Piara Singh

Vs

The State of Punjab

Criminal Appeal Nos. 158 and 197 of 1968

(J.C. Shah, V. Ramaswami - I, A.N. Grover JJ)

08.01.1969

JUDGMENT

RAMASWAMI, J. -

1. The appellant Piara Singh and one Nand Lal Sehgal were tried together by the Sessions Judge of Kapurthala, who by his judgment dated 1st July, 1967, convicted the appellant under Section 308, I.P.C. and sentenced him to death. The appellant was also convicted and sentenced to 5 years' rigorous imprisonment under Section 3 of the Explosive Substances Act and to 5 years' rigorous imprisonment under Section 326 of the Indian Penal Code. Nand Lal Sehgal was sentenced to life imprisonment under Section 302, read with Section 109 and 119, I.P.C. and to 5 years' rigorous imprisonment under Section 4 of the Explosive Substances Act. Both the convicted person filed appeals in the Punjab and Haryana High Court, viz., Criminal Appeal No. 602 of 1967 and 601 of 1967. The State of Punjab also filed a Criminal Revision No. 1006 of 1967 for enhancement of sentence of Nand Lal Sehgal. By a common judgment, dated 3rd November, 1967, the High Court dismissed the appeal of the appellant and confirmed the sentence of death imposed upon him. The High Court, however, acquitted Nand Lal Sehgal by allowing his appeal and dismissed the revision petition filed by the State of Punjab. These are two appeals, one by certificate and the other by special leave on behalf of the appellant Piara Singh against the judgment of the Punjab and Haryana High Court, dated 3rd November, 1967.

2. The case of the prosecution was that one Ram Sahai, P.W. 19, who was the Organising Secretary of Jagatjit Kapra Mills Mazdoor Union, Phagwara, had proceeded on hunger-strike from 1st October, 1966, in front of the gate of the Jagatjit Textile Mills, Phagwara (hereinafter called the mills), in order to compel the management to accept certain demands of that union regarding dearness allowances, gratuity for re-employment of the labourers who had been turned out of service and the like. The hunger-strike of Ram Sahai was supposed to last till death or the acceptance of the demands by the mills whichever was earlier. A tent had been fixed outside the gate of the mills and Ram Sahai used to sit on a cot under the tent. On 4th October, 1966, at 1-45 p.m. Ram Labhaya, Postman, P.W. 31, came there with a registered parcel addressed to Ram Sahai. On the parcel being opened, a bomb inside it exploded, as a result of which Radhey Sham, Shadi Lal and Charanjit Lal died and P.W. 11 Chanan Singh P.W. 14 Moti Lal, P.W. 16 Madhu Prashad, P.W. 17, Tara Singh, P.W. 18 Ram Dass, P.W. 20 Muni Lal and P.W. 21 Naunihal Singh received injuries. It is alleged for the prosecution that the parcel had been dispatched by the appellant from Amritsar at the instance of Nand Lal Sehgal and that the approver Mohinder Singh had helped the appellant in preparing the parcel containing the bomb.

3. The first clue in connection with the crime was obtained by the police on 8th October, 1966,

when at about 4-00 p.m., P.W. 25 Amrik Singh, a resident of Amritsar appeared before Sub-Inspector Mohinderpal Singh, P.W. 59 and made a statement that he had known Piara Singh before and was friendly with him that on 3rd October, 1966, Piara Singh who was carrying a Jhola, which appeared to contain something bulky, met him and in response to an invitation for tea, told Amrik Singh that he was in a hurry to go for some work. Three or four days later, Amrik Singh read in newspaper regarding explosion of bomb near the Textile Mills, Phagwara. On the 7th October, 1966, Sri Nivas, P.W. 27 who is a deed-writer, met him and told him that Piara Singh had despatched a parcel from Amritsar.

