

Dhian Singh S/O Kartar Singh And Others vs State Of Punjab on 29 March, 1995

Equivalent citations: AIR1995SC2451, 1995CRILJ4167

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Bench: Madan Mohan Punchhi

JUDGMENT

1. The appellant in Criminal Appeal No. 544 of 1983 is Dhian Singh and appellants in Criminal Appeal No. 115 of 1988 are his son Gurcharan Singh and son-in-law Mohinder Singh. These three, along with two others Chhinder Singh and Hazur Singh faced trial before the Court of Session for offence punishable under Sections 148, 302, 302/149, I.P.C. After trial they were convicted for the offences charged and suitable orders of sentence were passed. The High Court, on appeal, however, acquitted Chhinder Singh and Hazur Singh because it took the view that the identity of Chhinder Singh at the time of the commission of the crime was not established beyond doubt and the role assigned by the prosecution to Hazur Singh was merely on exhortation which was unnecessary in the manner in which the incident took place. The death of the deceased Joginder Singh was attributed to injuries with weapons which were sharp-edged, excepting one. simple in nature, which was by blunt weapon, the same being attributed to Dhian Singh. All the same, the High Court on the murder charge confirmed the individual convictions of Gurcharan Singh and Mohinder Singh - the appellants in Criminal Appeal No. 115 of 1988 under Section 302, I.P.C., and that of the Dhian Singh appellant under Sections 302/149, I.P.C.

2. Learned Counsel for the appellant Dhian Singh has urged that when Gurcharan Singh and Mohinder Singh appellants stand individually convicted under Section 302, I.P.C. and Chhinder Singh and Hazur Singh have been acquitted, there could be no occasion to maintain the conviction of Dhian Singh under Sections 302/149, I.P.C. all the more when only one simple injury was attributed to him by means of a Gandasi, and that too by its blunt side on a non-vital part of the body. i.e. at the knee. The argument as projected is capable of being repelled. Even if we take the view that Dhian Singh caused the injury to the deceased after some injuries had been inflicted by other accused on the deceased his case is not advanced. Even if he had not caused any injury he could still be held liable with the aid of Section 34, I.P.C. along with Gurcharan Singh and Mohinder Singh - the other two accused. But, in the facts and circumstances we would rather take the view that when the assault had begun on Joginder Singh - deceased, and 4/5 blows were inflicted on him by the other accused, the single blow of Dhian Singh, was not of much contributory significance and it could well be that his intention shared by him with the other accused was upto the extent of causing simple hurt to the deceased. Nothing stopped him to inflict more injuries than one. and that too, with the sharp side of the Gandasi. In the presence of the other four accused, who were in their twenties, Dhian Singh was fifty years of age, much older and it could well be that he did not share the same criminal intent as that of the accused, who stand ultimately convicted for offence

punishable under Section 302 I.P.C. Thus, on this doubt created, room has been made out to convert the conviction and offence of Dhian Singh - appellant from one punishable under Sections 302/149. I.P.C. to one under Section 324. I.P.C. and on doing so we sentence him to rigorous imprisonment for a period of three years and to pay a fine of Rs. 1,000/, in default of payment of which he shall further undergo three months' R.I. The appeal of Dhian Singh (appellant in Criminal Appeal No. 544 of 1983) is thus allowed, in part.

3. In so far as the appeal of Gurcharan Singh and Mohinder Singh (appellants in Criminal Appeal No. 115 of 1988) is concerned, each of them were attributed fatal injuries to the deceased by means of sword. Concurrently, they have been found guilty of the offence by both the Courts below. No argument of any substance could be advanced by their counsel. Their conviction thus would have to be maintained. It is accordingly so done by dismissal of their appeal.