

## **Jumman And Ors. vs The State Of Punjab [Alongwith Criminal ... on 15 November, 1956**

**Equivalent citations: AIR1957SC469, 1957CRILJ586, AIR 1957 SUPREME COURT 469**

### **JUDGMENT**

Govinda Menon, J.

1. In Sessions case NO. 41 of 1955 before the Additional Sessions Judge of Amritsar, the accused persons were Jumman, Darshu and Chanan sons of Ishar, Sohan alias Sohni son of Thakar, Bansa son of Ishar and Hazara Singh son of Jetha, charged with various offences. All the accused were charged Under Section 302/149, as well as for the offence of rioting Under Section 148, I. P. C. Jumman, Darshu, Chanan and Sohni were also charged Under Section 302, I. P. C. for having committed the murder of Tara Singh, Lakha Singh and Sangha Singh. Bansa and Hazara Singh were charged Under Section 307/34, I. P. C, for having attempted to commit the murder of Mohindar Singh, Kartar Singh and Nand Singh. There were also certain additional charges which, it is unnecessary, to refer in detail. The learned Sessions Judge found all the six guilty and sentenced Jumman, Darshu, Chanan and Sohni to death and Hazara Singh and Bansa to imprisonment for life for the offence Under Section 302/109, I. P. C., and to imprisonment for a period of 5 years for an offence Under Section 307/34, I. P. C. Against these convictions and sentences Chanan, Darshu and Sohni preferred Criminal Appeal NO. 14 of 1956 in the Punjab High Court at Chandigarh. Criminal Appeals NOS. 30 and 32 of 1956 were filed, by Jumman, (cr. A. NO. 30 of 1956), by Jumman, Darshu, Chanan Sohni, Bansa and Hazara (cr. A. NO. 32 of 1956) respectively. All these appeals were heard together and a common judgment, delivered by the learned Judges of the High Court by which the convictions of all the appellants were confirmed but the sentence of death passed on the 4th accused Sohni was reduced to imprisonment for life on account of his youth. The sentences on the other accused were confirmed. Special leave having been granted by this Court to Jumman, Darshu and Chanan, Criminal Appeal NO. 129 of 1956 is in consequence of that and Criminal Appeal NO. 153 of 1956 is by Bansa. Hazara Singh had applied for special leave to appeal by Criminal Miscellaneous Petition NO. 568 of 1956 and for the reasons given by us at the time of the hearing, special leave to appeal was granted to him.

2. It will thus be seen that Sohni is no longer before the Court and that only the case of the other five accused need be considered. Jumman, Darshu, Chanan and Bansa are brothers and Hazara Singh is stated to be a relation of their father.

3. The rioting and murders which have given rise to the prosecution, took place in the village Attalgarh at about 8:30 A. M. on 25th February 1955, and according to the prosecution case three individuals, namely Lakha Singh, Tara Singh and Sangha Singh, lost their lives in the conflict. There

