Supreme Court of India
Bhagwan Singh vs State Of Punjab on 13 May, 1994
Equivalent citations: 1994 SCC Supl. (2) 344 JT 1994 (7), 8
Author: H B.L.
Bench: Hansaria B.L. (J)

PETITIONER:
BHAGWAN SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT13/05/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
SAHAI, R.M. (J)
FAIZAN UDDIN (J)

CITATION:
1994 SCC Supl. (2) 344 JT 1994 (7) 8
1994 SCALE (2)1015

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- The occurrence which had seen the death of Gurcharan Singh had taken place at about noon on 27-6-1981 in Village Barawal of District Sangrur, Punjab. The prosecution case is that PW 3 Karnail Singh and his brothers had applied for allotment of about 50 bighas unallotted (Bachat) land. This prayer was allowed and the possession of the land was delivered to the appellants about 20 days before 27th June on which date Karnail Singh and his brother PW 4 Jarnail Singh and their father PW 9 Gurdev Singh as well as the deceased Gurcharan Singh, were preparing wats in the land. Daljit Singh, brother of Karnail Singh, brought food for the party after taking which they retired towards the shade of a keekar tree. At that point of time it is alleged that an unlawful assembly consisting of nine persons variously armed came and raised lalkara that nobody should be allowed to go alive and they should be taught a lesson for getting allotted the Bachat land. In the attack which followed appellants Balbir Singh and Jawala Singh caused injuries with gandasa on the head of the deceased, and appellant Harinder

Singh on his legs. Gurcharan Singh fell down on the receipt of the blows, and while he was lying fallen on the ground, Surinder Singh (since acquitted) and appellant Bhagwan Singh started causing injuries to him with the weapons they were armed with. The aforesaid PWs stepped forward to rescue Gurcharan Singh when one Jagdev Singh gave a gandasa blow on the head of Karnail Singh (PW

3) and one Rajinder Singh on his right collar bone. On this Karnail Singh fell down when he was given more blows. Appellants Bahadur Singh and Mohinder Singh caused injuries to Gurdev Singh (PW 9) and Jarnail Singh (PW 4). After having so dealt with the complainant party, Balbir Singh proclaimed that the object had been accomplished, whereafter the accused party made good its escape. But before that some of the appellants had received injuries at the hands of Karnail Singh and his companions.

2. Gurcharan Singh and the injured were taken in a tractor- trolley to Civil Hospital, Dhuri where Gurcharan Singh was declared dead. Karnail Singh went to police station at Dhuri which was at a distance of about 3 miles. The information was lodged at about 3 p.m. which set the law in motion and nine persons in all were booked for trial under various sections of law including Sections 302/149, 325/149, 324/149 IPC. All of them came to be convicted under these sections of law along with some others by Sessions Judge, Sangrur.

3. The convicted persons preferred three different appeals before the High Court of Punjab and Haryana, all of which were heard together. By the impugned judgment the High Court acquitted 3 appellants before it - they being aforesaid Surinder Singh, Rajinder Singh @ Bawa and Jagdev Singh. Convictions of the appellants Jawala Singh, Balbir Singh, Bhagwan Singh, Harinder Singh, Bahadur Singh and Mohinder Singh under Sections 325/149 and 324/149 were set aside, while their convictions inter alia under Sections 302/149 IPC were maintained.

4. Bhagwan Singh approached this Court by filing Crl. Appeal No. 245 of 1983, whereas Jawala Singh, Harinder Singh and Balbir Singh are the appellants in Crl. Appeal Nos. 687-688 of 1983. The SLP of Bahadur Singh and Mohinder Singh was dismissed on 18-4-1983. The review petition also came to be dismissed on 18-8-1983. Thereafter the SLP of Jawala Singh, Balbir Singh and Harinder Singh was admitted on 28-11-1983. Bahadur Singh and Mohinder Singh felt that by dismissing their SLP they were discriminated and filed Writ Petition (Crl.) No. 544 of 1986, which was ordered to be tagged with the aforesaid appeals.

