

SUPREME COURT OF INDIA

State of Punjab

Vs.

Ramji Das

Crl.A.No.236 of 1974

(Y. V. Chandrachud, P. K. Goswami and P. N. Shinghal, JJ.)

03.03.1977

JUDGEMENT

SHINGHAL, J.:-

1. This appeal by the State of Punjab is directed against the judgment of the Punjab and Haryana High Court dated October 29, 1973, by which respondent Ramji Dass has been acquitted of the offence under Section 302, I. P. C. and the reference for confirmation of the sentence of death has been rejected.

2. The prosecution alleged that there was a 'jagrata' in Arya Samaj Chowk, Ferozpur city, on August 5, 1972. There was therefore a large gathering there. The whole of the 'pandal' was properly lighted, and there was a raised platform in the center, for the signing parties and the organisers. The deceased Balbir Singh was present in the 'jagrata' and was working as a volunteer to prevent persons from going to the platform. His brother Gurbachan Singh (P. W. 5), his mother's sister's husband Harnam Singh (P. W. 2), and Bahadur Singh (P. W. 3) were also present there. Respondent Ramji Dass came there at about 10 p. m. and wanted to push his way to the platform. He was stopped by

the deceased Balbir Singh. That led to an exchange of abuses between them, when suddenly respondent Ramji Dass whipped out dagger Ex. P. 1 from the 'dab' of his 'pyjama' and thrust it in Balbir Singh's neck. An attempt was made to apprehend him but before that could be done, he gave another blow to Balbir Singh with the dagger, at the shoulder. Balbir Singh fell down, and was being taken to the hospital when he died. Respondent Ramji Dass was apprehended on the spot, along with the blood-stained dagger Ex. P. 1. He was handed over to Assistant Sub-Inspector Manjit Singh (P. W. 8) who was on patrol duty in the area. Harnam Singh (P. W. 2) gave the first information report Ex. P. D. to Manjit Singh. The Investigating Officer took the blood-stained dagger in his custody and sealed it. He also took shirt Ex. P. 2 and 'pyjama' Ex. P. 3, which were on the person of the respondent, in his custody, as they were stained with blood. They were also sealed on the spot. The Chemical Examiner and the Serologist have reported that the dagger, the shirt and the 'pyjama', were stained with human blood. A post-mortem examination was made of the dead body of Balbir Singh. As there were some injuries on the person of the respondent, he was also medically examined and the injury report has been placed on the record. Dr. S. K. Gupta, who performed the post-mortem examination, stated that the death of Balbir Singh was caused by shock and hemorrhage as a result of the incised wound on the front and lower part of the neck which had cut the major blood vessels. In his opinion, that injury was sufficient to cause the death of Balbir Singh and was ante-mortem. Dr. Gupta found another incised wound on the front of the left deltoid region, and stated that both the injuries could be caused by dagger Ex. P. 1.

3. The prosecution examined Harnam Singh (P. W. 2), Bahadur Singh (P. W. 3) and Gurbachan Singh (P. W. 5) as eye-witnesses of the incident. Respondent Ramji Dass denied the allegation of the prosecution, but did not lead any evidence in his defence. The Additional Sessions Judge of Ferozpur convicted him of the offence under Section 302, I. P. C. and sentenced him to death. He also imposed a fine of Rs. 500/- and directed that, as and when it was recovered, a sum of Rs. 250/- may be paid to the immediate heirs of the deceased by way of compensation. As the High Court has acquitted the respondent as aforesaid, the State of Punjab has filed this appeal by special leave.

4. The statements of Harnam Singh (P. W. 2) and Bahadur Singh (P. W. 3) recorded in the court of the Committing Magistrate were treated as evidence in the Court of Session under Section 288 of the Code of Criminal Procedure. The Additional Sessions Judge held that those statements were "most straightforward" and were narrated in a "natural and proper sequence and in a consistent manner." He further took the view that even if the statement of Harnam Singh (P. W. 2) had not been transferred and read in evidence under Section 288 of the Code of Criminal Procedure, his statement in the Sessions Court was by itself "sufficiently convincing evidence regarding the truth of the prosecution case so as to base a conviction" on it. The trial Court further held that the statement of Gurbachan Singh (P. W. 5) was reliable and trustworthy. The High Court, however took the view that there could be "no manner of doubt that these witnesses had no regard for truth and it will be extremely difficult to conclude that their statements made before the Committing Magistrate were substantially truthful." As regards Gurbachan Singh (P. W. 5), while the trial Court put "implicit faith" in his testimony and considered him to be a reliable and trustworthy witness, the High Court took the view that he was closely related to the deceased and had "made contradictory statements at different stages and was not a wholly reliable witness." It therefore held that it would be "extremely unsafe" to rely on his sole statement. As regards the recovery of the blood-stained clothes from the person of the respondent, the High Court held that although it was a circumstance