is a background put forward for the offence and it is as follows: --

4. Two brothers, Hazara Singh and Surti, of Jumman and his brothers were murdered in August 1954, and for that murder Lakha Singh deceased, Jagir Singh P. W. 18, who is another brother of Lakha Singh, and one Gulzari were tried, but all of them were acquitted in January 1955. The acquittal of Lakha Singh naturally inflamed the brothers of Hazara and Surti and the police, therefore, apprehended further trouble and for that reason both the parties were put up before the Court of a Magistrate at Amritsar for proceedings Under Section 107/151, Criminal P. C. After enquiring into the matter, the Magistrate had posted the case for orders on 25th February 1955, at Amritsar. The party of the prosecution which comprised the three deceased and P. WS. 19 to 21 were proceeding to the Court in pursuance of the directions to be present, and the party of the accused also was on the same purpose. In order to reach Amritsar, the party had to go to Attari to catch a motor-bus. The prosecution alleges that as the three deceased individuals and P. ws. 19 to 21 reached the bridge of a water-course, the six accused persons emerged out of a khal which was then dry. It is alleged that Hazara had a gun in his hand, Bansa had a pistol, Sohani and Chanan carried spears. Darshu carried a kirpan and Jumman carried a dattar. The allegation is to the effect that the accused's party was laying in wait for their rivals to pass that way and to spring upon them unawares, and it is further alleged that on seeing the prosecution party, the accused raised a lalkara that none should be spared, whereupon Jumman and Sohni opened an attack on the deceased Lakha Singh. Darshu started attacking Tara Singh and Chanan attacked Sangha Singh. After Lakha Singh fell down with injuries, Jumman started attacking Sangha Singh and Sohni attacked Tara Singh. Various injuries were inflicted on the victims by the assailants. On seeing the three deceased individuals being attacked and their falling down in that manner, P. ws. 19 to 21 started running towards the field which was close by. While they were running, Bansa and Hazara fired at them with the gun and pistol in their hands and when the arms misfired, the pursued turned round, pounced upon the firing party and P. w. 19 snatched the gun from Hazara and P.W. 20 snatched the pistol from Bansa. Witnessing this, the other four accused, who had by this time felled down the three deceased individuals, threatened to attack the witnesses, who ran away, whereupon the accused also retreated. When that was the state of things, the witnesses returned to the place of murder and found that the bicycle which P. W. 19 had with him had been taken away by the retreating assailants. It was found that Lakha Singh, Tara Singh and Sangha Singh had died. The prosecution had to admit that the deceased Lakha Singh had a small sota about 4 feet long and Tara Singh had a dattar which they used against the accused's party, with the result that Darshu and Jumman received injuries from Lakha Singh and Tara Singh, and had wiped off the blood.

5. P. W. 19 thereafter went to the Police Station carrying with him the gun and the pistol which he and P. w. 20 had wrested from Hazara Singh and Bansa. The First Information Report Ex P. B/1 was given by P. w. 19 at the Police Station, Gharinda, at 10:30 A.M., i.e., within two hours of the incident, and it gives a succinct account of the incident. It says that on the accused's party raising the lalkara to the effect that none of the prosecution party should be spared, Jumman and Sohni, who were armed with dattar and barchhi, assaulted Lakha Singh; Darshan assaulted Tara Singh with a kirpan, and Chanan, who had a barchhi, assaulted Sangha Singh. Lakha Singh, Tara Singh and Sangha Singh ran hither and thither to save heir lives, but the assailants surrounded them and began to injure them. It further says that Bansa and Hazara, who were armed with pistol and a gun, tried to

fire towards the prosecution witnesses but fortunately the cartridges did not fire, whereupon P. w. 19 grappled with Hazara and snatched the gun from his hand, and similarly Kartar Singh snatched the pistol from Bansa. The First Information Report also mentioned about the cycle which P. w. 19 had and which was taken away by the assailants on their retreat. He produced the gun and the pistol which he and Kartar Singh had snatched away from Hazara and Bansa. A motive is also given for the murders and the rioting.

6. It is unnecessary to recapitulate in any detail the further progress in the investigation except to say that on this First Information Report the Police took up investigation and charge-sheeted the six accused before a Committing Magistrate who finding that a prima facie case was made out against them, committed the case to the Court of Session where the learned Judge found them guilty of the offences charged and sentenced them as stated above. We have already referred to the result of the appeal before the High Court.

7. Dr. H. Chandra, Civil Surgeon, Amritsar, who conducted the post mortem examination, gave evidence regarding the injuries found on the three deceased individuals. On Sangha Singh there were five injuries of which the first was the fatal one. On Tara Singh there were 16 injuries, of which injury NO. 6 was sufficient to cause death in the ordinary course of nature, and a number of other injuries were grievous. On Lakha Singh there were 11 injuries of which injury No. 1 and the perforating wound of the heart under No. 6 were necessarily fatal.