4. The most important witness in the case is Mohinder Singh, P.W. 8, who was tendered pardon under Section 337 of the Code of Criminal Procedure by the District Magistrate, Kapurthala. The evidence of the approver is to the effect that he was working in the mills since 1951 and three or four years latter Piara Singh also joined service in that mills and was working as his subordinate. Piara Singh developed cordial relations with Nand Lal Sehgal and used to assist him in breaking up labour strikes. One and a half months before the occurrence, Piara Singh came to the approver's residence and told him that Sehgal wanted one Ram Singh who was employed in the Textile Mills, Ganga Nagar, to be killed. Piara Singh suggested the device of sending a bomb in a parcel to the victim and when the parcel would be opened, the bomb would explode. About 15 days before the incident, Piara Singh again came to the approver and told him that he had secured a bomb and he wanted to get prepared two wooden boxes, one smaller in size than the other. The approver and Piara Singh thereafter went to the shop of Nazar Singh, P.W. 22, a carpenter of Phagwara, who made the box. Later in the evening they went to the shop of Gian Singh, P.W. 23, a carpenter of village Chachoki, which is said to be half a mile from Phagwara. Piara Singh got prepared from him six pieces of phaties of raw wood. After it had become dark, Piara Singh brought to the approver's house these articles as also a bomb saying that he had removed the fuse of the bomb so that if it should fall, it may not explode. On 2nd October, 1966, Piara Singh came to the approver's house at 10 p.m. and informed him of Sehgal's intention that the bomb should now be sent so as to explode at Ram Sahai who was the leader of the strikers at Phagwara. Piara Singh thereafter prepared a wooden box from the six pieces of phaties. The approver described the arrangement for packing the bomb as follows :

> "Placing the fuse in the bomb after removing the pin and placing a wire in its place, we placed it in that box. Then the box was closed and the lid was placed on it with Kabza and Kundi. In that Kundi a nut was placed and a bolt was fitted in it so that the box may not open. Then the box was also tied with strings so that the phaties may not give way on account of the pressure of the lever. Then from the hole, which was on one side of the box corresponding to the wire fitted in the bomb, the wire was pulled out. Then that wooden box was placed in the bigger box. Piara Singh accused had brought with him a piece of Khaddar cloth and a parcel was made of the bigger box in that cloth. The pieces of Khaddar which were spare were placed in between the two boxes so that the smaller box may not move inside the bigger box. Because of the spare pieces of cloth were not sufficient so I gave to shirts of my children to Piara Singh. Those shirts were of Poplin of blue colour. Piara Singh tore one shirt into pieces and placed those pieces also in between those boxes. Before the parcel was prepared in the Khaddar cloth the bigger box was secured with nails."

5. At about 1 a.m., the approver and Piara Singh went to the house of Sehgal and explained to him how they had prepared the parcel. Piara Singh told Sehgal that when Ram Sahai would open the parcel, the bomb would explode and he would die. Sehgal made over a sheet of paper to Piara Singh on which was written the address of Ram Sahai. Sehgal also gave Rs. 40 to Piara Singh for expenses

and instructed him that the parcel had to be sent through the Post Office at Amritsar. Next day on 3rd October, 1966, Piara Singh came to the approver in the morning carrying a Jhola in which he placed the parcel containing the wooden box. The approver took Piara Singh to the Railway Station, Phagwara. In the evening Piara Singh returned at about 6 p.m. and told the approver that he had got the parcel despatched as directed by Sehgal from Amritsar where he had also met Amrik Singh. Both of them then went to the house of Sehgal and Piara Sing handed over the registration receipt to him saying that it should be destroyed. At about 2 p.m. on the next day, i.e. 4th October, 1966, the approver learnt about the explosion of the bomb.

The High Court considered that the statement of the approver was sufficiently corroborated by the evidence of Nazar Singh, P.W. 22, Gian Singh, P.W. 23, Sardara Singh, P.W. 24, Amrik Singh, P.W. 25 and Sri Niwas, P.W. 27, so far as the appellant was concerned. The High Court accordingly held that charges under Sections 302 and 326, I.P.C. and Section 3 of the Explosive Substances Act were established against the appellant. As regard Nand Lal Sehgal the High Court took the view that there was no independent corroboration of the approver's evidence which could reasonably lead to the inference that Sehgal was instrumental in the commission of the crime. The High Court, therefore, acquitted Nand Lal Sehgal.

