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Court : Punjab and Haryana

Decided On : Mar-26-1964

Reported in : AIR1965P& H90; 1965CriLJ209

Judge : J.S. Bedi and; Shamsheer Bahadur, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 141, 148, 149, 302, 304, 309, 323, 324, 342 and 452

Appeal No. : Criminal Appeal No. 521 of 1963

Appellant : Chand Singh and ors.

Respondent : The State

Judgement :

Shamsheer Bahadur, J.

1. This judgment will dispose of two appeals one by the nine convicts Chand Singh, Nek Singh son of Budha Singh Inder Singh, Bhan Singh, Sarwan Singh alias Sarbha, Bachitta Singh, Nek Singh son of Ishar Singh, Bachan Singh and Besakha Singh (Criminal Appeal No. 521 of 1963) from the convictions and sentences under sections 304 (II), 324, 326 and 323, Indian Penal code and the other by the State directed against the acquittal of these convicts under Ss. 302/ 149, 148, and 452 Indian Penal Code (Criminal Appeal No. 738 of 1963).

(2) All the convict-appellants reside in village Barhe and their houses are very near to that of Mohna Singh P. W.; indeed the house of Bhan singh appellant is just opposite to that of Mohna Singh. Nek Singh and Bachan Singh appellants are brothers. Inder Singh and the other Nek Singh are also brothers and bhan singh and Besakha Singh are also brothers while the remaining three appellants, Chand Singh Sarwan Singh and Bachittar Singh are not related to each other, though according to the prosecution all the nine convicts belong to one party and are collateral's. The only common bond between the appellants is the close proximity of their houses and the cause of the entire trouble which culminated in the death of Sarwan Singh son of Mohna Singh P. W. was the wall which was being erected by the deceased his father brothers and sister- a structure which would have stopped the passage of the appellant from the lane in front of Mohna Singh's house.

(3) According to the prosecution the nine appellants of whom Nek Singh son of Budha Singh, Besakha Singh son of deva Singh and Bachittar Singh were armed with gandasas and the others with barchhas, went to the house of Mohna Singh at 10 a. m on 18th of December, 1962 where he was sitting with his sons Sarwan Singh deceased, Surjan Singh, Mohar Singh and his daughter Chetan Kaur. Chand Singh exclaimed: 'Laharo tusin the Kimen Kandh banande ho' (O' Loharo; how are you building a wall here).

Sarwan Singh alias Sarbha caught hold of Sarwan Singh deceased by his arms and Besakha Singh gave a gandasa blow with its sharp side on this leg. Thereafter, Sarwan Singh was dragged out from his house while Mohna Singh Surjan Singh Mohar Singh and Chetan Kaur tried invasion to rescue him. After Sarwan Singh has been brought out of his house, Bhan Singh gave a barchha blow on the right side of Sarwan Singh. Bachan Singh appellant gave blows to Sarwan Singh and Sarbha wielded his barchha which caused a scratch on his left thigh. Further blows were given by the other appellants to Sarwan Singh deceased, Chetan Kaur and surjan Singh. After the accused had run away, Sarwan Singh was taken inside the house in apprecarious condition. No resident of the lane came there as the neighbors did not like Mohna Singh erecting a wall outside his house to obstruct their passage. Mohna Singh accompanied by Sucha Chowkidar went to Pokcie Station Boha which is at a distance of five miles from

village Bareh and the report (Exhibit P. A.) was lodged at 1-30 p.m. while some constables returned to the village with Mohna Singh the Sub-Inspector reached the place of occurrence on the noon of 19th December 1962, and recovered bloodstained earth both from inside and outside the house of Mohna Singh. On the 20th of December 1962, all the nine convicts surrendered themselves and were taken under arrest. As a result of the disclosure statements made by them, recoveries of three barchhas and three gandasas were made from Bachhan Singh, Bachittar Singh, Nek Singh son of Budh Singh, Besakha Singh Inder Singh and Chand Singh. Except the barchha which was recovered from Bachha Singh memo Exhibit P. N.1, all the other weapons were not found at the time of their recovery according to the different memos prepared at that time to be stained with blood. The barchha recovered as a result of disclosure statement made by Bachan Singh was found stained with blood. All these recoveries were made in presence of Mal Singh, Inder Singh and Jagir Singh. According to the report of the Serologist however two of the gandasas and one of the spears recovered and sent to him for examination with the earth etc. were found to be stained with human blood.