8. There can, therefore, be no doubt that whoever inflicted those injuries on the three deceased individuals had the intention of causing death. At this stage it may be mentioned that of the accused persons who were arrested on 2nd March 1955, Jumman and Darshu had injuries on them which are spoken to by P. w. 9 Dr. Ugger Sain, Assistant Surgeon, Civil Hospital, Phillaur, on 3rd March 1955, at 10 A. M. Jumman had six injuries of which NO. 1 was a contused wound 2" x 1/4" x 1/4" at the left side of the head, three incises above the left ear and five other injuries were abrasions. In the opinion of P. w. 9 the injuries were caused by a blunt weapon. On accused Darshu there were two injuries of which one was incised wound 1 1/2" x 1/4" x 1/2" on the back of the neck and the other was an abrasion. Of these injuries No. 1 was caused by a sharp edged weapon and NO. 2 by a blunt weapon. It is worthwhile to remember that in the First Information Report EX. P.B./1, P. W. 19 has made no mention whatever of the infliction of the injuries on Jumman and Darshu.

9. When the accused were arrested on 2nd March 1955, the cycle belonging to P. w. 19 was recovered. Also some of the clothes which the accused were wearing were seized by the police. On 8th March 1955, on the information given by Chanan, the Spear NO. 13 was also recovered from the field. The fact regarding the recovery of the spear was not made out in the Committing Magistrate (sic) and we need not make any comment regarding that.

10. As against the case thus adumbrated on behalf of the prosecution, the plea of the accused was one of, complete denial of participation in the occurrence.

11. Before we propose to discuss the evidence on which reliance has been placed by the counseling this Court, it is necessary to advert to a circumstance which calls for some comment. Along with the

appeals filed by the accused, there was before the High Court, a reference Under Section 374, Criminal P. C., by the Sessions Judge, submitting to the High Court the proceedings before him for confirmation of the sentences of death passed by him. Under Section 375, Criminal P. C., the High Court has power to direct further inquiry to be made or additional evidence to be taken in such matters and according to Section 376, Criminal P.C., the High Court has to confirm the sentence, or pass any other sentence warranted by law, or alternatively it may annul the Conviction and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge or the High Court may acquit the accused person. Section 377, Criminal P. C., provides that the confirmation of the sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

12. It is clear from a perusal of these provisions that in such circumstances the entire case is before the High Court and in fact it is a continuation of the trial of the accused on the same evidence and any additional evidence and that is why the High Court is given power to take fresh evidence if it so desires. In an appeal Under Section 41, Civil P. C., an appellate Court has to find whether the decision arrived at by the Court of first instance is correct or not on facts and law; but there is a difference when a reference is made Under Section 374, Criminal P.C., and when disposing of an appeal Under Section 423, Criminal P.C., and that is that the High Court has to satisfy itself as to whether a case beyond reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In fact the proceedings before the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own.

13. Bearing these circumstances in mind if we analyse the judgment under appeal, we find that except giving a meager narration and a summary of the evidence let in before the Sessions Court, the judgment of the High Court suffers from the infirmity that it does not seem to have exercised its independent judgment on the material facts placed before the Court. We have carefully analysed the judgment of the High Court and in our opinion the only reasons given are towards the end of the judgment and that too in a meagre and inconclusive manner. In these circumstances we would have remanded the whole proceedings to the High Court for a fresh hearing and disposal and for giving reasons for the conclusion arrived at by the High Court, but it seems to us that such a procedure will entail unnecessary delay and hardship, especially in a case where most of the appellants are under a sentence of death. The counsel on either side have expressed their willingness to argue the case on the evidence and though in an appeal under special leave we are ordinarily bound by the finding of fact arrived at by the High Court, in this case since the High Court has not dealt with the appeal as it should have, we proceed to hear the appeal on the evidence.

14. The only portion of the judgment of the High Court giving expression to the conclusions of the learned Judges after considering the evidence is the following:

"In my opinion there is no improbability in the prosecution story that the prosecution witnesses had snatched the gun from Hazara and pistol formants. As the arms misfired the witnesses got emboldened and snatched the arms from the accused. "Giving the matter my very best consideration I find that the accused have been rightly convicted."

15. At a later portion of this judgment we are giving reasons as to why the evidence of the prosecution eye-witnesses cannot be totally accepted as the lower courts have done in view of the fact that no explanation has been given by them regarding the injuries on the two accused.

