SUPREME COURT OF INDIA

Pritam Singh

Vs.

The State

Crl.A.No. II of 1950

(Saiyid Fazal Ali, M.Patanjali Sastri,JJ., M.C.Mahajan and B.K.Das,JJ.,)

05.05.1950

JUDGMENT

Fazl Ali,J.,

1. This is an appeal by one Pritam Singh against the decision of the High Court of Punjab at Simla, upholding his conviction on the charge of 454 murder of one Buta Singh and confirming the sentence of death passed on him by the Sessions Judge of Ferozepore.

2. The prosecution case, which has been found to be substan- tially true by both the trial judge and the High Court may be shortly stated as follows.

3. On the 28th December, 1948, Pritam Singh had made inde- cent overtures to one Punni, wife of Kakarra Chamar, who had been brought into the village by Buta Singh, the deceased, about 10 or 12 years ago. Buta Singh, on learning of this incident, spoke to Pritam Singh, but finding that his atti- tude was uncompromising, he advised Kakarra to go to the police station to report the matter. On the next day, while Kakarra was going to the police station, Mal Singh, the first prosecution witness in the case, brought him back telling him that Pritam Singh had apologized and the matter should not be pursued. On the 30th December, at about 5 p.m., just when Buta Singh came out of his house, Pritam Singh came up with a double barrelled 12-bore gun and shot him in the abdomen, and Buta Singh died a short time thereafter. Shortly after the occurrence, Punjab Singh and Nal Singh, who had both witnessed the occurrence, went to the police station at Abohar, which is at a distance of 13 miles from the place of occurrence, and lodged the first information report regarding the murder.

4. In this report, Punjab Singh reported the facts as already stated, but he also added that Pritam Singh was drunk when he fired the gun and his younger brother, Hakim Singh, who was also drunk was standing at a short distance from him and shouting "Kill, don't care." None of the other witnesses however supported Punjab Singh as to the part attributed by him to Hakim Singh or as to the drunken condition of the appellant or Hakim Singh, and the

police after due investi- gation of the case sent up a charge sheet against the appel- lant only. The appellant was thereafter put on his trial before the Sessions Judge of Ferozepore. The learned Ses- sions Judge, after hearing the prosecution witnesses, of whom five were eye-witnesses, viz., Punjab Singh, his broth- er Mitta Singh, Mal Singh, Nikka Singh (brother of 455 Singh), and Mst. Phoolan, mother of the deceased, came to the conclusion, in agreement with 4 assessors who were present at the trial, that the version given by the prosecu- tion witnesses was substantially true. In support of his conclusion, he referred to the following facts among others :--(1)that the first information report had been lodged at the police station without any delay, (2)that the names of at least 4 of the alleged eye-witnesses were mentioned in the report, and (3) that no sufficient reason had been shown as to why the prosecution witnesses should have conspired to falsely implicate the accused in a murder case, if he had been innocent. The High Court on appeal agreed with the Sessions Judge, and the learned Judge who delivered the judgment of the High Court observed as follows in the con- cluding part of his judgment :--"I have given the case every consideration and I have come to the conclusion that the learned Sessions Judge was right in holding that the case against the appellant had been proved beyond reasonable doubt." The appellant thereafter obtained special leave to appeal to this Court, and Mr. Sethi, the learned counsel appearing for him, has in support of the appeal, addressed to us very elaborate arguments to show that the conclusion arrived at by the Courts below is not correct. He has argued that the alleged eye-witnesses were intimately con- nected with each other and with the deceased, that they and the accused belonged to two mutually hostile factions, that these witnesses had made discrepant statements as to the respective places from where they claimed to have seen the occurrence, some of them making discrepant statements about their own position before the police officer who drew up the plan of the scene of occurrence and before the trial Court and also making discrepant statements about the position of the other witnesses, and that they should not be held to be truthful witnesses inasmuch as they had denied certain previous statements made by them either before the police or before the Committing Magistrate. Mr. Sethi also put forward the theory, which has been discredited by both the Courts below on grounds which prima facie do not appear to be 456 unreasonable, that the occurrence must have taken place late at night, that there were probably no eye-witnesses to identify the real assailant and that the appellant had been falsely implicated on account of enmity.

