

State of Punjab

Vs

Joginder Singh and Others

Criminal Appeal No. 67 of 1972

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

12.03.1973

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal by the State, by special leave, is against the judgment dated September 7, 1971, of the High Court of Punjab and Haryana in Criminal Appeal No. 384 of 1971 and Murder Reference No. 32 of 1971. Respondents 1 and 2 are brothers and similarly Respondents 3 to 6 are also brothers. The six respondents along with another Darshan Singh, son of Ishar Singh, were tried for offences under Section 302 and 307, read with Section 149 and Section 148 of the Indian Penal Code. The learned Additional Sessions Judge, Amritsar, acquitted the 7th accused, Darshan Singh, son of Ishar Singh. Joginder Singh, the 1st respondent, was convicted under Section 302 and sentenced to death. Respondents 2 to 6 were convicted under Section 302, read with Section 149 and sentenced to life imprisonment. All the six respondents were convicted under Section 148 and sentenced to one year's rigorous imprisonment. Further they were also convicted and sentenced to varying terms of imprisonment under Section 323 and 324, read with Section 149 and Section 326 of the Indian Penal Code. All the sentences of imprisonment were directed by the trial court to run concurrently.

2. There was no appeal by the State against the acquittal of the 7th accused. All the respondents challenged their conviction and the sentences awarded in Criminal Appeal No. 384 of 1971 before the High Court. At the 1st respondent had been sentenced to death, there was also the Murder Reference No. 32 of 1971 by the learned Sessions Judge to the High Court for confirmation. The High Court accepted their appeal and acquitted all the respondents. The Murder Reference was rejected. The State has come up in appeal against the order of acquittal passed by the High Court.

3. Mr. A. N. Mulla, learned counsel for the State, has very strenuously attacked the reasoning and finding of the High Court. According to him, the learned Additional Sessions Judge in a very well-considered judgment had convicted the respondents. But, on the other hand, the High Court without a proper consideration of the evidence has acquitted the respondents without any justification.

4. Therefore, the point is whether the order of acquittal passed by the High Court is justified in the circumstance of this case.

5. The case for the prosecution was briefly as follows :

"On the evening of May 22, 1970, the deceased, Gurdip Singh, with his two brothers P.Ws. 3 and 4, was sitting in his haveli in the village Maan. At about 7 or 8.00 p.m.,

he went to his fields, which were at a distance of about 150 yards to answer calls of nature. The respondents along with the 7th accused, armed with dang and kirpans, suddenly emerged from the bushes nearby and inflicted very serious injuries on Gurdip Singh. In particular, the 1st respondent, Joginder Singh, gave a cut on the neck of Gurdip Singh with a sword. Even after Gurdip Singh fell down, all the seven accused mercilessly beat him with the weapons they had. Gurdip Singh died on the spot. This incident was witnessed by P.W. 1, the son of the deceased, as well as P.Ws. 3 and 4. P.Ws. 3 and 4 rushed to help their brother, but they also received injuries at the hands of all the accused. All the accused ran away with their weapons. P.Ws. 5 and 6 saw the accused running in a body. The first information report was given by P.W. 1 at about 10.30 p.m. at the police station, Kathu Nagal, which was at a distance of about one mile from the village. P.W. 15 took up investigation. In the meanwhile, P.Ws. 3 and 4 had gone to the V.J. Hospital at Amritsar, which was about 12 miles away from the village. The doctor P.W. 2, treated there witnesses for their injuries. P.W. 2 also performed the post-mortem on the deceased. On the basis of information furnished by Respondents 2 and 5, blood-stained kirpans were recovered. The post-mortem examination revealed that the deceased had sustained about 34 injuries. According to the doctor, P.W. 2, injuries Nos. 1, 3 and 6 were individually sufficient in the ordinary course of nature of cause death."

6. The prosecution relied on the evidence of P.Ws. 1, 3 and 4 and also the evidence of P.Ws. 5 and 6 for establishing that all the accused were seen running away with weapons in their hands immediately after the occurrence. The learned Additional Sessions Judge found that the prosecution witness had sufficient motive to falsely implicate the 7th accused, Darshan Singh, son of Ishar Singh. The trial court was not prepared to give much credence to the evidence of P.Ws. 5 and 6. Nevertheless, in view of the fact that P.Ws. 3 and 4 had received injuries, their evidence as well as the evidence of P.W. 1 was accepted. The trial court also accepted the case of the prosecution regarding the recovery of blood-stained kirpans on the basis of information furnished by Respondents 2 and 5. Disbelieving the prosecution witnesses, the trial court acquitted the 7th accused, Darshan Singh, son of Ishar Singh. But it found it safe to act on the same evidence and convicted all the respondents in the manner stated earlier.