(4) Sarwan Singh who was taken to the hospital at Mansa was examined there at 6-30 p.m. by Dr. Digar Singh and six injuries were found on his person. The first one was a cut wound 3'x1'x1 1/4' in front of the left knee and was a grievous injury. Another grievous injury was stab wound through the pelvic bone on the back of the right buttock. The other four injuries were cuts and linear scratches as per nature. The injuries in the opinion of the doctor, were caused by sharp stabbing weapon and sharp-edged weapon. Sarwan Singh died in the hospital at 8 p.m., about ten hours after the assault. The Post-mortem which was performed by the same doctor was found dangerous to life while the first one was grievous in nature. The dangerous stab wound on the right buttock was considered sufficient by Dr. Didar Singh in the ordinary course of nature to cause death. Surjan Singh P.W. was examined by Dr. Mohinder Singh Bedi next day at Boha on 19th December 1962 at 12 noon and five simple injuries were found on his person two contused wounds two incised wounds and one abrasion. Two of the injuries were the result of blows given by sharp-edged weapon while three were caused by a blunt weapon. Chetan Kaur P. W. had three contusion marks on her person and these injuries were simple. Two out of the accused were examined on 20th December 1962.

Besakha Singh appellant had three contused wounds and one swellings all simple in nature while Sarwn Singh alias Sarbha had two contused simple injuries. In the opinion of the doctor they were caused within 72 hours of the examination.

(5) The position taken up by the accused in there statements under section 342, Code of Criminal Procedure may briefly be summed up. The injured appellants Besakha Singh and Sarwan Singh state that a quarrel arose when the deceased Sarwan Singh was requested not to build the wall and a large number of neighbors came to the spot. Besakha singh and Sarwan Singh appellants received injuries at the ands of Sarwan Singh was requested not to build the wall and a large number of neighbors came to the spot. Besakha singh and Sarwn Singh appellants received injuries at the hands of Sarwan Singh decease and his brother Surjan Singh. Thereafter the two accused ran away and they did not know how Sarwan Singh and others seven appellants took no plea of self-defence which was discussed elaborately by the learned Session Judge and eventually rejected.

(6) After a consideration of the entire evidence the learned Sessions Judge accepted the persecution version only partially. The learned Judge did not find it possible to agree that the appellants went into the house of Sarwan Singh from where he was dragged outside. In view of the learned Judge, Mohna Singh his sons and daughter were constructing a wall when the nine appellants came there with their respective weapons and inflicted injuries on Sarwan Singh, his brother and sister. As the wall was being built contravention of an order of a Court in a common lathe the appellants could not form an unlawful assembly and case of each accused was dealt on the basis that every one was liable for his individual acts only. The other aspects of the prosecution story having been accepted by the Sessions Judge, Nek Singh son of Ishar Singh has been awarded a sentence of four years rigorous imprisonment under Part I of S 304 Indian Penal Code it having been held that the thrust was given on anon-vital part of the body without any intention to murder Sarwan Singh Basakj Singh appellant has been convicted under S. 326, Indian Penal Code and has been awarded a sentence of one and a half year's rigorous imprisonment. Bhan Singh, Bachan Singh and Sarwan Singh alias Sarbha appellants who are said to have been convicted under S. 324. India Peanal Codem and have been awarded a sentence of year's rigorous

imprisonment each. Bachittar Singh and Inder Singh appellants have been sentenced under S. 322, Indian Penal code for causing simple injuries to Surjan Singh to undergo rigorous imprisonment for three months while the remaining two appellants Chand Singh and Nek Singh son of Budha Singh have been sentenced to the same term of imprisonment under S. 323, Indian Penal Code for injuries inflicted on Chetan Kaur.

