

SUPREME COURT OF INDIA

Mohinder Singh

Vs.

State of Punjab

Crl.A.No.35 of 1955

(Vivian Bose, T. L. Venkatarama Ayyar and B. P. Sinha, JJ.)

13.09.1955

JUDGEMENT

SINHA, J. :-

1. This is an appeal by special leave from the Judgment of the High Court of Judicature for the State of Punjab at Simla convicting the appellant Mohinder Singh, aged 25 years, under S. 302. I. P. C. and sentencing him to death. The appellant along with his sister's son, Baj Singh, had been placed on trial for the murder of Kapur Singh. Both had been convicted of the offence and sentenced, the appellant as stated above, and Baj Singh to transportation for life. On appeal Baj Singh was acquitted by the High Court on giving him the benefit of the doubt.

2. The facts of this case may shortly be stated as follows : At about 2-30 a.m. on 29-5-1954, the first information report was lodged by Sunder Singh, lambardar of village Chirewan at police station Muktsar in the district of Ferozepore, to the effect that Phula Singh (P. W. 1) was a displaced person from the district of Lahore. He had been settled in the village Chirewan on an allotment of 16 standard acres of land. He had three sons and a daughter who was married to the appellant Mohinder Singh. Mohinder Singh was also a displaced person from West Punjab and had been living with his father-in-law Phula Singh for the last three years along with his wife and children. Of the three sons of Phula Singh, Kapur Singh is said to have been the eldest about 45 years of age. He as well as the appellant Mohinder Singh used jointly to cultivate the land allotted to Phula Singh. Mohinder Singh is said to have developed a liaison with Kapur Singh's wife named Har Kaur. As Kapur Singh had a few months before, the occurrence come to know of the illicit connection, about ten days before the occurrence he removed his wife to her father's place. Baj Singh, who is the appellant's sister's son, had come to stay with the family only about a few weeks before the occurrence.

The occurrence is said to have taken place on the night between the 28th and 29th of May, 1954, in the courtyard of Phula Singh's house. Three cots more or less contiguous to one another were found lying at the time the police visited the spot in the early morning of the 29th May soon after recording the first information report. It was said in the report that the three beds were occupied by the appellant and Baj Singh side by side and by Phula Singh aforesaid. At about midnight, Phula Singh is said to have been aroused from his sleep by the screaming of Kapur Singh that he was being killed. Phula Singh claimed to have identified the two accused as the assailants of Kapur Singh who died then and there as a result of multiple injuries on his person with sharp cutting weapons like a kirpan. When the police turned up for investigation a bloodstained kirpan, said to have belonged to Baj Singh, was found near about the dead body of Kapur Singh. Mohinder Singh

is said to have fled away with his kirpan. Both the assailants are said to have shouted to Phula Singh when he was about to intervene that he should keep out of their way, otherwise he would make himself liable to be similarly dealt with by them. A pair of shoes and a number of clothes said to be the property of accused Baj Singh were also found near one of the cots. On the alarm raised by Phula Singh, a number of persons including Teja Singh (P. W. 4) and Arjan Singh (P. W. 5) and Thakar Singh (not examined) turned up. They also claimed to have identified the two accused while running away from the scene of the occurrence.

3. Such was the prosecution case that was investigated by the police, and after the necessary commitment proceedings the two accused were placed on their trial. Their defence appears to have been that on 28-5-1954, accused Mohinder Singh had left his father-in-law's village where the murder had taken place for village Beriwala, 70 miles away. The same day his sister's son, the second accused, also left with Mohinder Singh's family for village Beriwala. Three witnesses were examined by the accused in support of their defence which was in the nature of an alibi.

4. During the trial it was found by the learned trial Judge that Phula Singh (P. W. 1) had a developed cataract which rendered his eyesight "extremely weak", with the result, as remarked by the learned Judge, that

"he could not make out the fingers of my hand from a distance of two to three feet and can form only a very hazy picture of things lying even at a short distance from him".

But he claimed that at the time of the occurrence his vision was not so bad. The Court in order to find out the truth about this assertion, called the Civil Surgeon of Ferozepore as a Court witness. He examined Phula Singh for his vision and found him (P. W. 1) suffering from "senile maturing cataract in both the eyes". The doctor was not naturally in a position to say whether on the date of the occurrence about three and a half months before his deposition his vision could have been better than what he found it.

Despite this opinion of the doctor, the learned trial Judge found no difficulty in accepting in its entirety the evidence of Phula Singh. He was naturally very much influenced by the consideration that as the father-in-law of the accused Mohinder Singh he would not start a false case of murder against him, having already lost his eldest son as a result of the murder. He also accepted the evidence of P. Ws. 4 and 5 who had turned up on the alarm raised by Phula Singh and found him crying and saying that the two accused had killed his son with kirpans. The third man called Thakur Singh who was also alleged to have similarly turned up and to have seen the accused running away immediately after the occurrence was not examined by the prosecution as the Public Prosecutor appears to have intimated to the court that he would not examine Thakur Singh and Har Kaur (the widow of the murdered person) as they had been won over by the accused. P. Ws. 4 and 5 claimed to have seen accused Mohinder Singh running away with a kirpan and accused Baj Singh empty-handed.

