

Ram Kishan Singh

Vs

Harmit Kaur and Another

Criminal Appeal No. 106 Of 1970

(A.N. Ray, D.G. Palekar JJ)

09.12.1971

JUDGMENT

RAY, J. -

1. This is an appeal by special leave against the judgment, dated March 20, 1970, of the High Court of Punjab and Haryana setting aside the acquittal of the appellant.
2. The High Court passed the order on a revision application under Section 439 of the Code of Criminal Procedure made by Harmit Kaur widow of the deceased Bharpur Singh.
3. The prosecution case was as follows : Gurdit Singh had two sons Hara Singh and Hazura Singh. Hazura Singh married twice. By Nihal Kaur Hazura Singh had two sons, the deceased Bharpur Singh and Mangal Singh and a daughter. By the other wife Narinder Kaur, Hazura Singh had one son the appellant and four daughters. The family lived at a place called Gholia Khurd and cultivated land. Hazura Singh had also land at Jalalabad. The land at Jalalabad was given on 'Batai'. Three years before the date of occurrence which was September 11, 1967, Nihal Kaur with her son Bharpur Singh and his wife Harmit Kaur and her other son Mangal Singh shifted to Jalalabad. Hazura Singh remained at Gholia Khurd. Thereafter Narinder Kaur, the mother of the appellant, died. The appellant quarrelled with his father Hazura Singh. The appellant started drinking. Hazura Singh went to Jalalabad with the intention of shifting to that place. On September 10, 1967, Hazura Singh, Nihal Kaur and the deceased and his wife Harmit Kaur went to Gholia Khurd in order to pack the luggage of Hazura Singh. There was some dispute. Parties went to eat at the house of Hara Singh and returned at about 11 p.m. At about 5 a.m. on September 11, 1967, the appellant is alleged to have murdered his brother Bharpur Singh. The murder was alleged to have been seen by Nihal Kaur, Harmit Kaur and Hazura Singh. Hara Singh is alleged to have been informed about the incident by Hazura Singh.
4. The Sessions Judge disbelieved Nihal Kaur and Harmit Kaur in regard to their evidence and came to the conclusion that they were not present. Hazura Singh was found to have been won over. Hara Singh was disbelieved.
5. Harmit Kaur made an application under Section 439 of the Code of Criminal Procedure and asked for retrial on the ground that the Sessions Judge had not taken into consideration the statement of Hazura Singh made under Section 164 of the Code of Criminal Procedure. The High Court held that the Sessions Judge erred in not taking into consideration the statement and directed retrial.
6. There was a first information report Exhibit P-3. Exhibit P-4 was a statement to the police under

Section 164 of the Code of Criminal Procedure. The trial Court considered the first information report and the evidence of Hazura Singh. The trial Court found that Hazura Singh's evidence was unacceptable and he was not a truthful witness and he had asked his brother Hara Singh not to give truthful evidence.

7. The first information report was found by the Sessions Judge not to be a truthful statement in spite of the fact that Hazura Singh repudiated having of his own accord made the first information report. The Sessions Judge found the untruthfulness of Nihal Kaur and Harmit Kaur who claimed to have been present at the time of the occurrence. The Sessions Judge found in the facts and circumstances of the case that the guilt of the appellant was not established.

8. A statement under Section 164 of the Code of Criminal Procedure is not substantive evidence. It can be used to corroborate the statement of a witness. It can be used to contradict a witness. The first information report was considered by the Sessions Judge. Any special consideration of the statement of Hazura Singh under Section 164 of the Code of Criminal Procedure could not have produced a different result by reason of the conclusions of the Sessions Judge as to rejecting the oral evidence of Nihal Kaur, Harmit Kaur and Hazura Singh as unreliable, untruthful and unworthy of credence.

9. It is true that the High Court as an appellant Court can set aside an order of acquittal. In doing so, the High Court has to review the evidence upon which the order of acquittal is founded. The High Court is to consider the views of the trial judge as to the credibility of the witnesses. The High Court is also to keep in view the presumption of innocence in favour of the accused and the right of the accused to the benefit of doubt. Finally the High Court is to give reasons that the acquittal was not justified. The acquittal by the Sessions Judge cannot be said to be against the evidence or in disregard of evidence. Nor can the acquittal be said to be in violation of the principles of criminal jurisdiction.

10. The High Court in setting aside the acquittal said that the result would have been different if the Sessions Judge had taken into consideration the statement of Hazura Singh Exhibit P-4 with which Hazura Singh had been confronted. In cross-examination Hazura Singh said that the statement before the Magistrate Exhibit P-4 was made under threat and was a wrong statement. The Sessions Judge found that Hazura Singh made the same statement disowning the first information report. Hazura Singh was torn in his conscience between emotion for his son the appellant on the one hand and his wife Nihal Kaur and the deceased son Bharpur Singh on the other.

11. The High Court was wrong in setting aside the acquittal. The appeal is allowed. The appellant is set at liberty.

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