

State of Punjab

Vs

Sohan Singh and Others

Criminal Appeal No. 98 of 1970

(S. N. Dwivedi, Y. V. Chandrachud JJ)

16.11.1973

JUDGMENT

CHANDRACHUD, J. -

1. The learned Additional Sessions Judge, Jullundur, convicted the three respondents under Section 307 read with Section 34 of the Penal Code and sentenced each of them to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 500. The High Court of Punjab and Haryana having set aside the order of conviction and sentence, the State of Punjab has filed this appeal by special leave.
2. The incident out of which the prosecution arises happened between 9 and 10 p.m. on December 11, 1966 in the village of Dherian. The case of the prosecution is that one Dalipa was assaulted on that night by the three respondents, Sohan Singh, Joginder Singh and Gurbachan Singh. Dalipa was first lured out by Gurbachan Singh. On coming out of the house Dalipa saw that Gurbachan was armed with a Kirpan and he therefore started retreating to the house. He was however overpowered by the respondents and there is not the slightest doubt that he was assaulted brutally. The evidence of Dr. Pushpa Bajaj shows that he had received as many as 26 injuries out of which 20 were incised. Injury No. 12 which had cut the neck half way through has been described by the medical officer as being dangerous to life.
3. Having heard the learned Counsel on behalf of the State, we see no reason to take a view contrary to that taken by the High Court. The prosecution examined Dalipa, his daughter Jogindero and his son Joginder in support of its case. Jogindero had admittedly received injuries during the incident in question and there can be no doubt that she came out of the house on hearing the cries of her father. But it is clear from her evidence that she did not disclose the names of the assailants to anyone of the persons who had gathered at Dalipa's house immediately after the incident. She has explained this lapse by saying that everyone was in a hurry to take Dalipa to the hospital and therefore there was no time to disclose the names of the assailants. This excuse is too lame to be accepted. Dalipa's son Joginder has stated in his evidence that it was only after one Milkha Singh had told him and his sister the names of the assailants, that they mentioned those names to the police. It was common ground in the Courts below that there was deep-seated enmity between Milkha Singh and the respondents.
4. The incident took place on a dark night but it was claimed that it was possible to identify the assailants in the light of a lantern brought by Joginder. It seems to us surprising that no reference should have been made in the First Information Report to Joginder bringing a lantern with him. In fact, as observed by the High Court, it is extremely doubtful if Joginder was at all awake at the time

of the incident,. He was a boy of 12 and the evidence of Dalipa shows that even the adults in the household had retired for the night about 2 hours before the incident took place.

5. Milkha Singh was in the company of Dalipa and his children throughout the night until the First Information Report was lodged at the police station. In view of his enmity with the respondents we are unable to see any error in the finding of the High Court that the respondents were implicated at his instance. In fact, as stated above, Joginder admitted in plain terms that the names of the respondents were furnished to him and his sister by Milkha Singh.

6. In the result we confirm the order acquittal and dismiss the appeal.

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