6. In support of his appeal Mr. Mitter contended, in the first place, that by reason of the acquittal of Nand Lal Sehgal the evidence given in the case concerning Nand Lal Sehgal must be totally rejected. It was contended that the evidence of the approver so far as it concerns Nand Lal Sehgal must be eliminated. In other words, the argument was that the effect of acquittal of Nand Lal Sehgal was to weaken if not to destroy the approver's evidence so far as it concerns the appellant also. In this connection Mr. Mitter relied upon the principle issue-estoppel and referred to the decision of the Judicial Committee in Sambasivam v. Public Prosecutor, Federation of Malaya, (1950 AC 453) and the decision of this court in Pritam Singh v. State of Punjab, (AIR 1956 SC 415) and Manipur Administration v. Thokchom Bira Singh. ((1964) 7 SCR 123). In our opinion, there is no justification for this argument. It is true that Nand Lal Sehgal was acquitted by the High Court which took the view that the evidence of the approver was not corroborated so far as Nand Lal Sehgal was concerned. But there is no finding of the High Court that the approver had implicated Nand Lal Sehgal falsely. The High Court considered that there was no legal corroboration of the approver's evidence as regards Nand Lal Sehgal and in the absence of such corroboration it was not safe to uphold the conviction of Sehgal. That is different thing from saying that the High Court found that the approver's evidence regarding the participation of Nand Lal Sehgal is false. In any event, the principle of issue-estoppel has no application to the present case. It should be stated that the principle of issue-estoppel is different from the principle of double jeopardy or autre fois acquit as embodied in Section 403 of the Criminal Procedure Code. The principle of issue-estoppel is a different principle, viz., where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of Section 403(2), Cr. P.C. Speaking on the principle of estoppel Dixon, J., said in King v. Wilkes (77 CLR 511 at pp. 518-519) :

> "Whilst there is not a great deal of authority upon the subject, it appears to me that there is nothing wrong in the view that there is an issue-estoppel, if it appears by record of itself as explained by proper evidence that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in view on a second criminal trial of the same

> prisoner. That seems to be implied in the language used by Wrigt, J., in R. v. Ollis, which in effect I have adopted in the forgoing statement ..... There must be a prior proceeding determining against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner. The allegation of the Crown in the subsequent proceeding must itself be inconsistent with the acquittal of the prisoner in the previous proceeding. But if such a condition of affairs arises I see on reason why the ordinary rules of issue-estoppel should not apply. Such rules are not to be confused with those of res judicata, which in criminal proceeding are expressed in the pleas of autre fois acquit and autre fois, convict. They are pleas which are concerned with the judicial determination of an alleged criminal liability and in the case of conviction with the substitution of a new liability. Issue-estoppel is concerned with the judicial establishment of a proposition of law or fact between parties. It depends upon well known doctrines which control the re-litigation of issue which are settled by prior litigation."

In a subsequent case Marx v. The Queen ((1956) 96 CLR 62), Dixon, C.J., stated as follows :

> "The law which gives effect to issue-estoppels is not concerned with the correctness or incorrectness of the finding which amounts to an estoppel still less with the processes of reasoning by which the finding was reached in fact ..... It is enough that an issue or issues have been directly raised and found. Once that is done, then, so long as the finding stands, if thereby any subsequent litigation between the same parties no allegations legally inconsistent with the finding may be made by one of them against the other. Res Judicata pro veritate accipitur ..... and ..... this applies in pleas of the Crown."

Again in Brown v. Robinson ((1960) SR (NSW) 297, 301), Herron and Maguire, JJ., said :

> "Before issue-estoppel can succeed in case such as this there must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner ..... It depends upon an issue or issues having been distinctly raised and found in the former proceeding."

The principle of issue-estoppel has received the approval of this court in Pritam Singh v. State of Punjab and Manipur Administration v. Thokchom Bira Singh (supra) and several later decisions. But the principle cannot be invoked in the present case because the parties are different and the decision upon any issue as between State and Nand Lal Sehgal in the same litigation cannot operate as binding upon the State with regard to the present appellant. For issue-estoppel to arise, there must have been distinctly raised and inevitably decided the same issue in the earlier proceeding between the same parties. In our opinion, Mr. Mitter is unable to make good his argument on this aspect of the case.