which created a suspicion against the respondent, but "by itself the circumstance is not sufficient to bring the charge home to the accused." The High Court observed that as the respondent was in the crowd, and was in the "vicinity of the area where Balbir Singh had been stabbed he could have received blood-stains on his shirt and 'pyjama' as Balbir Singh would have bled profusely." It therefore reached the conclusion that that circumstance was "not conclusive" for proving the guilt of the respondent. It was for these reasons that the High Court acquitted the respondent.

5. We have gone through the statements of Gurbachan Singh (P. W. 5) and Harnam Singh (P. W. 2) and we find that the High Court has not read them correctly. Gurbachan Singh was the brother of the deceased, but that could be no reason for disbelieving him. The High Court should have appreciated the fact that being such a close relation, he would have no reason for leaving out the real assailant of his brother Balbir Singh, and implicating respondent Ramji Dass falsely. Moreover it should have noticed the fact that there was not even a suggestion, in the court of the Committing Magistrate or in the trial Court, that Gurbachan Singh had any enmity or other reason to falsely implicate the respondent. His statement could not therefore be viewed with suspicion merely because of his relationship with the deceased.

6. The High Court considered it unsafe to rely on the statement of Gurbachan Singh because, according to Bahadur Singh (P. W. 3) he was not present at the spot but was sitting in the shop of a 'halwai', along with him, and also because he made an entirely different statement in his affidavit Ex. D. A. with which he was confronted. In that affidavit Gurbachan Singh had stated that he was sleeping in his house when he was informed of the murder of his brother Balbir Singh in Arya Samaj Chowk. As we shall point out, when we deal with the statement of Bahadur Singh (P. W. 3), he is an unreliable witness and the High Court could not have rejected his testimony merely because Bahadur Singh stated in the trial Court that Gurbachan Singh was sitting with him in the shop of a "halwai" at the time of the incident.

7. It is true that Gurbachan Singh gave a different version in his affidavit Ex. D. A. but the High Court erred in thinking that the affidavit was in the nature of a statement at a "different stage" of the case. The High Court failed to notice that there could possibly be no "stage", or occasion, for Gurbachan Singh to file the affidavit before an unconcerned Magistrate. We have no doubt that he must have done so under some pressure to save the respondent somehow. What Gurbachan Singh stated in his affidavit Ex. D. A. was that he was sleeping in his house on the night of the incident when an unknown person came there and informed him that his brother Balbir Singh had been murdered in Arya Samaj Chowk, that he reached there and found his mother's sister's husband Harnam Singh standing there, that he did not know Ramji Dass and had not seen him after the occurrence and that he made his earlier statement in the court of the Committing Magistrate at the instance of the Police. Gurbachan Singh was the brother of the deceased and there is convincing evidence on the record to prove that he was present in the 'jagrata' and had witnessed the incident. The High Court failed to take note of the fact that in his statements in the court of the Committing Magistrate and the trial Court, he gave the same version of the incident. He clearly stated that he was present at the 'jagrata' where his brother Singh (deceased) was working as a volunteer. He also stated that when the respondent tried to push forward towards the platform, Balbir Singh tried to

check him and there was an exchange of abuses between them. He further stated that the respondent got enraged, whipped out a dagger from the 'dab' of his 'pyjama' and gave a blow with it on the front part of the neck of the deceased. An attempt was made to catch him, but before that could be done he gave another blow with the dagger to Balbir Singh who fell down and cried that he had been killed. The respondent was then overpowered and was handed over to the police when it arrived within a few minutes. Gurbachan Singh was quite consistent in his statements to this effect in both the courts for he was free any pressure or influence there. The criticism which has been levelled against him is that he was unreliable because of the version given by him in his affidavit Ex. D. A. and his relationship with the deceased. As has been shown, these could not be sufficient reason for disbelieving him.

8. Mr. Kohli tried to argue that, on the very next day of his statement in the trial Court, Gurbachan Singh made an application dated April 3, 1973, in which he resiled from it. We do not however feel persuaded to disbelieve the statement of Gurbachan Singh for any such reason, because the fact that he made the application on the next day of his statement shows that, as in the case of the affidavit Ex. D. A. he was apparently prevailed upon by someone to do so. The High Court does not in fact appear to have disbelieved the statement of Gurbachan Singh because of that application. So if the statement of Gurbachana Singh had been read correctly, with due regard to all the facts and circumstances in which affidavit. Ex. D. A. was made by him, the High Court would have considered it to be unreliable. As has been stated, the trial Court though it proper to place implicit faith on his testimony and found him to be reliable and trustworthy. We have gone through his testimony and we have no doubt that it is reliable.