(7) So far as the appeal of the convicts is concerned, Mr. Dara Singh has urged that the appellants having been rightly found to have gone to the house of Mohna Singh in assertion of their right to have lane kept open as a common passage where Mohna Singh as his other members of family were constructing a wall their plea of self defence should have been accepted. The evidence of Mohna Singh P. W. 4 Surjan Singh P. W. 5 Mohar criticised by the learned counsel and reliance has been placed on the findings of the learned counsel and reliance has been placed on the findings of the learned Sessions house from Lekhu some years ago. This house adjoins the one which he already owned. He has admitted that there is lane which separates the house which he has acquired from Lekhu and the houses of Ruldu and Sham Singh on the opposite side. The width of the lane is a few feet and a freshly built wall though only one brick high was found existence by the investigation officer, Karam Singh P.W. 13. According to this witness 'there were the beginning of the construction (ik rada) of a wall' at the place of occurrence on 19th December 1962. He noted that the construction was fresh one and there was mud-plaster lying ready for use. Inder Singh P. W. 10 is a Lambardar and joined the investigation of this case and actually witnessed the recoveries. He admitted in cross-examination the Ishar Singh father of Inder Singh appellant has come to him in the morning to complain that Mohna Singh as his sons had been erecting a wall to close the lane. According to Inder Singh P. W., this wall has been built once before by Mohna Singh and his sons his himself got it demolished 21/2 years ago as the residents of the neighborhood were objecting to its existence. It seems to be common ground that the lane has been in existence for about 40 to 42 years. This is admitted by Mohna Singh P. W. 4 himself. Mohna Singh further admitted that an application had been made against his by Besakha Singh, Inder Singh Nidhan Singh father of Chand Singh accused and Ishar father of Nek Singh

accused before a Magistrate of Mansa that an encroachment has been made. That application according to Mohna Singh himself was decided against him about 18 days before the occurrence. From this evidence it has been rightly inferred by the learned Sessions Judge that the appellants felt annoyed at Mohna Singh constructing the wall with the help of his son Sarwan Singh deceased who resided in Budhlada and had arrived in Barch at 8 A. M. on the 18th December 1962 to assist his father in this work. The independent evidence of the investigating officer shows that the mud-plaster was lying there for use and a fresh wall was actually found in existence. The right of Mohna Singh to have that wall in the lane had not been accepted by the Court and the applications for encroachment had been decided against him.

(8) Mohar Singh P.W. 6 son of Mohna Singh had also admitted that there was a dispute between their neighbors including Chand Singh appellant and themselves regarding the lane between their house and that of Ruldu. Mohna Singh and his sons wanted to keep it open for their use. According to Mohan Singh and his sons the construction which was seen by the Sub-Inspector had been made after the occurrence and not before. This is not supported by at least two of the prosecution witnesses. We have already adverted to the testimony of Inder Singh, Mal Singh P. W. 9 a, member of the Panchayat who joined the investigation deposed that Ishar Singh father of Nek Singh and Inder Singh appellants told him in the morning at 9 that the complainants were bent on constructing a wall in the lane for which bricks and mud-plaster had been stocked. Mal Singh along with Panches and Jangir Singh Lambardar tried to dissuade Mohna Singh and his sons from building the wall but they kept quiet. Mal Singh and his companions left with an impression that the wall would not be built the whole 'Behra' in his opinion being opposed to the closure of the lane. In our opinion the evidence clearly shows that the construction had been made at all the item of occurrence and was the immediate cause of the assault.