16. The first question to be considered is whether the accused's party banded themselves into an unlawful assembly with the common object of committing a crime and lay in wait for the prosecution witnesses and the deceased to pass along that route before taking them by surprise and inflicting on them the injuries as spoken to by the prosecution witnesses, There are certain circumstances which do not bear dispute and they are that both the accused and the prosecution witnesses along with the deceased had to be present in the Court of the Magistrate at Amritsar, at about 11 a.m., on the day in question and that being the case, it is natural that both of them would be going in the direction of the Court which in this case happened to be passing along the Grand Trunk road. We may also consider that each one of the parties would have anticipated meeting the rival faction on the road and if such an eventuality took place, each one of them might have apprehended some trouble. For this purpose it is but natural that they would have armed themselves in order to protect themselves. On a perusal of the evidence of P. ws. 19 to 21 we are not able to find any indication of the accused's party knowing beforehand the route to be taken by the prosecution party. p. w. 19 says that when he and his companions reached a water-course, the six accused persons emerged out of a khal. P. W. 20 speaks in the same strain and P. w. 21 does not improve the matter any further. Neither the judgment of the Sessions Judge, nor that of the High Court gives any further details from which it is possible to find a pre-concerted action on the part of the accused. Such being the case, it is reasonable to conclude that both the parties met on the road while each was going to Court and each one of the parties was not animated by any pre-concerted intention to commit an offence or bring about a riot.

17. A careful scrutiny of the evidence of the eye witnesses leaves us with no doubt whatever that Jumman, Chanan Darshu and Sohni, who were armed with the weapons mentioned by the witnesses, surrounded the three deceased individuals and inflicted the injuries mentioned in the post-mortem certificate regarding each one of them which resulted in their deaths. We may also conclude that Hazara and Bansa were also members of the accused's party.

18. Having come to the conclusion that there was no premeditated intention to inflict injuries on the prosecution party; we have to find out whether Hazara and Bansa had a common object along with the four other accused. On the material it is difficult to find that there was an unlawful assembly which had a common object of committing a crime. We believe the evidence of P. ws. 19 to 21 when they depose regarding the beating and the infliction of injuries on the three deceased individuals by the accused abovementioned and that being the case, they must beheld responsible for their acts. Darshu attacked Tara Singh and Chanan attacked Sangha Singh. Jumman and Sohni attacked Lakha

Singh with the arms in their possession. The cross-examination of P. w. 19 and 21 does not elicit any fact which would show that the part ascribed to each of the accused in the examination in chief is unbelievable. That being the case, we accept that part of the prosecution case and hold that the three deceased came by their death as a result of the injuries inflicted by the respective accused aforesaid. What offence has been committed by them will be discussed later.

19. We now deal with the appeals by Hazara and Bansa. According to the facts explained above, Hazara had a gun in his hand and Bansa had a pistol, and while P. w. 19 to P. w. 21 were running away from the scene, each one of them, fired with the fire-arm in his possession which misfired, and it was after that, that the pursued persons turned round with the object of snatching away the fire-arms. P. W. 19 snatched the gun from Hazara and P. w. 20 snatched the pistol from Bansa. The question is whether the story now put forward is to be accepted or not. There is no doubt whatever that these fire-arms are unlicensed and, therefore, it is difficult to trace the ownership. While the prosecution witnesses attribute the ownership to Hazara and Bansa, there is a possibility that the fire-arms belonged to the prosecution witnesses themselves and that was why they were produced before the police officers; for these witnesses would have come to grief if they had otherwise admitted the possession of these. In our opinion it is not unlikely that these fire arms being in possession of the prosecution witnesses, were produced at the Police Station in order to avoid a prosecution on account of possessing unlicensed firearms. Having once produced them before the police, the witnesses had to give some explanation regarding them, and the explanation that would suggest ordinarily would be to attribute the fire arms to the accused's party. That they had time to invent such a story is clear from the fact that the journey to the Police Station took nearly 1/2 hour and during that period Mohindar Singh (P. w. 19) could certainly have invented the story. A perusal of the prosecution evidence regarding the way in which these fire-arms were snatched away by leaping upon Hazara and Bansa by Mohindar Singh and Kartar Singh, shows that on the face of it the story is unacceptable. We do not think that the three pursued individuals who, according to the evidence, were not at a short distance, would have had sufficient courage to turn round and attack the pursuers, especially when they knew that the pursuers had firearms in their hands. It is also unlikely that the pursued individuals knew that the fire-arms could not be used again effectively. In these circumstances, the story of the snatching of the fire-arms seems to be artificial and was probably invented to hide the unlawful possession of the fire-arms. We, therefore, reject the prosecution version regarding this and in our opinion it is just likely that the pistol and the gun belonged to the witnesses themselves.