9. We have also gone through the statement of Harnam Singh (P. W. 2). The High Court has disbelieved it because of his relationship with the deceased, and because of the discrepancies in the statements in the court of the Committing Magistrate and the trial Court. It has apparently not thought it desirable to place reliance on the statement of the witness in the court of the Committing Magistrate even though the trial court treated it as evidence in the case.

10. We find that even if the statement of Harnam Singh in the court of the Committing Magistrate is not treated as evidence in the case under Section 288 Cr. P. C, the High Court erred in thinking that his statement in the trial court did not support the prosecution case. A careful reading of the statement shows that Harnam Singh clearly stated the basic facts in the trial Court. He thus stated that he went to attend the 'jagrata' in Arya Samaj Chowk, Ferozpur, and was present at the time of the incident. Balbir Singh (deceased) was working as a volunteer there and was standing at a distance of 2 1/2 'karams' from him. The 'pandal' and the 'jagrata' were fully lighted. When he reached there, some quarrel was going on between the respondent and the deceased, and he went forward to intervene. He heard Balbir Singh crying that he had been killed. He and one or two other persons thereupon caught hold of the murderer whose name he did not know but he was the person present in the court. When he and others were catching hold of the accused, he threw the dagger forward and it hit Balbir Singh on the shoulder. The respondent was beaten by the witness and others. The witness apprehended the respondent and produced him and the dagger (Ex. P. 1) before the police which took them in custody. The witness further stated that the deceased received

a dagger injury in his neck and a second injury on the shoulder and that he died when he was being removed to the hospital. The witness stated further that it was incorrect to suggest that he was present at his house, and so were Gurbachan Singh and Bahadur Singh, when somebody came and told them about the incident that they went to the spot thereafter.

11. The above facts, which were stated by Harnam Singh in the trial Court, substantially corroborate the prosecution case and the statement of Gurbachan Singh, and the High Court misread the testimony when it took the view that Harnam Singh "did not support the prosecution case at the trial and deposed that he heard that some quarrel was going on between the accused and the deceased and that he and some other volunteers went forward to physically intervene."

12. It may also be mentioned that the High Court failed to take into consideration the following facts and circumstances which fully corroborated the statements of Gurbachan Singh (P. W. 5) and Harnam Singh (P. W. 2), -

(1) The evidence on the record left no room for doubt that the respondent was apprehended on the spot and was handed over to the Police along with the blood-stained dagger Ex. P. 1. It will be recalled that the reports of the Chemical Examiner and Serologist have proved that the dagger was stained with human blood. The respondent was given an opportunity to explain the allegation, regarding his apprehension on the spot and the seizure of the blood-stained dagger from him, but he only stated that it was incorrect and that he was innocent. That was no explanation. The High Court however failed to take this fact into consideration while assessing the evidence.

(2) Another significant fact which had been fully established by the evidence on the record was the recovery of blood-stained shirt Ex. P. 2 and blood-stained 'pyjama' Ex. P. 3 from the person of the respondent. These articles were taken in police custody in the presence of Surendra Kumar (P. W. 7), and were sealed on the spot. The reports of the Chemical Examiner and Serologist have proved that the shirt and the 'pyjama' were stained with human blood. The recovery of these articles thus lent corroboration to the parol evidence referred to above. As has been stated, the High Court took the view that the recovery of the clothes was not sufficient, by itself, to prove the charge against the respondent, and that as the respondent was present in the crowd and in the vicinity of the area where Balbir Singh was stabbed, he could have received the blood-stains because of the profuse bleeding. Here again the High Court erred in forgetting that it had to take the recovery of the clothes into consideration not as a sufficient circumstance by itself, but along with the other evidence on the record. Moreover it did not notice that it was nobody's case that the shirt and the 'pyjama' of the respondent were stained with blood because of profuse bleeding merely because he was present in the crowd. As it is, we find that none of the prosecution witness was cross-examined with reference to any such defence.

(3) As has been stated, a postmortem examination was performed on the dead body of the deceased

by Dr. S. K. Gupta. He found the following two incised injuries on his person,-

(i) An incised wound 2 cm. x 7.5 cm. x 7 cm. deep in the transverse direction on the front and lower part of neck just above the suprasternal notch. On dissection right side of trachea oesophagus and right side inferior vena cava were cut.

(ii) An incised wound 1.5 cm. x .5 cm. x skin deep on the front of left deltoid region.

