

Hardev Singh vs State Of Punjab on 11 May, 1994

Equivalent citations: 1994 SCC, SUPL. (2) 282 JT 1994 (4) 120, AIR ONLINE 1994 SC 258

Author: Yogeshwar Dayal

Bench: Yogeshwar Dayal

PETITIONER:
HARDEV SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 11/05/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
YOGESHWAR DAYAL (J)

CITATION:
1994 SCC Supl. (2) 282 JT 1994 (4) 120
1994 SCALE (2) 900

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- Original accused 3 is the appellant in Criminal Appeal No. 12 of 1982 and original accused 4 is the appellant in Criminal Appeal No. 400 of 1982. They along with six others were tried for offences punishable under Sections 302, 302/149, 307 and 307/149 IPC and under Section 27 of the Arms Act. The trial court acquitted A-5 to A-8 and convicted A-1 to A-4 and sentenced them to imprisonment for life in respect of the murder charge and various other terms of imprisonment in respect of other offences. The appeal preferred by them was dismissed by the High Court.

2. It may be mentioned at this stage that during the pendency of the special leave petition in this Court A-1, Hardeep Singh died and the special leave petition filed by A-2, Baljinder Singh was dismissed. Therefore we are left with + From the Judgment and Order dated 6-8-1981 of the Punjab and Haryana High Court in Crl. Appeal No. 773-DB of only A-3 Hardev Singh and A-4, Jaspal Singh who figure as appellants in these two appeals.

3. The prosecution case is as follows: Hardeep Singh, A-1 and his son Jaspal Singh, A-4 are the residents of Village Salewala. A-2 is the Sarpanch and resident of Village Khanewal. A-3 belongs to another Village Khang. A-5, one of the acquitted accused also belongs to Village Khanewal. A-6 to A-8 belong to Village Salewala. Two months before the present occurrence Amritpal Singh, deceased 1 and one Sarbjit Singh had quarrelled with Kuldeep Singh, Sarpanch, A- 7, one of the acquitted accused and brother of A-1, at the Patiala bus stand. A-3 is the wife's brother of Kuldeep Singh. On 22-7-1979, Partap Singh, PW 4 and his son Amritpal Singh, deceased 1 and Satbir Singh had gone to Pattran for making some purchases and they started to go back to their village at 5 p.m. The deceased was driving the motorcycle and Harbans Singh Sarpanch, deceased 2 and Surjit Singh, PW 6 were sitting on the pillion seat. Another motorcycle was driven by Sarbjit Singh and Satbir Singh and Partap Singh, PW 4 were sitting on the pillion seat. When they reached near the Sam Nala bridge after crossing Village Salewala, they noticed A-1, armed with a .12 bore gun, A-2 armed with .31 5 bore rifle and A-3 armed with gandasa hiding in the Akk plants. At that time Amritpal Singh, deceased 1 was going ahead on the motorcycle than the other one. While so both A-1 and A-2 fired one shot each on Amritpal Singh, deceased 1 who fell down after receiving the injuries along with Harbans Singh, deceased 2 and Surjit Singh, PW 6 towards the left of the road. Just at that juncture, a truck driven by A-4 came from the side of Village Khanewal. In that it is alleged that the other acquitted accused were sitting by the side of the driver armed with .12 bore pistol etc. and they raised lalkaras to kill the deceased and according to the prosecution, the truck went and hit and ran over the motorcycle. The gun of deceased 1 which was in the hands of deceased 2 was also broken. The three persons coming on the other motorcycle came forward to save them but the accused in the truck fired but nobody was hit. The truck got stuck in the water. Amritpal Singh, deceased 1 had already died because of gunshot injury and Harbans Singh, deceased 2 was unconscious and Surjit Singh, PW 6 was lying injured outside the water. One Jagjit Singh came and took the injured Surjit Singh to the hospital and the injured Harbans Singh was taken by another person to the hospital in a car leaving others at the place of occurrence. Partap Singh left for the police station and lodged a report before ASI, Kehar Singh, PW 17 and the case was registered. Surjit Singh, PW 6 was examined by Dr Barjesh Modi, PW 1. He found two lacerated wounds and a swelling and two abrasions. After X-ray, injuries 1 and 2 were declared grievous. The doctor opined that he could have received these injuries by striking against the running truck. Dr C.L. Verma, PW 3 conducted the postmortem on the dead body of deceased 1 and he found a gunshot wound on the right side of the forehead. On dissection, the frontal bone was found to be fractured and the brain matter was punctured and it was opined that he died due to this gunshot injury. Deceased 2 meanwhile died. The same doctor, PW 3, also conducted postmortem on his dead body and found several abrasions all over the body and left thigh and left leg were found to be pinkish blue. On internal examination he found fractures of clavicle and 3rd to 10th rib on the right side, puncture of right lung and fractures of 2nd to 10th rib on the left side. The other internal organs like liver and kidneys were found to be ruptured. The doctor opined that the death was due to shock and haemorrhage due to

these injuries and he also opined that all the injuries on the body of deceased 2 could be the result of an accident with a heavy vehicle. ASI, PW 17 got the place of occurrence photographed and he found some empty cartridges at the scene of occurrence which he seized. The truck which got stuck in the water was also taken into possession. The accused were arrested and after completion of the investigation, the charge-sheet was laid. The prosecution examined as many as 18 witnesses. PWs 1 to 3 are the doctors, PW 4 Partap Singh is the father of deceased 1 who gave the report. PW 6 is the injured witness. The rest are all official or panch witnesses.