20. The next question that has to be considered is about the absence of any acceptable evidence and the belated explanation put forward by the prosecution as to how the injuries came to be inflicted on Jumman Darshu of which reference has already been made. Mr. Gopal Singh appearing for the State of Punjab referred to the judgments of the Sessions Judge, as well as the High Court to show that an attempt had been made to explain the injuries on the accused but we are not satisfied that such attempt has been successful, for one thing the First Information Report does not give any indication regarding the injuries on Jumman and Darshu, and after it was found that these two accused had injuries on them, the prosecution attempted to get over the difficulty by the witnesses speaking to the injuries on the two accused. It seems to us that attempt is futile. What must have happened was that both the parties being armed when they came into conflict, weapons must have been used by

the prosecution witnesses also on the accused. We have no doubt whatever that in such an encounter it is the three deceased that got worsted when injuries were inflicted on them. To this extent we have believed the evidence of P. ws. 19 and 21 but we do not think that their suppression of the injuries on Jumman and Darshu could make their evidence totally unbelievable.

21. It is further urged by the learned counsel for the appellants Messrs Harbans Singh and Verma that the details of the attack on each of the victims by the respective accused would not bear scrutiny because in the confusion and the melee caused as a result of the encounter, it will not be possible for witnesses to know with any exactitude the particularity of the acts attributed to each of the accused. Mr. Gopal Singh submits that it is naturally possible for the witnesses to observe the incident and since all of them have attributed acts to the same individual as against the same deceased without particularizing the part of the body on which the injuries were inflicted, the evidence of those witnesses is credible. He analyses the attack in different stages. The first stage was when the parties met. The second stage was when one or more of the assailants inflicted injuries on the deceased and the third stage next. If these witnesses had stated the portions of the body on which such injuries were inflicted, then probably their evidence could have been branded as unbelievable but that having not been done, the learned counsel contends that the evidence of those witnesses can be accepted. We have already stated that to that extent we are prepared to accept the evidence of P. ws. 19 to 21.

22. In our view, therefore, there was no unlawful assembly in which Hazara and Bansa were members and that being the case, they should be acquitted of all offences.

23. With regard to the other four, we believe the evidence of P. ws. 19 to 21 to the extent to which the injuries said to have been inflicted by them were found.

24. In such a case where a mutual conflict develops and there is no reliable and acceptable evidence as to how it started and as to who was the aggressor, would it be correct to assume private defence for both sides? We are of the view that such a situation does not permit of the plea of private defence on either side and would be a case of sudden fight and conflict and has to be dealt with Under Section 300, I. P. C., Exception 4.

25. The matter has to be viewed in this way. It is clear that there was no pre-meditation and therefore when the contending factions met accidentally and attacked each other, the conflict resulted in a sudden fight, in the heat of passions, upon a sudden quarrel and without the accused having taken undue advantage or acted in a cruel or unusual manner. On the finding that both the parties had arms, there was no undue advantage taken by either. Hence Exception 4 to Section 300, I.P.C., applies with the result that the offence is Under Section 304 (part 1), I. P. C.

26. We, therefore, set aside the convictions Under Section 302, I.P.C., and sentence of death on these appellants but convict them Under Section 304, (part I). I.P.O., and sentence each one of them to imprisonment for ten years.

27. Sohni has not appealed. In our opinion his is a fit case for the State Government's interference Under Section 401, Criminal P.C.