The presence of these injuries corroborated the testimony of the eye-witnesses. It will be recalled that Dr. S. K. Gupta stated that the injuries could be inflicted by dagger Ex. P. 1.

(4) The respondent was examined on August 6, 1972 at 2 a. m. and ten simple injuries were found on his person by Dr. Tejinder Singh. Harnam Singh (P. W. 2) has stated that he was mobbed and beaten by him and other persons. The presence of the injuries on the person of the respondent is also therefore a circumstance which supports the case of the prosecution against him.

(5) The first information report was lodged within about 10 minutes of the incident and contains the necessary details, including the name of the respondent as the person who inflicted the dagger blow, and the names of the eye-witnesses. It therefore goes to corroborate the statement of its maker Harnam Singh (P. W. 2).

13. The parol evidence of Gurbachan Singh (P. W. 5) and Harnam Singh (P. W. 2) was thus amply corroborated by the above facts and circumstances.

14. We have gone through the statement of Bahadur Singh (P. W. 3). He was cross-examined with reference to his statement in the court of the Committing Magistrate and that statement was transferred to the record of the sessions case for the purpose of treating it as evidence in the case. We do not however think it necessary to take it into consideration under Section 288, Criminal Procedure Code even though Bahadur Singh had stated in it that it was the respondent who took out the dagger from the 'dab' of his 'pyjama' and gave a blow on the front of the neck of the deceased, for we are inclined to agree with the High Court that the witness had no regard for truth. It will be sufficient to say in this connection that while in the trial Court the witness stated that he was present at a distance of two or four 'karams' from the place of the 'jagrata', Gurbachan Singh (P. W. 5) and Harnam Singh (P. W. 2) were also present there and the respondent was went back on that statement when he also present there as 'sevadar' he was cross-examined by the defence counsel and stated that he did not see the respondent there and that he and Harnam Singh were called there from their respective houses. The witness was a rickshaw puller and he had so hopelessly contradicted himself that his statement cannot be said to disprove the case of the prosecution.

15. Mr. Kohli tried to argue that the first information report was not recorded soon after the incident and that the claim of the prosecution that it was recorded within 10 minutes of the incident must be rejected because it reached the Magistrate concerned the next day at 12 noon. We find no force in this argument for we have no reason to disbelieve the statement of Inspector Hardial Singh (P. W. 10) that the report was sent with Constable Shivdarshan Kumar who brought it back undelivered, and that he (witness) thereafter handed it over to the Magistrate at 12 noon at his house as it was a holiday. It has to be remembered that the incident took place in a large gathering, in a well-lit area, and the respondent was apprehended on the spot along with the blood-stained dagger. It is also not disputed that the Police arrived at the place of occurrence within a matter of minutes because A. S. I. Manjit Singh (P. W. 8) was assigned his duty in the Arya Samaj Chowk where the 'jagrata' was going on. There could be no question of fabricating the first information report in such facts and circumstances, and it is futile to argue that the report reached the Magistrate the next day because it was made up falsely.

16. Mr. Kohli argued in the alternative, that the respondent had a right of private defence because the statement of Dr. Tejinder Singh showed that he had received as many as ten injuries, some of which could possibly be inflicted with a 'lathi'. Counsel has therefore argued that the respondent had a right of private defence of his body and that even if it were assumed that he had exceeded that right, his case would fall under Exception 2 or Exception 3 to Section 300, I. P. C. The argument is however untenable because the accused could have no apprehension of death or grievous hurt by the deceased because the incident took place in a large gathering where other persons were present and would have intervened on behalf of the respondent if necessary. There could therefore be no occasion for considering the application of any of the exceptions to Section 300, I. P. C. Harnam Singh (P. W. 2) has stated that the respondent was mobbed by several persons and was given a beating, and that he also gave him a beating. This fully explains the injuries which were found on his person. On being given an opportunity to explain the injuries, the respondent stated that the ten injuries on his person were caused because "he was given a beating by the police at the police station." There is therefore no justification for the argument that the respondent caused the murder of Balbir Singh in the exercise of the right of private defence of his person.

17. It is thus quite clear that the evidence referred to above leaves no room for doubt that the prosecution has succeeded in bringing home the guilt to the respondent, and the contrary view of the High Court is wholly unwarranted and must be set aside.

18. The appeal is allowed. The acquittal of respondent Ramji Dass is set aside and he is convicted of the offence under Section 302, I. P. C. for causing the murder of Balbir Singh. As the murder was not premeditated, we think it sufficient to sentence the respondent to imprisonment for life. He is in jail and shall serve out the sentence.

Appeal allowed.

