

Bishan Dass

Vs

State of Punjab

Criminal Appeal No. 197 of 1974

(V. R. Krishna Iyer, R. S. Sarkaria JJ )

10.01.1975

JUDGMENT

KRISHNA IYER, J. -

1. The appellant, convicted of murder of Satya Devi, a young woman, and her child, Surjit Kumar, by throwing a hand-grenade into the house of Mohinder Pal. PW 7, husband of the deceased lady, was sentenced to death by Sessions Judge. On appeal, the conviction and sentence were confirmed by the High Court. Of course, he has also been convicted for offences under Sections 325 and 323 for causing injuries to Mohinder Pal aforesaid and a few others.

2. The substance of the prosecution case is that PW 7 was a grocer and cultivator. The accused was a neighbouring cultivator and had a dispute over the boundary between the two fields with PW 7. A quarrel had arisen on this score between the two and this led to grudge borne by the accused against PW 7. It is further alleged, as motive for the offence, that the accused used to buy grocery from PW 7's shop on credit but that the former defaulted to pay and when pressed, picked up a quarrel. These dual motives by themselves are not serious enough for the commission of a grave crime but who knows the psychic sensitiveness of individuals ? Both the courts below have held the motives true and we see no reason to disagree with them. Of course, merely because there is some grudge or pique proved, we cannot hold the accused guilty. That question has to be decided by the pressure of probabilities and direct evidence to the extent of proof beyond reasonable doubt.

3. Now to the actual incident. It is alleged that on August 21, 1971, PW 7, his wife and children and his aunt, PW 8, were talking to each other from the courtyard of their house, seated on cots. There was a lamp burning, hung from a wall of the courtyard. As they were chatting, PW 7 turned towards the lantern to light a cigarette and his eyes landed on the accused standing in the lane nearby. Immediately the latter threw a handgrenade into the courtyard and ran away. The explosion which followed sprayed splinters which struck the persons present there. In consequence, two persons the wife and child of PW 7, died on the spot and others, including PW 7 received injuries. The Sarpanch of the village PW 6, who was living closely, came to the scene, found two persons dead and a number of others with injuries. He proceeded to the police station for lodging a first information report but could not cross the river at night as it was in floods. The next day he lodged the first information report before the police at 2 p.m., Ex. PK. Investigation commenced and the accused was charge-sheeted for various offences, the gravest of which was under Section 302, Indian Penal Code. The accused denied his guilt totally but produced no evidence in defence. Even so the prosecution has to prove its case satisfactorily, the silence of the accused being of no consequence in this context.

4. It has been held by the Courts below that the death of the two persons and the injuries to a number of others were caused by the handgrenade thrown by the accused. Shri O. P. Rana appearing as amicus curiae has challenged the findings as totally untenable and built upon surmises and flimsy evidence. Indeed, his persuasive presentation initially induced some hesitancy in our minds but on a closer consideration of the evidence we are not inclined to disturb the holding by the High Court and the Sessions Court that the accused was responsible for the murder and the other lesser offences.

5. The trumpcard used by Shri Rana was that there was a fatal omission in the first information, laid a day after the occurrence, to mention the name of the accused. On the other hand, Ex. PK, the first information report, mentions as the miscreant 'some unknown man'. Had there been no satisfactory explanation for this serious omission we might have been inclined to doubt the veracity of the prosecution. The point made by Shri Rana is that PW 7 claims to have seen the assailant and shouted that the bomb was thrown by Bishan 'Bishan, Tera Bera Gark Mainu Taba Kar Ditta Hai'. It is plausibly submitted that if PW 7 had known the name of the assailant and PW 6 had visited his house after that he should have been told about the accused and the name of the accused should have found a place in the Ex. PK. But we have the evidence that PW 7 became unconscious after a time and regained consciousness only the next morning. This is stated to be a convenient device of evasion, according to Shri Rana. We do not think so. It is conceivable that the person seeing a horrible crime might instantly shout the name of the criminal but viewing the horror of his dear wife and child being struck dead, be shocked into unconsciousness, particularly when he too, was injured by the blast. According to the Medical Officer (PW 2) one of the injuries PW 7 was located on the right side of the chest and had to be kept under observation. PW 6 testified that on reaching the scene after the explosion, he found PW 7 and the other injured persons lying unconscious. PW 6 therefore, could not elicit any information from PWs 7 and 8, during his 10 minutes' stay at the scene, PWs 7 and 8 swore how they had been rendered unconscious. The courts below have believed them on this point and we see no reason to disagree.

6. PW 8 candidly admitted that although the name of the assailant was shouted by PW 7, she herself did not see the accused throwing the bomb. May be she did not but that does not contradict PW 7 having seen the accused in the light of the lantern. We have substantial corroboration from PW 8's evidence of the version given by PW 7. The night was dark, true, but there was a light burning and the distance from where the handgrenade was thrown was a few yards only (between 35 and 45 feet). There is no inherent improbability in the versions of PWs 7 and 8.

7. We have the evidence of PW 15 who identified the accused shortly after the occurrence running from near the scene :

When I was in the street the accused came running from the said of the house of Mohinder Pal. He struck against me. I enquired from him as to what had happened but the accused did not respond and ran away towards the filed. I went to the house of Mohinder Pal. There I saw his wife and one son lying dead. Mohinder Pal and his two sons and Daya Wanti were lying injured. When the accused struck against me there was a report of explosion just before that.

This testimony is corroborative of the prosecution case. We have also the extra-judicial confession spoken to by PW 16, a member of the Panchayat whom the accused approached, confessed to having thrown a handgrenade into the house of PW 7 killing two and pleading that he be produced before the police. We see no reason to discredit PW 16 whose evidence has found acceptance by the courts below.

8. Certainly better evidence on the ballistic aspects could have been produced by the prosecution but the materials on record analysed by the two courts carefully leave us in no doubt that the guilt of the appellant has been brought home.

9. The question that now remains is one of sentence. We should have considered this matter more anxiously, although the discretion exercised by the courts below is not interfered with except for special reasons. But in the circumstances manifest here the appellant's crime is cruel and inhuman and the consequential deaths dastardly and pathetic. We are aware that the general trend in courts and among jurists as well as penal codes in this country and in other countries is towards abolition of capital punishment. Indeed, we have had occasion to consider this matter in some detail in *Ediga Anamma v. State of A. P.* ((1974) 4 SCC 443 : 1974 SCC (Cri) 497), where we have pointed out how the draft Bill before Parliament revising the Penal Code leans towards the more humane alternative of the two punishments prescribed for murder. However, a Bill is not law nor are we disposed to interfere with the punishment inflicted. It is entirely a matter for the clemency of the Governor or the President, if appropriately moved to commute or not to commute.

10. We dismiss the appeal.

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