At this stage it is significant to note that admittedly the night was a dark one (being three days before the new moon) and still at the dead of night these two witnesses claimed to have noticed consistently that the accused Mohinder Singh had a kirpan in his hand and the other accused was empty-handed, while running away. As will presently appear, this consistent story has been woven round the suspicion of Phula Singh who appears to have convinced himself beyond all possibility of doubt that it was the two accused who had committed the murder of his son, Kapur Singh. If the evidence of the three witnesses. P. W. 1, Phula Singh, who claims to be an eye-witness to the

occurrence, and P. Ws. 4 and 5 who claim to have seen the accused running away immediately after they heard the alarm of P. W. 1, is relied upon, there is no difficulty in holding that there is sufficient evidence to bring the charge home to the accused. That is the view taken by the learned trial Judge and the assessors.

5. On appeal, however, the learned Judges of the High Court have acquitted Baj Singh giving him the benefit of the doubt of the main question whether he was privy to the plan to murder Kapur Singh and whether he actually took any part in the murder. They did not rely upon the testimony of P. W. 1, Phula Singh, to the effect that Baj Singh also had actually given kirpan blows to the deceased, chiefly on the ground of his bad eyesight.

6. While acquitting Baj Singh the learned judges in the court below confirmed the sentence of death passed against the appellant Mohinder Singh and the only question therefore before us is whether the case against the appellant has been proved beyond all reasonable doubt particularly as on the same evidence the High Court did not feel justified in maintaining the conviction and sentence of Baj Singh. In our opinion, the case against the appellant is not free from doubt, arising from the following considerations. Firstly, P. W. 1, Phula Singh, who figures as the only eye-witness to the occurrence has equally implicated Baj Singh with the appellant.

As a matter of fact, the bloodstained kirpan which was found lying near the feet of the dead body was alleged by him as belonging to Baj Singh. The kirpan of the appellant has not been recovered and we do not know whether or not it was also bloodstained. Material exhibits, P-3, P-4 and P-5, newly made clothes said to belong to Baj Singh, and material exhibit P-6, a pair of shoes also said to belong to him, were found near one of the three cots. Those were taken by the trial Judge to be incriminating circumstances against the accused Baj Singh. No such incriminating circumstances were disclosed against the appellant.

The appellant has examined three witnesses of the village Beriwalla where he had removed with his family on 28th May. They claim to have seen the appellant in that village between 4 and 5 p. m. on that date. That evidence of alibi may not be conclusive in favour of the appellant because there is a possibility of his having taken advantage of a fast conveyance to the railway station and from there travelling by rail back to the village Chirewan. Secondly, the fact remains that it was a dark night and the eyesight of the only eye-witness, Phula Singh, which does not appear to have been such as to enable him distinctly to see even from a distance of a few feet at the dead of the night as to who the assailants were. In spite of those physical disabilities, Phula Singh appears to have convinced himself from the very start that it was the appellant, aided by his sister's son Baj Singh who had committed the murder. That is the reason why within a few hours of the occurrence the first information report clearly mentions the part said to have been played by the two accused and Phula Singh having informed all those who turned up soon after the occurrence that it was they who find perpetrated the crime.

The witnesses who turned up including P.Ws. 4 and 5, naturally did not see any reasons to differ from the inference drawn by Phula Singh aforesaid that it was the two accused and none others who had committed the murder. They had thus no difficulty in filing in the details and coming to court as they did in the full confidence that they had seen all that they had deposed to. It is thus a case of moral certainty from the surrounding circumstances developing into the factual certainty in the minds of the prosecution witnesses aforesaid that the two accused were concerned with the murder. Otherwise it would be difficult to explain the vehemence with which the P. Ws. aforesaid particularly P. W. 1, asserted that the two accused were the real assailants of the deceased.

7. The judgment of the High Court giving Baj Singh the benefit of the doubt certainly raises a reasonable doubt as to the guilt of the appellant. The positive evidence against him is not stronger than or Any different from the evidence against Baj Singh. But it has been argued on behalf of the prosecution on the authority of the judgment of this Court in - 'Dalip Singh v. State of Punjab', AIR 1953 SC 364 (A) with particular reference to the observations at pp. 367-368 that it is possible that the High Court may have been in error in giving Baj Singh the benefit of the doubt and that therefore that circumstance should not weigh in favour of the appellant in this Court. Those observations were made with reference to the facts and circumstances disclosed in the evidence in that case and cannot be taken as laying down any rule of universal application.

In the present case we find that the evidence of the three witnesses aforesaid on which the case against the appellant depends is not free from the blemish that they have been more emphatic in their assertions than the circumstances of the case would justify. They were roused from a sound sleep by the alarm raised, in the first instance by the dying man so far as P. W. 1 is concerned, and of P. W. 1 himself so far as the other two witnesses' evidence goes. When they were suddenly roused from their sleep in the early part of the dark night without any previous, apprehensions, it would be difficult for them to notice what they claim to have clearly observed. As already indicated, it is a case of their convincing themselves, however honest they may have been, that the two accused were the persons concerned in the crime without having clearly seen them or being able to see them. At any rate, in the case of the first witness for the prosecution who started the theory on which the prosecution case is based, his eyesight appears to have been too dim to enable him to see clearly in the dark night, as he claims to have done, that the two accused had dealt the fatal blows. If the basic evidence of P. W. 1 is subject to reasonable doubt as to its correctness, as we think it is, there is no difficulty in viewing the evidence of P. Ws. 4 and 5 with the same doubt.

In these circumstances we are not satisfied that the evidence led on behalf of the prosecution has brought the charge home to the appellant. We would accordingly allow the appeal, set aside the orders of conviction and sentence of the appellant and direct that he be released forthwith.

Appeal allowed.

</html