4. The accused denied all the allegations. A-1, however, stated that the two deceased persons and PW 6 received injuries in the motorcycle accident when they were going at a high speed and could not control and that the truck in question was driven by one Baldev Singh and not by A-4 and Baldev Singh tried to avert the accident and in that attempt he took the truck to the extreme right and went into the ditches and during the same PW 6 also received injuries and that the persons on the motorcycle were carrying a gun which went off accidentally by their fall and caused injuries to deceased 1. A-4 stated that he was a student and he was not at the scene of occurrence. The other accused in general denied the occurrence and examined some defence witnesses. The trial court relied on the evidence of PWs 4 and 6 and held that A-1 to A-3 were waiting in hiding and when the motorcycle driven by deceased 1 came, they advanced. A-1 and A-2 fired at D-1 who was hit by the shot fired by A-1 and the shot fired by A-2 did not hit him. The trial Judge further held that A-1 to A-3 had the common intention to cause the death of deceased 1. He also held that the other five accused reached in the truck after the deceased was already hit with gun and therefore they cannot be held liable for the murder of deceased 1. He, however, held that A-4 who was driving the truck had overrun deceased 1 and PW 6 and therefore he had also the intention to cause the death of deceased 1 and accordingly convicted him under Section 302 read with Section 34 IPC and Section 302 in respect of deaths of deceased 1 and deceased 2 respectively. He also convicted A-4 under Section 307 IPC for causing injuries to PW 6 by dashing him against the truck and the other accused were convicted under Sections 302/34 IPC. A-1 is also convicted under Section 27 of the Arms Act. The High Court agreed with the findings of the trial court and confirmed the convictions and sentences. A-3, Hardev Singh, the appellant in Criminal Appeal No. 12 of 1982 has been made constructively liable along with A-1 and A-2 in respect of the murder of deceased 1. According to the prosecution he was armed with a gandasa and was in the company of A-1 and A-2 who shot at deceased 1 but he was hit by the gunshot fired by A-1. Learned counsel submits that the case of A-3 is in no way different from the case of the acquitted accused A-5 to A-8, who according to the prosecution, were seated in the truck armed with pistol and gun and who also raised lalkaras instigating to kill the deceased. It is also submitted that A-3 had not used his gandasa on anyone and in a case of this nature arising out of acute enmity, it is highly unsafe to convict A-3. We find considerable force in this submission. PW 6, the injured witness simply deposed that A-3 was there along with A-1 and A-2 and raised a lalkara. Therefore we agree with the learned counsel that his case is in no way different from that of the other acquitted accused. Therefore he is also entitled to the benefit of doubt.

5. Now coming to the case of A-4, Jaspal Singh, the appellant in Criminal Appeal No. 400 of 1982, the prosecution case is that after D-1 was hit by the gunshot, the truck driven by A-4 came there and dashed against the motorcycle driven by deceased 1 which had already fallen and ran over it. It is in