(9) The question still remains whether the appellants were entitled to oppose by force the construction of the wall by Mohna Singh and his family members? This question is interlinked with the appeal which has been filed on behalf of the State and might well be discussed at this stage. If the appellants could in assertion of

their right of common use of the lane justifiably obstruct Mohna Singh and others who were constructing the wall, they would not constitute an unlawful assembly and the plea of self-defence which has been raised on their behalf by Mr. Dara Singh would have to be considered. If on the other hand the appellants could not to criminal force in such a situation they would constitute members of an unlawful assembly. Under S. 141 of the Indian Penal Code:

'An assembly of five or more persons is designated an 'unlawful assembly' of the common object of the person composing that assembly is:

First.....

Second.....

Third.....

Fourth, By means of criminal force, or show of criminal force to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment or to enforce any right or supposed right ; or

.....'

Mr. Jagga for the State contends that though the wall which had been constructed by the complaint's party even on a prior occasion had been declared to an encroachment the appellants by using criminal force for the enforcement of this right clearly constituted an unlawful assembly. A person in possession of property or in enjoyment of a right may use force against those who are trying to deprive him of it but five or more persons cannot use criminal force for the 'enforcement ' of a 'right ' or supposed right'. In other words the order of the Court could not be enforced by criminal force at the instance of private parties although they have been held to be in enjoyment of the common an assembly of five or more persons has not been given the right to use criminal force of enforcement of a right even though it has been recognised by a Court of law. The position has been succinctly summarised in Ratan Lal's Law of Crimes (20th edition) at page 334 in these words:

' The words.....'to enforce a right or a supposed right ' show that it is perfectly immaterial whether the act which one seeks to prevent by use of criminal force or show of criminal force is legal or illegal the test of criminality being the determination to use criminal force and act otherwise than in due course of law so as to threaten the public peace..... The natural tendency of the law of all civilised States is to restrict within constantly narrowing limits the rights of the self-help. In the domain of penal law that right can extend to no cases not expressly defined by the law itself. The fact therefore of the illegality of the act of the opponent of the accused is wholly irrelevant, unless it brings itself within the category of those in which self-defence is permitted.'

(10) Thus, the use of criminal force can be regard as legitimate only in situations which have definitely been so mentioned in the statue itself. In Mr. Dara Singh's submission the appellant had come to oppose the high-handed action of the complainants in defence of their common right and nor for its enforcement. If that contention were to be accepted persons having a decree or order of a Court of Law in their favour or support can resort Court of Law in their favour or support can resort to force for its execution. That is a position which cannot be countenanced in law and as stated in the passage cited aforesaid from Ratan Lal's treatise on the Law of Crimes no system of law would accord recognition to self-help in the execution of orders passed by Courts. The complainants if they were violating any order of the Court could have been dealt with the legal processes only and high-handedness of their action would not provide any justification for stopping it by the use of criminal force by others. We are therefore not inclined to agree with the finding of the learned Sessions Judge that he party of nine appellants armed as they were with barchhas and gandasas should be regarded as rightful defenders of their legal rights, because they writ to stop the complaints from erecting the wall which they had been forbidden to make on the lane which issue by the residents of the neighboring houses. According to the appellants the construction of a wall would compel the appellants and other persons residing in the lane to make a circuitous route in going to and coming from their houses. That might well be so but private redress by use of force is not contemplated by law.

(11) Reference may be made to some of the authorities cited at the bar. In *Silajit Mahto v. Emperor*, ILR 36 Cal 865 it was held by a Division Bench of Sir Lawrence H. Jenkins and Mookerjee JJ. that where the common object was not to enforce a right or supposed right but to maintain undisturbed the actual enjoyment of a right the assembly could not be said to be unlawful under sub-section (4) of S.141 of the Penal Code. The ruling of this decision does not help the appellants as they resorted to criminal force not for maintenance of a right but for its actual enforcement. In *State of Mysore v. Raju Shetty*, AIR 1961 Mys 74 a Division Bench of A. Narayana Pai and Ahmed Ali Khan JJ. observe that :