5. All the three appeals and the writ petition having raised common questions of law and fact were heard together and are being disposed of by this judgment.

6. The basic submission advanced on behalf of the appellants/writ petitioners is that they had acted in self- defence and as such even if any offence was committed by them the same would attract the mischief of Section 304 of the Penal Code, as what they had done was in excess of the right of private defence. As to this submission, we would state that as right of private defence is not available to aggressor(s), we have to decide as to whether the view taken by the courts below that the accused party was aggressor is sustainable or not.

7. Shri Gambhir appearing for the appellants Jawala Singh, Harinder Singh and Balbir Singh has urged that as four persons on the side of the accused party namely, Harinder Singh, Balbir Singh, Bahadur Singh and Mohinder Singh had also received injuries, all of which were not explained, it would go to show that the complainant party had not come forward with the full truth and the case of the defence that they were not aggressors merits acceptance. We are unable to accept this submission of Shri Gambhir because aggression on the part of the accused party is writ large on the face of very large number of injuries caused on the person not only on the deceased but on PWs Gurdev Singh, Jamail Singh and Karnail Singh. The deceased had 19 injuries on his person, Gurdev Singh 9, Jamail Singh 16 and Karnail Singh

14. This is in contrast to 4 injuries received by appellant Balbir, 3 by Mohinder, 2 each by Bahadur and Harinder. So, belabouring of the complainant party is apparent and thus we are left with no doubt that it was the accused party which had acted as aggressor. Though Shri Gambhir has also submitted that the complainant party had even used gandasa which would be apparent from the fact that some of the accused had received incised wounds, as to which the evidence of the doctor is that it was more probable that the same were caused by gandasa than kassi as was the case of the prosecution, this fact is not material to disagree with the finding of the two courts on the accused party being the aggressor. This being the position, right of self-defence was not available to it.

8. Shri Gambhir's another submission is that as both the parties were having no enmity from before, as was conceded before the High Court, and as the accused party had not claimed the land in question before this day of occurrence as admitted by PW 3, the genesis of the occurrence as put forward by the prosecution is doubtful. We, however, find there is evidence on record to show that possession of the land was delivered about 20 days before the occurrence and as such despite the two parties having had no enmity from before, the grudge of the accused party because of the allotment of the Bachat land did provide the motive; the mere fact that no claim was made by it before the day of occurrence is not enough to disbelieve the genesis as put forward because only 20 days had elapsed from the date of delivery of possession of the land to the complainant party. The claim made on the date of occurrence cannot be said to be stale to create doubt about it not having been made at all. Some time is necessary to make preparation and then to act accordingly. 20 days' period might have been required to work out the strategy etc.

9. Shri Gambhir has sought to create a doubt in our minds about the place where the occurrence had taken place. It has been urged that finding of little blood at the field where the occurrence is said to have taken place according to the prosecution, would show that the assault had not taken place there. It has been further contended that the sample of blood had not been sent to serologist which ought to have been done, as observed in Lakshmi Singh v. State of Bihar'. The finding of little blood at the place of the occurrence may be due to the fact that after Gurcharan Singh had fallen down in the field tractor and trolley were brought to carry him to the hospital. This act must have rubbed away some blood from the field. The blood found at the place of the occurrence is required to be chemically examined when ascertainment of blood group is relevant, which was not so here. The observation of this Court in Lakshmi Singh case' in this regard has to be read in the context of the facts of that case. The same cannot be taken as a proposition of law that whenever bloodstained earth found at the place of occurrence is not sent to chemical examiner, the same would cast a doubt

on the veracity of the prosecution case.

10. The final contention is that acquittal of three persons by the High Court, who had also been equally involved by the PWs would show that their evidence was not fully reliable. The High Court, however, acquitted them because having found that all the appellants before it were closely related, it observed that insuch a case there is sometimes a tendency on the part of the prosecution witnesses to indulge in some exaggeration. The three persons were given benefit of doubt because they were those who had not suffered any injury in the course of the occurrence. Even while doing so the High Court observed that adoption of this course may not be taken that it doubted the testimony of concerned PWs.

