

State of Punjab

Vs

Pritam Singh and others

Criminal Appeal No. 227 of 1976

(A. C. Gupta, Syed M. Fazal Ali JJ)

04.08.1977

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Punjab & Haryana High Court dated May 13, 1975 by which the six respondents, namely, Pritam Singh, Gurdev Singh, Gurmej Singh, Teja Singh, Bhan Singh and Kewal Singh had been acquitted of the charges under Sections 302, 307/149, 302/149, 148/307 and 452 I.P.C. and Section 27 of the Arms Act and under Sections 4 and 5 of the Explosive Substances Act. The respondents had been convicted under aforesaid sections by the trial Court of the Additional Sessions Judge, Ferozepore.

2. Put briefly, the prosecution case was that some time in 1964 Toga Singh father of respondents Gurmej Singh, Teja Singh and Bhan Singh was murdered and Pala Singh and Banta Singh had been accused of murdering the deceased and were accordingly charge-sheeted by the police which resulted in the conviction of Pala Singh who was sentenced to imprisonment for life. Pala Singh served out the sentence of life imprisonment and had just come out of the jail when the feelings between him and the respondents became extremely strained as a result of which security proceedings had to be drawn up to maintain peace and tranquillity between the two factions in the village. The prosecution alleged that as the sons of Toga Singh and other respondents were bent upon wrecking vengeance for the murder of Toga Singh, they wanted to take the life of Pala Singh and with this avowed object in view the six accused persons led by Pritam Singh came on the roof of the house of Pala Singh at about 6 a.m. on August 30, 1973 armed with pistols-gun, hand-grenade and gandasis. As soon as the party climbed over the walls of the house of Bachan Singh adjoining the house of Pala Singh, Gurmej Singh gave a lalkara that the entire family of Pala Singh should be finished. Thereupon Pritam Singh who was armed with a hand-grenade threw it in the court-yard. The hand-grenade exploded and killed Balwant Kaur, sister-in-law of Pala Singh and her daughter Charan Kaur who were sleeping in the courtyard. Pala Singh and his brother Ajit Singh escaped as they were giving fodder to the cattle and took shelter behind the pillar. When Gurmej Singh found that Pritam Singh had missed the target, he fired a pistol shot at Pala Singh which also did not hit him. Thereafter the accused bolted away. Pala Singh immediately left for police station Zira and lodged First Information Report at 6.45 a.m. on the same day. All the respondents were named in the F.I.R. and the facts mentioned above were briefly narrated therein. Harbhajan Singh, S.H.O., took up investigation and visited the spot, prepared inquest reports and after usual investigation submitted a charge-sheet against the respondents who were tried and ultimately convicted by the Additional Sessions Judge, Ferozepore as mentioned in his judgment. The learned Sessions Judge was fully aware of the fact that the prosecution had produced only inimical and interested witnesses, but in view of the fact that the F.I.R. was lodged very promptly and the

splinters of the hand-grenade were found on the spot which had killed the deceased and that the medical evidence also supported the manner in which the deceased had died, the learned Judge held that the prosecution had proved its case beyond reasonable doubt. The defence of the respondents was that they had nothing to do with the occurrence and had been falsely implicated due to enmity.

3. The accused-respondents filed an appeal to the High Court against their convictions and sentences and in appeal the High Court found that the case against the respondents was not proved beyond reasonable doubt as it was replete with inherent improbabilities and consisted of purely partisan evidence without any corroboration from independent sources.

4. It might appear that the High Court did not try to consider the intrinsic merits of the evidence of the eye-witnesses but rejected the evidence of those witnesses only on the ground that they were interested and inimical witnesses. But on a very careful consideration of the judgment of the High Court in the light of the evidence led by the prosecution, we feel that the view taken by the High Court was not wrong. Apart from the circumstances mentioned by the High Court in its judgment there were certain important intrinsic circumstances which threw a good deal of doubt on the prosecution case. In the first place, it is admitted that there was serious enmity between the parties and there was sufficient motive for Pala Singh to have implicated the respondents at whose instance he was implicated in the murder of Toga Singh and eventually convicted to life imprisonment. Equally there was a motive for the respondents also to kill Pala Singh in order to wreck vengeance on him for having caused the death of the father of Gurmej Singh. Teja Singh and Bhan Singh. When the motives were thus equally balanced, the Court had to look to surrounding circumstances in order to find out the truth.