'The expression 'enforce a right' implies that existence of two persons the person who enforces it and the person against who it is enforced. Such a situation can arise when the property over which or the subject in respect of which the right is sought to be enforced, is not in possession of the person trying to enforce that right but in the possession of the person against whom the right is sought to be enforced. If that property or subject is in the actual possession of the person to whom the right cannot be rightly described as enforcing that right. In such a situation he is said to enjoy the right and not enforce it. *****'

Now, the right to common user had been given judicial recognition by a Court of law. The wall has been constructed by persons against whom that right has been declared. When the wallows being built by the complainants' party the right to stop them from so doing would clearly amount to enforcement of a right which has been recognized the appellants even though they were armed with barchhas and gandasas could not be said to constitute an unlawful assembly as they had come to enforce a right cannot therefore be accepted. In view of this finding the right to self-defence cannot in consequence be acceded to under S. 104 Indian Penal Code even though the complainants were echoing something in contravention of an order of the Court. It is worthy of note that self-defence appellants and it may be recalled that only two of the injured convicts admitted only partially their presence at the spot and disclaimed the knowledge of the assault which resulted in the death of Sarwan Singh deceased.

(12) Piecing together our conclusions we would therefore hold that the appellants attacked the complainants with spears and gandasa when they were in the act of constructing a wall. We accept the findings of the learned Sessions Judge that the appellants did not go inside the house of complainant to drag Sarwan Singh deceased though it may be pointed out that two of the reasons in support of it are not enable. The learned Sessions Judge has found that blood was not found inside the house. It is quite accurate. As it has been stated before blood was found both inside and outside the house of the complainants. It is possible that some blood may have been spilt when Sarwan Singh was taken inside the house on a cot after he had received the fatal injuries. The fact of dragging was not mentioned in the inquest report is also not tenable. It was stated in the first information report (Exhibit P. A) that Sarbha appellant had caught hold of the arms of Sarwan Singh deceased who had later on been dragged outside. The omission of this circumstance in the inquest report is not therefore of any vital importance. We further hold that the appellants formed an unlawful assembly but judging plaintiffs and the weapons used by the assents it is impossible to say that the common object of the assembly was to cause death. It has been held by their Lordships of the Supreme Court in *Shambhu singh v. State of Bihar*, AIR 1960 SC 726 that:

'Members of an unlawful assembly may have a community of object up to a certain point beyond which they may differ in their objects and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object and as a consequence of this the effect of S. 149 of the Indian Penal code may be different on different members of the same unlawful assembly.'

Following this principle we are of the opinion that the common object of the unlawful assembly in the instant case was to cause grievous hurt and death was caused by only one of the members were not responsible. Nek Singh son Ishar Singh alone was responsible for the fatal injury to Sarwan Singh deceased and he would therefore be convicted under S. 302 Indian Penal Code. The other appellants as members of an unlawful assembly had a community of object only up to the point of causing grievous hurt and death was caused by only one of the members of the assembly namely Nek Singh son of Ishar Singh for which the others cannot be held responsible., The appellants other than Nek Singh son of

Ishar Singh in opinion are guilty only under S. 326 read with S. 149 Indian Penal Code. Considering all the circumstances of the case we impose the sentence of life imprisonment to Nek Singh son of Ishar Singh under S. 302, Indian Penal code and the other appellant namely Chand Singh Nek Singh son of Budha Singh Inder Singh Bhan Singh and Basakha Singh are convicted under S. 326 read with S. 149, Indian Penal Code and sentenced to three years ' rigorous imprisonment each. It is not necessary to record any separate conviction of the appellant for the offence under S. 148 Indian Penal Code.

(13) In the result the appeal of the State will be allowed to the extent indicated and that of the convicts dismissed.

(14) J.S. Bedi, J.

(14) I agree.

(15) Appeal dismissed.

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