

State of Haryana

Vs

Jagbir Singh and Others

Criminal Appeals Nos. 189-190 of 1977

(V. R. Krishna Iyer, Jaswant Singh JJ)

(N. L. Untwalia, Jaswant Singh JJ)

07.10.1977

JUDGMENT

GOSWAMI, J. -

1. These two appeals by special leave are directed against the judgment and order of acquittal of both the accused respondents of the High Court of Punjab and Haryana. They had been earlier convicted under Section 302/34, I.P.C. and sentenced to imprisonment for life by the Sessions Judge. The case depends entirely upon circumstantial evidence.
2. The dead body of the deceased Naresh Kumar with several incised gaping wounds was found on the morning of March 16, 1975 which resulted in an information to the Police by his father. The two accused were very friendly with the deceased and it was stated in the First Information Report that the deceased was last seen during the previous night with them. Suspicion naturally fell on them and investigation commenced.
3. The Sessions Judge detailed the circumstances on which he relied for the purpose of conviction of the respondents as follows :

From the prosecution evidence discussed above, the following circumstances stand proved. The two accused demanded a party from the deceased at about 6.30 p.m. All of them took liquor and Bhujia of eggs outside the Malabar Hotel. They then enjoyed their dinner in Chakor Restaurant and the two accused along with Naresh Kumar deceased were last seen going towards Maian Mohalla on motor-cycle at 10.00 p.m. after purchasing a packet of cigarettes and a betel from the shop of Sekhar Chand, betel seller. In the morning on the next day, Naresh Kumar was lying murdered in the Ram Lila Grounds. After their arrest, accused were interrogated and in consequence of their disclosure statements, they got recovered knives Exs. P-1 and P-2 and their blood-stained clothes. According to the evidence on the record, the group of blood found on the clothes of the deceased and those of the two accused was of the same and further injuries found on the person of the deceased could be caused with knives Exs. P-1 and P-2. These circumstances, in my considered view, are sufficient to prove that they were the accused alone, who committed the murder of Naresh Kumar and none else.
4. Although prosecution relied upon extra-judicial confession made by the accused before Deputy Prasad (P.W. 14), neither the Sessions Judge nor the High Court placed any credence on the same. Both the Courts also rejected the testimony of two important witnesses, viz., PW 13, regarding extra-judicial confession and PW 15 with regard to recovery of certain incriminating articles at the

instance of the two accused. Thus the prosecution case did not emerge unscathed even from the hands of the Sessions Judge on some material aspects.

5. Similarly a certain motive for the murder was sought to be established by producing an amorous letter Ex. PZ in the hand of the deceased stated to be produced before the police by accused Sarwan Kumar on March 18, 1975. This letter, on its face, was not addressed to any person by name and was alleged by the prosecution to be intended by the deceased for the step-mother of Sarwan Kumar thus furnishing a motive for the murder. There was no attempt, whatsoever, by the prosecution to establish that the unnamed addressee of the letter could at all be the step-mother of the accused Sarwan. This was all about the motive.

6. The High Court found a very serious infirmity in the entire prosecution case from an admission which had been made earlier by Sukhbir Singh (PW 18), the father of the deceased. From that statement the High Court found that Sukhbir Singh had admitted that the accused were arrested by the police in this case on March 16, 1975, the very day the dead body of his son was found at the Ram Lila Grounds. If the arrest of the accused on March 16 is true, as stated by Sukhbir Singh, not only the extra-judicial confession of the accused before Deputy Prasad on March 18, 1975 but also the recoveries of the blood-stained clothes and kirpans made by the police on March 18, 1975 following the alleged statements of the accused lose all credibility. This is the principal ground on which the High Court came to the conclusion that there was "padding" in the prosecution case and that certain evidence was fabricated in order to implicate the accused.

7. There was a further fact which the High Court took into consideration. Narain Das (PW 7) and Shekhar Chand (PW 8) stated that the accused were last seen at 10.00 p.m. on March 15 with the deceased who was then wearing "bush-shirt and pants". At the post-mortem the doctor found "a shirt and pullover on the dead body". The High Court therefore rightly observed that possibility was not ruled out that the deceased went elsewhere with others after changing his dress after he was last seen by the witnesses with the accused.

8. The High Court gave proper consideration to all the reasons given by the Sessions Judge and when the main planks in the circumstantial evidence gave way no conviction could be sustained. We find that the reasons given by the High Court for its conclusions are cogent and clinching and there was no other judicial alternative than to record an acquittal. The High Court has rightly interfered with the conviction in this case. There is no merit in these appeals which are dismissed. Both the accused shall be set at liberty forthwith.

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