

Hansa Singh

Vs

State of Punjab

Criminal Appeal No. 248 of 1973

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

20.08.1976

JUDGMENT

FAZAL ALI, J. -

In this appeal by special leave the appellant has been convicted under Section 302 Indian Penal Code and sentenced to imprisonment for life for having committed the murder of one Gurbachan Singh. According to the prosecution, the accused Hansa Singh had suspected the deceased Gurbachan Singh of committing sodomy on his son Haria, which furnished the motive for the murder of Gurbachan Singh. The story of the prosecution is that on October 30, 1969 at about 6.00 p.m. when Gurbachan Singh was going to some village and he reached near the house of Gurjit Singh he was surrounded by the accused, some of whom caught hold of him and the appellant Hansa Singh is said to have assaulted him on various parts of the body with his kirpan. F.I.R. was lodged at about 9.00 p.m. at police station Nathana, being 7 miles from the village where the occurrence took place. The police visited the spot and after usual investigation, submitted chargesheet against the accused. The defence was that as the deceased was committing sodomy on Haria, son of the appellant, in the presence, he was greatly annoyed at this act and having lost his power of self-control, he assaulted the deceased. No evidence has been given by the defence in support of his plea. But it seems to us that from the circumstances appearing in the case the defence taken by the appellant is true. It is true that both the High Court and the Sessions Judge have concurrently found that the prosecution case as alleged, has been proved beyond reasonable doubt. Normally this Court would not interfere with these concurrent findings of facts. There are however, certain striking facts in the case which point to the conclusion that the murder took place near the door of Gurjit Singh and this could have only been done if the story suggested by the appellant Hansa Singh is true. One of the special features of this case is that out of the eyewitness, one of them Bela Singh who accompanied the informant to the police station, was examined after a period of 7-8 months and had narrated the occurrence for the first time before the committing Magistrate. He was not examined by the police at all and no explanation for this has been given. As regards PW Mal Singh and Sita Ram, one extraordinary feature is that having seen the occurrence they did not narrate same to anybody or even to the persons who had gathered at the spot. Both Sita Ram and Mal Singh admit this fact and the only reason for this silence appears to us to be that the witness themselves found that the accused had committed the assault in the circumstances related by him, which would undoubtedly mitigate his offence and would also alienate the sympathies of the villagers. Another important circumstance that seeks to support the defence taken by the appellant is that the body was actually found near the door of Gurjit Singh where according to the appellant the deceased was committing sodomy on his son Haria. In order to get rid of this bald fact the prosecution appears to have invented a story that the occurrence took place at some distance from the house of Gurjit Singh, who after assaulting the deceased, bodily lifted the deceased and placed

his deadbody near the house of Gurjit Singh. The High Court has acquitted all the other accused. And we find it difficult to believe that after having assaulted the deceased, Gurjit Singh alone could have lifted the body and placed it near the door of Gurjit Singh. Gurjit Singh being the own brother of Hansa Singh, there could have been no motive in taking the body to his house. In these, circumstances, therefore, the statement of the accused that the deceased Gurbachan Singh was committing sodomy on Haria in the house when the appellant arrived at the scene and assaulted the deceased, appears to be true. In view of these circumstances, therefore, the prosecution has undoubtedly proved that it was the appellant alone who has assaulted the deceased and this is proved by PW Mal Singh and Sita Ram also. The question remains as to what offence the appellant has committed. The learned counsel for the appellant has taken us through the evidence and shown us a few discrepancies here and there. The evidence appears to be consistent so far as the assault by the appellant on the deceased is concerned. We, however, feel that the occurrence took place while the deceased was committing sodomy on Haria and that gave such a sudden and grave provocation and annoyance to the appellant which impelled him to assault the deceased. For these reasons we are satisfied that the case of the appellant falls clearly within the purview of Section 304 Part II of the Indian Penal Code. The appellant on seeing the deceased committing the act of sodomy on his son, lost his power and self-control and it was undoubtedly a grave and sudden provocation for him which led him to commit the murderous assault on the deceased. We understand that the appellant has been in jail since 1959 and according to the Code of Criminal Procedure, 1973 the period of detention of the accused has to be set off against any sentence which is imposed on the appellant. The position, therefore, is that accused has been in jail for about 7 years. We, therefore, alter the conviction of the accused from one under Section 302 to that under Section 304 Part II of the I.P.C. and we reduce the sentence from life imprisonment to the period already undergone (which is almost 7 years). The appeal is allowed with the modifications indicated above.

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