7. It was then contended on behalf of the appellant that there was no corroboration of the approver's evidence so far as he was concerned. An accomplice is undoubtedly a competent witness under the Indian Evidence Act. There can be, however, no doubt that the very fact that he has participated in the commission of the offence introduces a serious taint in his evidence and courts are naturally reluctant to act on such tainted evidence unless it is corroborated in material particulars by other independent evidence. It would not however, be right to except that such independent corroboration should cover the whole of the prosecution case or even all the material particulars of the prosecution case. If such a view is adopted it will render the evidence of the accomplice wholly superfluous. On the other hand, it will not be safe to act upon such evidence merely because it is corroborated in

minor particulars or incidental details because, in such a case, corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true. It is well settled that the appreciation of approver's evidence has to satisfy a double test. His evidence must show that he is reliable witness and that is a test which is common to all the witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. See Sarwan Singh v. State of Punjab. (AIR 1957 SC 637). In the present case the High Court has rightly applied this principle and reached the conclusion that the approver's evidence was materially corroborated so far as the appellant was concerned. In the first place, the approver said that while going from his house, when he fled from Phagwara, he had thrown the remaining pieces of the shirt in a cluster of Sarkandas. As a result of search, S. I. Pritam Singh recovered torn pieces of cloth Exs. P. 9/1 to P. 9/3 from a bush about 150 yards from the mill. The testimony of the expert Mr. Longia, P.W. 7, shows that Exs. P. 9/1 to P. 9/3 were parts of the same cloth as pieces Exs. P. 10/1 to P. 10/3 which were used for packing the bomb between the inner and the outer boxes. If the approver was not a participant to the packing of the hand grenade, he could not possibly be in possession of the pieces of cloth Exs. P. 9/1 to P. 9/3. In the second place, the evidence of Nazar Singh, P.W. 22, indicates that he made the outer box for Piara Singh and was paid Re. 1 by him. Gian Singh P.W. 23, also said that he had been asked by Piara Singh to make Phaties about 4" in length for the preparation of the box. Amrik Singh, P.W. 23 has also given corroborative evidence. Piara Singh had met him at Amritsar on 3rd October, 1966, and told him that Piara Singh had despatched the parcel. The testimony of Sri Niwas, P.W. 27, is crucial in this case. He has corroborated the statement of the approver in important particulars. The evidence of Sri Niwas was criticised on behalf of the appellant as Sri Niwas made his statement to the police after some delay, viz., on the 17th October, 1966. On this point Sub-inspector Mahinderpal Singh explained that earlier on 9th October, 1966, he tried to contact Sri Niwas by the latter was not found in his seat in Phagwara Chouk. He made another effort to trace him on 13th October, 1966, but it was equally fruitless. It is true that the Sub-Inspector could have made more strenuous efforts to trace out Sri Niwas, but he was going to other places also in connection with the investigation. The High Court has held that merely on account of this delay the statement of Sri Niwas could not be rejected. On the contrary the High Court has found the evidence of Sri Niwas to be true and reliable. It is manifest that there is sufficient corroboration of the evidence of the approver so far as the appellant is concerned and the argument of Mr. Mitter must be rejected on this aspect of the case.

8. Lastly, it was contended that the hand grenade could not be arranged in the manner stated by the approver, but that the hand grenade was intact and when the parcel was opened, some one may have caused it to explode. In this connection Mr. Mitter referred to the evidence of expert Mr. Murti, P.W. 7. According to Mohinder Singh, only one hole was made in the inner box through which the wire fitted in the grenade in place of the safety pin was taken out. The argument of the appellant was that two holes should have been made in the inner box, but according to the approver only one hole was made. It was also said that according to the report of the expert, bent steel wire was found in the first parcel which was sent to him. It was argued that the report of the expert was non consistent with the evidence of the approver who said that the safety pin of the wire had been removed. It was suggested that Mohinder Singh would have probably thrown the safety pin and not kept it in the box. The High Court has examined in detail the argument of the appellant on this point and reached the conclusion that the statement of the approver with regard to the packing of the hand grenade should be accepted as true. The question involved is one appreciation of evidence and not a question of law. In any event, we see no sufficient reason for taking a view different from that of the High Court in this matter.

9. For these reasons we hold that there is no merit in these appeals which are accordingly dismissed.

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