the other four were charged under s. 307 read with S. 149 of the Code for Hazara Singh and Bhajan Singh having fired pistol shots at the police party with such intention and under such circumstances that if they had there by caused the death of any member of the police party they would have been guilty of murder.

Hazara Singh and Bhajan Singh were further tried on a charge under S. 25 of the Indian Arms Act. The learned Sessions Judge found that all the six persons were proceeding towards Pakistan in order to smuggle six bags containing 40 Kg. cardamom each. Hazara Singh and Bhajan Singh were armed with a rifle and a pistol respectively and when challenged by the police party they fired shots from their weapons at the police party in their attempt to murder them in pursuance of the common object of them all and as such they were guilty of an offence under s. 148 of the Indian Penal Code. They were con-

victed and sentenced to one year's rigorous imprisonment on that count. Hazara Singh and Bhajan Singh were found guilty of the offence under S. 307 of the Indian Penal Code while their co-accused were found guilty of the offence under ss. 307 and 149, Indian Penal Code, and each one of them was sentenced to rigorous imprisonment for a period of five years and payment of a fine of Rs. 5001. The sentences were to run concurrently. Bhajan Singh and Hazara Singh were further found guilty of the illegal possession of firearms under s. 25 of the Arms Act and were sentenced to rigorous imprisonment for one year each.

On appeals to the High Court the conviction of the aforesaid persons was upheld but the sentences of Bachan Singh, Jarnail Singh, Baj Singh and Balwant Singh were reduced to three years' rigorous imprisonment. All the convicted persons have filed appeals to this Court (Cr. As. 139- 141/68) by special leave. These shall stand disposed of by this judgment.

The prosecution story was that Inderjit Singh P.W. I who was posted as Deputy Superintendent of Police P.A.P. Border, Khem Karan, had received information on 31st July 1964 that a party of smugglers would be smuggling some goods to Pakistan during the night. He organised a raiding party consisting of Sub-Inspector Ajit Singh P.W. 1,5, Agya Ram P.W. 12, A.S.1s. Darshan Singh, Nand Singh and Mulakh Raj, Head Constables Surjit Singh P.W. 3, and Ajai Singh P.W. 13. The entire raiding party was divided into four groups. Each group was headed by one of the officers including Inderjit Singh D.S.P. At about midnight the police party noticed some persons coining from the side of village Lakhna by the katcha path with some mares. The path led to Pakistan. It was a moonlit night but was cloudy at that time. It is unnecessary to go into the details which will be

presently noticed of how the firing of the shots took place by the accused persons and how they were identified and arrested. Four of them were taken into custody at the spot but Hazara Singh and Bhajan Singh escaped on their mares' They were arrested later and on their disclosure a rifle and 'a revolver were recovered. No one was injured and although some empty cartridges were found but no attempt was made to find the bullets which are alleged to have been fired by the party of the appellants.