7. The High Court, on the other hand, was also not prepared to act on the evidence of P.Ws. 3 and 4. In fact the view of the High Court is that they are not reliable witnesses. Even the evidence of P.W. 1 was not accepted by the High Court. According to the High Court the place, where this incident is stated to have taken place, was not visible from the haveli of the deceased where admittedly P.Ws. 1, 3 and 4 were stated to have been. Though P.Ws. 3 and 4 had received injuries and claimed to have gone immediately to the hospital about 12 miles from the village for treatment, the evidence shows that they were actually treated only at about 9.30 a.m. on the morning of May 23, 1970. In fact P.W. 2, the Medical Officer, has given evidence to this effect. It is the view of the High Court that these two witnesses were in the village at the time when the Investigating Officer came and it is only after a long deliberation among themselves that the first information report implicating the accused was given. The evidence of these two witnesses that they had already left for the Hospital and they did not see the Investigating Officer in the village, was not believed by the High Court. The evidence of P.W. 15, Investigating Officer, to the same effect was also not believed. The High Court was also impressed by the circumstance that through P.Ws. 3 and 4 had received injuries and this fact was known to P.W. 15, still the latter did not make any attempt to contact these two people at the Hospital for recording their statements. Their statements were actually recorded only on the morning of May 24, 1970, i.e., after a considerable delay. The evidence of P.Ws. 5 and 6 was also

rejected by the High Court. The recovery of blood-stained kirpans stated to have been made on the basis of the statements made by Respondents 2 and 5 was also disbelieved by the High Court. Having due regard to the medical evidence, it is the view of the High Court that Gurdip Singh should have died about two or three hours after taking food because the doctor found eight ounces of semi-digested food in his stomach. This gives an indication that the murder must have taken place not at the time mentioned by the prosecution witnesses but long thereafter when probably there would have been nobody to witness the occurrence. The High Court has quite naturally taken into account the fact that the prosecution witnesses have not been believed by the trial court so far as the 7th accused was concerned, though all of them have attributed a very important part in the incident. In view of these circumstances, the High Court felt that there is a reasonable, doubt regarding the complicity of these respondents and accordingly acquitted them.

8. It is not disputed that the High Court, sitting as a Court of appeal, was entitled to reappraise the evidence. In fact, as Joginder Singh, the 1st respondent, had been sentenced to death and there was the Murder. Reference, there was a duty on the part of the High Court to consider the evidence independently and come to its own conclusion. It can be stated safely that it is established that on May 22, 1970, Gurdip Singh was murdered on his field on which barseem was standing and that in the said incident his two brothers, P.Ws. 3 and 4, received injuries. Under those circumstances, normally, the evidence of P.Ws. 3 and 4 must received very careful consideration at the hands of the court. It should be borne in mind that even according to the learned Additional Sessions Judge, these and other witnesses had a motive to falsely implicate the 7th accused. The fact that their evidence has been found to be false with regard to the participation of the 7th accused, is certainly a very important factor to be taken into account to consider as to how for their testimony regarding the others can be safely accepted. For that purpose, the High Court has tested their evidence along with the other evidence on record. Though they claimed to have gone away to the Hospital to get themselves treated immediately after the occurrence, which is stated to have taken place between 7 and 8.00 p.m. on May 22, 1970, the records clearly show that they were for the first time treated by the doctor only at about 9.30 a.m. on the morning of the next day. They had no explanation to offer for this delay. Under those circumstances, the High Court was justified in holding that the incident must have happened very late in the night, when the other witnesses, who claimed to have seen the occurrence, would not have been there. There is also the circumstance that, though it is in evidence, there are other people living near about the place of occurrence. Not one of them has been examined by the prosecution. P.Ws. 5 and 6 have been found to be unworthy of credit by both the Courts.

9. Mr. Mulla has taken us through the evidence of the material prosecution witnesses and urged that their evidence has not been properly appreciated by the High Court. It is now well established that in appeals against acquittal, by special leave under Article 136, this Court will not normally interfere with the appreciation of evidence or finding of fact unless the High Court has acted perversely or otherwise improperly or there has been a grave miscarriage of justice. It is no doubt unfortunate that a murder goes unpunished. After having gone through the reasons given by the High Court, we are satisfied that, as there is a reasonable doubt regarding the guilt of the respondents, the High Court was justified in acquitting them. The appeal fails and is dismissed.

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