5. The obvious reply to all these arguments advanced by the learned counsel for the appellant, is that this Court is not an ordinary Court of criminal appeal and will not, generally speaking, allow facts to be reopened, especially when two Courts agree in their conclusions in regard to them and when the conclusions of fact which are challenged are dependent on the credibility of witnesses who have been believed by the trial Court which had the advantage of seeing them and hearing their evidence. In the present case. the story for the prosecution, which is neither incredible nor improbable, is supported by no less than 5 witnesses including the mother of the deceased, and their evidence, in spite of its infirmities, has impressed 4 assessors and the two Courts below, who, in appraising its reliability, have given due weight to certain broad features of the case which, accord- ing to them, negative the theory of conspiracy or concoc- tion. In these circumstances, it would be opposed to all principles and precedents if we were to constitute ourselves into a third Court of fact and,

after re-weighing the evi- dence, come to a conclusion different from that arrived at by the trial Judge and the High Court.

6. In arguing the appeal, Mr. Sethi proceeded on the as- sumption that once an appeal had been admitted by special leave, the entire case was at large and the appellant was free to contest all the findings of fact and raise every point which could be raised in the High Court or the trial Court. This assumption is, in our opinion, entirely unwar- ranted. The misconception involved in the argument is not a new one and had to be dispelled by the Privy Council in England in Ibrahim v. Rex (1) in these words:--"..... the Board has repeatedly treated applications for leave to appeal and the hearing of criminal appeals (i) [1914] A.c. 615. 457 as being upon the same footing: Riel's Case; Ex-parte Deem- ing. The Board cannot give leave to appeal where the grounds suggested could not sustain the appeal itself; and, conversely, it cannot allow an appeal on grounds that would not have sufficed for the grant of permission to bring it." The rule laid down by the Privy Council is based on sound principle, and, in our opinion, only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave to appeal is asked for, and it would be illogical to adopt different standards at two different stages of the same case.
It seems also necessary to make a few general observa- tions relating to the powers of this Court to grant special leave to appeal in criminal cases. The relevant articles of the Constitution dealing with the appellate jurisdiction of the Supreme Court are articles 132 to 136. Article 132 applies both to civil and criminal cases and under it an appeal shall lie to the Supreme Court from any judgment, decree..... or final order of a High Court, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. Article 133 deals with the appellate jurisdiction of this Court in civil matters only, and it has been drafted on the lines of sections 109 and 110 of the Civil Procedure Code, 1908.

7. Article 134 constitutes the Supreme Court as a Court of criminal appeal in a limited class of cases only, and clear- ly implies that no appeal lies to it as a matter of course or right except in cases specified therein. Article 135 merely provides that the Supreme Court shall have jurisdic- tion and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply, if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of the Constitution under any existing law.

8. The last article, with which we are concerned is article 136 and it runs thus :-- "136. (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, 458 grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India, (2).....

9. The points to be noted in regard to this article are firstly, that it is very general and is not confined merely to criminal cases, as is evident from the words "appeal from any judgment, decree, sentence or order" which occur therein and which obviously cover a wide range of matters; secondly, that the words used in this article are "in any cause or matter," while those

used in articles 132 to 134 are "civil, criminal or other proceeding," and thirdly, that while in articles 132 to 134 reference is made to appeals from the High Courts, under this article, an appeal will lie from any court or tribunal in the territory of India.

10. On a careful examination of article 136 along with the preceding article, it seems clear that the wide discretion- ary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases on13,, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article. By virtue of this article, we can grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that Court should grant special leave to appeal only in those cases where special circumstances are shown to exist. The Privy Council have tried to lay down from time to time certain principles for granting special leave in criminal cases, which were reviewed by the Federal Court in Kapildeo v. The King. It is sufficient for our purpose to say that though we are not bound to follow them too rigidly since the reasons, constitutional and administrative, which sometimes weighed with the Privy Council, need not weigh with us, yet some of those principles are useful as furnishing in many cases 459 a sound basis for invoking the discretion of this Court in granting special leave. Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. Since the present case does not in our opinion fulfil any of these conditions, we cannot interfere with the decision of the High Court, and the appeal must be dismissed.
Appeal dismissed.