The evidence of the police officers was consistent and we may only refer to the deposition of Inderjit Singh D.S.P. who appeared as P.W. 1 According to him when the culprits were at a distance of 25 to 30 karams (One karam is equal to 67 7 feet) he alerted members of the police party to be on their guard and directed Sub-Inspector Ajit Singh to challenge the culprits and inform them that the police party was holding its positions and they should stop proceeding further. Ajit Singh accordingly challenged the culprits. Thereupon the, leader of the party fired a shot at the police party. Inderjit Singh then ordered Sub-Inspector Agya Ram to fire a light pistol so that there might be light and it might be possible to identify the culprits. Agya Ram fired a shot and in the light that emerged the leader of the party was identified as Hazara Singh appellant who was riding a mare and who had a rifle in his hand. He was followed by Bhajan Singh or Harbhajan Singh who also was riding a mare and had a loaded, bag and was armed with pistol. He was followed by the other four on foot. These persons then shouted to their companions Hazara Singh and Bhajan Singh that they should open fire on the police party. Thereupon Hazara Singh and' Bhajan Singh started firing shots from their respective weapons. Sub-Inspector Ajit Singh ordered the police party to open fire in defence. Four Head Constables fired two shots each from their rifles at the culprits. At this stage Agya Ram fired another light pistol shot. Hazara Singh and Bhajan Singh ran away on their mares throwing away the bags. The other four persons were found lying down on the ground. There can be no manner of doubt that if Hazara Singh and Bhajan Singh fired shots at the police party and even though no one was injured the appellants would be guilty of the offences with which they were charged. The real question is whether it had been proved beyond doubt that the shots were fired at the police party. There could be two possibilities in such a situation, one could be of the shots being fined in the direction of the police party or taking aim at them and the other could be of the shots being fired in the air or in some other direction and not in the direction of the police party merely to create confusion for the purpose of running away. On the evidence of Inderjit Singh P.W. 1 himself it was a moonlit night but owing to the weather being cloudy it was dark and light pistol shots bad to be fired by Sub-Inspector Agya Ram on two occasions in order to provide sufficient light for seeing and identifying them. The light provided by these pistol shots admittedly lasted only for 2 or 2 1/2 seconds. If the shots which are alleged to have been fired by Hazara Singh and Bhajan Singh had been fired,at the time when there was light as a result of the firing of the light pistol shots by Sub-Inspector Agya Ram then it could be said to have been established that the Deputy Superintendent of Police and the other witnesses could have seen in which direction the fire arms were fired by Hazara Singh and Bhajan Singh and their statement could have been accepted that ,the shots had been fired at them. But from the evidence of Inderjit Singh as also of Sub-Inspector Agya Ram who actually fired the light pistol shots which provided the light on two occasions it is quite clear that the shots which were fired by Hazara Singh and Bhajan Singh were not fired during the few seconds there was light as a result of the light pistol shots of Agya Ram.- In other words the shots which are stated to have been fired by the aforesaid two appellants were fired in complete

darkness when it was not possible for any member of the police party to see the direction in which they were fired or the aim which was taken by Hazara Singh and Bhajan Singh. It is not possible to say from this evidence that Hazara Singh and Bhajan Singh fired the shoots in the direction of the police party or at them, and the possibility that the shots were fired in the air cannot be excluded. Thus the conviction under S. 307 of Hazara Singh and Bhajan Singh and of the other appellants under s. 307 read with s. 149, Indian Penal Code cannot be maintained and they must' be acquitted of that charge. It is unfortunate that the judgment of the High Court' is very sketchy and there is hardly any discussion or examination of all the above material facts.

As regards, the conviction of the appellants under S. 148 of the Indian Penal Code we find it difficult to uphold the same. According to that section whoever is guilty of rioting being armed with deadly weapons or with anything which used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Rioting is defined by s. 146 which provides that whenever force or violence is used by an unlawful assembly or any member thereof in prosecution of the common object of such assembly every member of such assembly is guilty of the offence of rioting. Section 349 gives the meaning of the word "force". The learned counsel for the State has not been able to show how any force or violence is proved to have been used by the appellants in prosecution of the common object of the unlawful assembly of which they were members. With the exception of the firing of the shots in a direction which cannot be determined no attempt was made by any of the appellants to use any force or violence on any member of the police party. Consequently the conviction of the appellants under s. 148 must also be set aside. As regards the conviction of Hazara Singh and Bhajan Singh under s. 25 of the Indian Arms Act it is most unfortunate that the witnesses who were produced with regard to the disclosure statements made by them and the recoveries effected at their 6 7 9 instance are of such a type that their evidence could never have been believed by any court. Lal Singh P.W. and Karnail Singh P.W. admitted that they had been joining in the police raids and had been appearing as witnesses for the police for the last 15 years. Apart from that the statements made by them were so similar particularly with regard 'to the manner in which they happened to join the investigation that their whole evidence looks tutored and unconvincing. P.W.11 Hakam Singh admitted that Pooran Singh was the son of his cousin Geja Singh and that he had been convicted-in a case of murder and sentenced to life imprisonment. Charan Singh, uncle of the two appellants had appeared as a witness against Pooran Singh in that case. He was obviously an inimical witness. It is again surprising that the High Court in its very sketchy judgment had made-- no mention of these salient facts and has contended itself by saying that there was nothing on the record to indicate that the appel- lants had been falsely implicated. The conviction of Hazara Singh and Bhajan Singh, therefore, cannot be maintained under s. 25 of the Arms Act.

In the, result the appeals are allowed and the convictions and sentences of all the appellants are here by set aside. The bail bonds of the appellants who were ordered to be released on bail by this Court on July 15, 1968 shall stand discharged.

G.C. Appeals allowed-
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