

Chuhar Singh

Vs

State of Haryana

Criminal Appeal No. 391 of 1974

(Y. V. Chandrachud, P. N. Bhagwati, R. S. Sarkaria JJ)

21.07.1975

JUDGMENT

CHANDRACHUD, J. -

1. The appellant Chuhar Singh suspected that the deceased Japan Singh had committed theft of some parts of his tubewell. On August 3, 1972 at about 5 p.m. the appellant asked Japan Singh to take a special oath denying the theft. That sparked off a quarrel during which Shisha Singh and Didar Singh are alleged to have held Japan Singh. The appellant then snatched a stick Japan Singh's hands and he is alleged to have given him two blows on his head, causing thereby his death. The incident happened in a village called Danauli.

2. The appellant, along with Shisha Singh and Didar Singh, was tried by the learned Additional Sessions Judge, Jindh, under Section 304 read with Section 34 of the Penal Code for causing the death of Japan Singh. The learned Judge acquitted Shisha Singh, but convicted Didar Singh under Section 323 and the appellant under Section 304 Part I of the Penal Code. The appellant was sentenced to suffer rigorous imprisonment for 10 years and to pay to fine of Rs. 500.

3. In appeal, the High Court of Punjab and Haryana acquitted Didar Singh, but confirmed the conviction of the appellant under Section 304 Part I. The High Court, however, reduced the sentence of the appellant to rigorous imprisonment for a period of seven years and maintained the sentence of fine. This appeal by special leave is directed against that judgment.

4. The case depends for its success on the evidence of a witness called Darbara Singh (PW 1). The fact that the prosecution has been able to examine but one eyewitness to the occurrence cannot detract from the strength of its case. What is important is not how many witnesses have been examined by the prosecution but what is the nature and quality of evidence on which it relies. The evidence of a single witness may sustain a sentence of death whereas a host of vulnerable witnesses may fail to support a simple charge of hurt. Since the case must stand or fall by the evidence of Darbara Singh, it is necessary to examine that evidence critically.

5. Darbara Singh belongs to a village called Rohd which is about a mile away from Danauli. He says that he went to Danauli because he wanted to borrow paddy saplings from one Chanan Singh. He further says that as he entered the particular lane where the incident took place, he heard a quarrel between the deceased Japan Singh on the one hand and the appellant and the two coaccused on the other. He claims that he saw the two coaccused holding Japan Singh, the appellant snatching stick from his hand and assaulting him on his head with that stick.

6. It is surprising that the statement of so important a witness should not have been recorded for over three weeks. Darbara Singh says that his statement was recorded by a police officer 20 or 30 days after the incident. A. S. I. Raj Singh contradicts him and deposed that he recorded Darbara Singh's statement on the very night of the 3rd but considering the serious allegations which have been made against Raj Singh, it is impossible to accept his claim. Besides, the subsequent course of events renders it more probable that Darbara Singh's statement was not recorded except at a late stage of the investigation. Krishna Chandra Katyal, the Dy. Superintendent of Police, went to Danauli on August 5 for verifying the statements recorded by A. S. I. Raj Singh and A. S. I. Rameshwar Dayal. He verified the statements of various witnesses soon after his arrival in Danauli but he contacted Darbara Singh nearly a month later on September 4. That shows that Darbara Singh's statement was not recorded by the investigating officer before the arrival of the Dy. Superintendent of Police; or else, he could not have failed to question an important witness like Darbara Singh. A large number of witnesses who claimed to have seen the incident resiled from their statements and it would appear that Darbara Singh came forward a month after the incident to support a dying cause.

7. In his statement before the Dy. Superintendent of Police, Darbara Singh did not involve Shisha Singh at all and limited his story to the implication of the appellant and Didar Singh. In his evidence before the court, Darbara Singh started that the incident was seen by one Karam Singh also but both the Sessions Court and the High Court have concurrently held that Karam Singh was not an eyewitness to the occurrence. It is interesting that Karam Singh saw Darbara Singh nowhere near the scene of offence. True, as Counsel for the State contends, that if Karam Singh is not a witness of truth, his evidence cannot be utilised to discredit Darbara Singh but the point of the matter is that no two witnesses agree as to what truly happened and each has his own experience to narrate. We have no doubt that the wide and irreconcilable discrepancies in the evidence owe their origin to the free play which the witnesses have given to their imagination. They have not stated what they saw. They have stated what they imagined they saw.

8. Any doubt on the presence of Darbara Singh will have to be resolved in favour of the accused if a close look is had at the first information report lodged by one Avtar Singh. Avtar Singh withdrew his support to the prosecution and disowned that report. But that is beside the point because in any event the first information report cannot be treated as substantive evidence in the case. The earliest version of the incident, for whatever it is worth is destructive of Darbara Singh's claim that he saw the incident through all its stages. Avtar Singh narrates the entire incident and winds up his story by saying :

Thereafter Chuhar Singh and Didar Singh both took Japan Singh, in the state of unconsciousness to the house of Didar Singh. On hearing the noise Chanan Singh son of Bir Singh Jat of Danauli and Darbara Singh son of Teja Singh of village Rohd came there.

Darbara Singh's evidence may contain a grain of truth in that he went to Danauli from Rohd on the evening of August 3, 1972, but he has falsely utilized that circumstance to build up an unfounded claim. He saw no part of the incident.

9. In view of these serious infirmities from which the evidence of Darbara Singh suffers, we find ourselves wholly unable to agree with the conclusion recorded by the High Court and the Sessions Court that he is a witness of truth. Normally, this Court is slow to interfere with findings of fact recorded by the High Court and the Sessions Court and the learned Counsel for the State has rightly

reminded us of the salutary rule that if two views of the evidence are reasonably possible, we ought to refrain, from upsetting the judgment of the High Court. But, we find it impossible, on any fair view, to accept the conclusion that Darbara Singh was an eyewitness to the occurrence. As there is nothing more in the case than the evidence of Darbara Singh, the prosecution must fail.

10. Accordingly, we allow the appeal, set aside the order of conviction and sentence and acquit the appellant. The appellant shall be released forthwith.

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