evidence that deceased 1 was driving the motorcycle and he fell down because of the gunshot injury. Consequently the motorcycle also fell to a side and deceased 2 and PW 6 who were on the pillion also fell down. Then, according to the prosecution, the truck ran over them causing injuries to deceased 2 and Surjit Singh, PW 6. On this aspect, the evidence of PW 6 is rather important. He deposed that the motorcycle was driven by deceased 1 and he and deceased 2 were sitting on the pillion and before starting deceased 1 handed over his own gun to deceased 2 and when they were nearing the Sam Nala bridge, they saw A-1 and A-2 armed with a gun and a rifle respectively and A-3 armed with a gandasia hiding behind Akk plants and that A-1 and A-2 fired and the shot fired by A-1 struck the forehead of deceased 1 as a result of which they fell down from the motorcycle along with the motorcycle and just then A-4 drove the truck towards them and all the three of them were dragged by the truck along with the motorcycle towards the ditches. PW 6 further deposed that he was hit by the side of the truck as a result of which his left leg and right arm were fractured. In the cross-examination he stated that all the three of them entangled in the motorcycle when it fell down. He also admitted that he could not say if the truck had gone out of control before proceeding towards the ditches. He added that the truck had passed over the motorcycle but again stated that no wheel of the truck passed over it and that he did not notice which part of the motorcycle was hit by the truck. He admitted that deceased 1 was also hit by the left side of the truck and that the motorcycle and deceased 2 were hit by the front portion of the truck. PW 4, the other eyewitness, who was travelling in the other motorcycle deposed that deceased 1 fell down after being hit by the gunshot along with deceased 2 and PW 6 to their left and that the truck driven by A-4 came and ran over the fallen people. In the cross-examination he stated that after their fall none of their bodies came under the motorcycle but he added that wheel of the truck passed over the motorcycle. He, however, admitted that none of the riders was overrun by the wheels of the truck and that the truck hit against the motorcycle. A perusal of the chief-examinations and cross-examinations of these two witnesses would show that they could not give a correct picture as to how the truck hit the motorcycle. Relying on these admissions, the learned counsel strongly contended that at the most it can be an accident or a rash and negligent act and that Section 302 IPC cannot be invoked by any stretch of imagination by calling it a murder. Having examined the evidence of PW 4, we do find considerable force in this submission. That apart, the medical evidence assumes importance. PW 1, a doctor, examined PW 6 and found six injuries on him. The first injury was a swelling pain on the right elbow, the second was painful tender swelling over the left thigh, the third was only an abrasion below the left nipple of the chest, the fourth one was a bruise on the left arm just above elbow, the fifth one was a lacerated wound on the posterior aspect of left thigh just above the knee and the sixth injury was a lacerated wound skin deep on the dorsum of right foot. The doctor opined that the possibility of receiving these injuries being caused by striking with a truck cannot be ruled out. In the cross-examination the doctor again admitted that the possibility of PW 6 receiving these injuries by fall of a motorcycle along with the motorcycle cannot be ruled out. Another significant admission made by him is that he did not find any crush injury. He also stated that if a truck overruns, there would be crush injuries on the part coming under the truck. This medical evidence amply shows that the truck did not pass over on any part of the body of PW 6 but at the most he could have received the injuries because of the fall after being knocked down. PW 3, another doctor, who conducted the postmortem of deceased I found only one gunshot injury on the forehead which caused the death and another lacerated 'wound bone deep on the left leg and another abrasion on the medial aspect of the left leg. These injuries would show that deceased 1 though got entangled

with deceased 2 and PW 6 due to fall, but did not receive any injury by virtue of the truck dashing against the motorcycle. PW 3 also conducted the postmortem on the dead body of deceased 2. He found six abrasions and some portions of the body being pinkish blue. On dissection he found fracture of the clavicle and ribs and rupture of kidneys and liver. He opined that the injuries on deceased 2 can be the result of heavy vehicle accident. In the cross-examination he admitted that the abrasions can be the result of rubbing against a hard surface and some of the injuries can be the result of fall from motorcycle on uneven ground. The doctor did not say that he noticed any crush injuries. From his evidence also it cannot be ruled out that the injuries can be due to a heavy vehicle accident and there is no re-examination clarifying the position. As already mentioned the plea of the accused had been that some driver was driving the truck which went out of control resulting in accident and since the driver tried to avert, the truck went into the ditches and got stuck in the water. If really it was the intention of the driver, whoever he may be, to dash against the victims with a view to commit murder, he could have hit and proceeded. The fact that it got into the ditches would probabilise the theory of accident. Under these circumstances, we find it difficult to uphold the conviction of A-4 for the offence of murder. However, it is clear that he drove the vehicle in a rash and negligent manner and consequently he would be liable under Section 304-A IPC.

6. For the aforesaid reasons A-3 Hardev Singh is acquitted and Criminal Appeal No. 12 of 1982 filed by him is allowed. All the convictions and sentences awarded against A-4, Jaspal Singh are set aside. Instead he 'IS convicted under Section 304-A IPC and sentenced to undergo two years' RI. In the view we have taken namely that Jaspal Singh, A-4 was responsible for causing the death of Harbans Singh, deceased 2 and injuries to Surjit Singh, PW 6 by rash and negligent driving, we think this is a fit case where Jaspal Singh, A-4 should be directed to pay sufficient amount by way of compensation to the legal heirs of Harbans Singh, deceased 2 and to Surjit Singh, PW 6. Accordingly as provided under Section 357 CrPC, Jaspal Singh, A-4 is directed to pay Rs 30,000 by way of compensation to the legal heirs of Harbans Singh, deceased 2 and Rs 10,000 to Surjit Singh, PW 6. If the amounts are not deposited within three months from today, the same shall be recovered and paid to the legal heirs of Harbans Singh, deceased 2 and to Surjit Singh, PW 6 as provided under Section 357 read, with Section 431 CrPC. Accordingly Criminal Appeal No. 400 of 1982 filed by him is partly allowed.