5. One of the most extraordinary features of this case is that after Pala Singh left for the police station to lodge the F.I.R., Ajit Singh his brother whose wife and daughter had been killed stayed at the house though he had also witnessed the occurrence. He was, therefore, the most material witness to be examined in the case, because his near relations had been killed in his presence and yet Ajit Singh was not examined by the prosecution at all.

6. Another important circumstance that militates against the prosecution version is that PW 4 Jaswant Kaur one of the eye witnesses clearly stated in her evidence that when Darbara Singh came to the place of occurrence soon after the occurrence she did not narrate the incident to him. Pala Singh had left for the police station and the only eye witness Jaswant Kaur who was present at the spot, for reasons best known to her, chose not to disclose the incident or the names of the assailants to Darbara Singh who was the only witness examined to corroborate the version of Pala Singh and Jaswant Kaur. Moreover, PW 5 Darbara Singh has stated in his evidence that he was informed about the occurrence and the names of the assailants by one Jita Singh who, however, has not been examined. Thus the evidence of PW 5 Darbara Singh becomes valueless. In spite of the fact that to the prosecution Ajit Singh and Jita Singh were available to corroborate the eye witnesses, yet none of them was examined and the evidence of Darbara Singh PW 5 which remained was hearsay and, therefore, inadmissible.

7. Another important circumstance which throws doubt on the prosecution case is that although the party of the accused consisting of six persons seems to have come variously armed, excepting the hand-grenade no other weapon appears to have been used in the offence, even though the hand-grenade missed the main target, namely, Pala Singh. Although it is said that pistol-shots were fired by Gurmej Singh, yet there is no evidence to show that any wads or pellets were recovered from the place of occurrence or from near the pillar where Pala Singh had taken shelter. This circumstance,

therefore, renders the story of pistol-shots having been fired by Gurmej Singh extremely doubtful. It is also not understandable why the other accused who had come armed with Gandasis did nothing at all, even though the object to kill Pala Singh had been foiled and there was sufficient opportunity for these persons to attack him with the Gandasis and to storm the place. This clearly shows that there was absolutely no occasion for the other accused to be armed with Gandasis and this has been introduced only as an embellishment to give colour to the gravity of the prosecution case.

8. It is also not intelligible to us as to why, if the respondents chose to attack Pala Singh's house during day-break when there was sufficient light, they missed the target and having missed the same they made no attempt to kill Pala Singh at all although they were armed with hand-grenades, pistols and Gandasis. Such a story lends support to the suggestion of the defence based on the evidence of PW 9 Dalip Singh that probably the occurrence took place at about 4 a.m. when some assailants of the deceased placed a bomb near the cot of the deceased persons which having exploded caused fatal injuries to the deceased.

9. The High Court has relied on the evidence of constable Dalip Singh PW 9 to prove the circumstance about the explosion. Dalip Singh PW 9 stated in his evidence that while he was on round he heard a sound of explosion of bomb at about 4 a.m. The only comment made by Counsel for the respondents against him was that Darbara Singh had filed a complaint against the victims alleging that he had taken utensils and one maund of grain. The witness denied this and no documentary evidence has been produced by the prosecution to show that the complaint was really filed and if so what action was taken thereon. In these circumstances, therefore, empty allegation made against the witness Dalip Singh is not sufficient to discredit his testimony, particularly when he appears to be a disinterested witness.

10. Having regard to the cumulative effect of the circumstances mentioned above, the wholly interested and partisan nature of the testimony of the witnesses examined by the prosecution and the complete absence of corroborative evidence, which though in possession of the prosecution was not produced without any adequate explanation, we find ourselves in complete agreement with the reasons given by the High Court that the prosecution has not been able to prove its case beyond reasonable doubt. Furthermore, this appeal is directed against the order of acquittal passed by the High Court and unless there are special circumstances or grave errors committed by the High Court leading to serious miscarriage of justice, this Court would not interfere in special leave in order to set aside an order of acquittal, and that too in a murder case.

11. For the reasons given above, we affirm the judgment of the High Court and dismiss the appeal.

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