11. Shri Mehta appearing for the two writ petitioners adopts the arguments of Shri Gambhir. Shri Verma submits for appellant Bhagwan Singh that this appellant was entitled to acquittal on the same ground on which three accused were acquitted by the High Court, as Bhagwan Singh too has no injury on his person which had weighed with the High Court in acquitting Surinder Singh, Rajinder Singh and Jagdev Singh. Shri Gambhir has advanced the same argument for appellant Jawala Singh. We are satisfied that if because of nonreceipt of any injury three persons were acquitted by the High Court, the same view ought to have been taken as regards Bhagwan Singh and Jawala Singh as well. We therefore order for acquittal of these two appellants.

12. In the result Crl. Appeal No. 245 of 1983 stands allowed by setting aside the conviction of the sole appellant Bhagwan Singh. Insofar as Crl. AppealNos. 687- 88 of 1983 are concerned, they stand allowed only to the extent that appellant Jawala Singh is acquitted. The conviction of two other appellants is confirmed. Writ petition (Crl.) No. 544 of 1986 stands dismissed. Appellants Bhagwan Singh and Jawala Singh are on bail. Their bail bonds are discharged. They need not surrender. Bail bonds of Harinder Singh and Balbir Singh are cancelled. They would surrender to undergo remaining period of their sentence, which was imprisonment for life. Writ petitioners Bahadur Singh and Mohinder (1976) 4 SCC 394 : 1976 SCC (Cri) 671 : AIR 1976 SC 2263 Singh being in jail, as their prayer for bail was rejected, would be released after their having undergone the sentence of life imprisonment as required by law.

V.S. DEMPO & CO. PVT. LTD. V. BOARO OF TRUSTEES ORDER

1. Leave granted.

2. Heard learned counsel on both sides. These appeals arise out of the order dated August 4, 1992 of the Division Bench in Civil Writ Petition No. 17600 of 1991 etc. The admitted facts are that the appellant-State had requisitioned to the Subordinate Selection Committee to recruit by direct recruitment 11 candidates to the post of Chief Inspectors. They have categorised the vacancies as under:

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6    posts for General Candidates
2    posts for Scheduled Castes
1    post for Backward Class
2    posts for Ex-servicemen
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While selecting 11 candidates the Committee also kept four more candidates in the waiting list. The respondents stand at SI. Nos. 8 to 11. They admittedly belong to the general category.

3. The High Court while disposing of the matter held that keeping the candidates in the waiting list does not create any right in their favour in the +From the Judgment and Order dated 4-8-1992 of the Punjab and Haryana High Court in C.W.P. Nos. 17600 of 1991, 2601 and 3741 of 1992 posts, but if the appellant for administrative exigencies fill up the post on ad hoc basis then it is open to the appellants to appoint the candidates waiting in the list in the order or merit. The contention of Ms Indu Malhotra, learned counsel for the State, is that the list had elapsed by efflux of time of one year and the candidates who were waiting in the list have no right to claim for appointment. The High Court is, therefore, not right in directing appointment of candidates in the waiting list in the order of merit. It is true that the waiting list will be valid only for one year and on the expiry thereof the waiting list shall stand lapsed; but what the High Court appears to have directed was that in the event of any ad hoc appointments being made to any existing vacancies, dehors the rule, the respondents will be considered for ad hoc appointment since their names are in the select list, provided the Government chooses to make such appointment.

4.We do not find any illegality in the observations of the High Court. It is one ofoption to the appellants. If the appellants do not make any appointments to theposts, the question of considering the claims of the waiting list candidates does not arise. In the event of the appellants' choosing to make appointments on ad hoc basis, then certainly the candidates in the waiting list, though it lapsed, must be considered for appointment dehors the rules which may not confer any right on them for future recruitment. It is only an enabling direction to make temporary appointment pending regular recruitment.

5.It is needless to mention that the respondents being the general candidate will be considered only against the quota reserved for general candidates.

6. The appeals are accordingly disposed of. No costs.