

Jaspal Singh

Vs

State of Punjab

Jindra and Another

Vs

State of Punjab

Criminal Appeals Nos. 275 of 1973 and 84 of 1974

(Syed M. Fazal Ali, A. D. Koshal JJ)

20.04.1979

JUDGMENT

FAZAL ALI, J. –

1. These appeals by special leave are directed against the judgment of the Punjab and Haryana High Court dated August 31, 1973 affirming the convictions and sentences passed by the Sessions Judge on the appellants under Section 304, Part II of the Indian penal Code and sentencing them to three years' rigorous imprisonment.

2. The facts of the case have been detailed in the judgment of the Sessions Judge and of the High Court and it is not necessary for us to reproduce the same. It appears that Bhupinder Singh suspected that his sister was poisoned by the mother of Jaspal Singh as a result of which she fell ill, but was ultimately cured. This led to an altercation between the parties and ultimately Jindra one of the appellants apologised and the matter subsided for the time being.

3. According to the prosecution, the deceased Bhupinder Singh along with the appellants Jaspal Singh and Harbans Singh had gone to village Chuni for getting their wheat ground. The party had left for village Chuni in the cart belonging to Jaspal Singh. They approached PW 7 Ram Karan Dass and after getting the wheat ground the accused purchased liquor. Thereafter, Bhupinder Singh and some of the other accused appeared to consumed lot of liquor and while they were returning home from there they reached a place called Sampli Naddi where Jaspal Singh who was the driver of the cart stopped the cart. Jindra and Harbans assaulted the deceased Bhupinder Singh and put him in front of the wheel of the cart. Thereafter Jaspal Singh drove the cart passing the wheels over the body of the deceased and running him over. Thereafter, they came to the village and brought their bullock-cart in front of the house of Harbans Singh from where Bhupinder Singh was put on a cot and carried towards his house. On being brought to the house of PW 6 Tej Kaur, mother of the deceased tried to put a few drops of water in the mouth of Bhupinder Singh but as he was extremely disturbed and raised shrieks by touching his abdomen. The deceased was then taken to the hospital but the doctor was reluctant to admit the deceased unless he was sent officially by the police. Two other doctors came and persuaded the doctor on duty to admit Bhupinder Singh. The first doctor who examined the deceased was Dr. Mohinder Pratap, PW 1 who examined the deceased on August

10, 1971 at about 5 p.m. He however did not note any external mark of injury. Meanwhile, PW Harbans Singh went to the police station along with Sawan Singh and lodged a FIR on August 11, 1971 at about 7.35 p.m. PW 2 Dr. (Mrs.) Jagdish Sethi performed the post-mortem on the dead body of Bhupinder Singh on August 20, 1971 and she found abdomen was slightly distended and death was due to rupture of the bladder and paritonitis, which could have been as a result of the deceased having been run over under the cart.

4. The police after usual investigation submitted a charge-sheet as a result of which the accused were prosecuted and committed to the Court of Session who convicted them as indicated above.

5. The defence of the accused was that they had been falsely implicated due to enmity and as Bhupinder Singh was dead drunk he may have died due to excessive drink or to some other cause.

6. We have heard Counsel for the parties and have also gone through the evidence led in the case. The High Court relied mainly on the alleged dying declaration of deceased Bhupinder Singh which was recorded by Saudagar Singh, PW 12 in the hospital. The Sessions Judge had relied on the evidence of Baldev Singh PW 5, Tej Kaur PW 6 and Nachater Singh appellants vehemently contended that the dying declaration made by Bhupinder Singh to Saudagar Singh could not be accepted because although the dying declaration was recorded in the hospital, no doctor was called upon to testify to the fact that the deceased was conscious and in a position to make a statement. It was also argued that even according to the prosecution case, the deceased was unconscious for 3 or 4 days and unless there was a clear evidence to show that the deceased had thereafter regained consciousness it would be difficult to accept the evidence of PW 12 that the deceased was in a position to make a dying declaration to him. After having perused the dying declaration Ex. P.J. said to have been recorded by PW 12 we are not at all satisfied about its genuineness. In the first place, the dying declaration was made on August 9, 1971 in the hospital where a number of doctors were available and could have been requisitioned for the purpose of giving their opinion as to whether or not the deceased was in a fit state of mind to make a statement more particularly since the dying declaration was recorded by a senior police officer like the S.H.O. who should have taken care to get the dying declaration attested by a doctor and satisfied himself about the voluntary nature of the dying declaration. In these circumstance, we do not agree with the High Court or the Sessions Judge that Ex. P.J. was sufficient to find the conviction of the appellants. Even if Ex. P.J. is excluded from consideration, there appears to be overwhelming evidence against the appellants. It is not disputed that on the night of the occurrence the appellants and the deceased were last seen together having gone to village Chuni in the cart of Jaspal Singh and having returned therefrom when the deceased was handed over to Tej Kaur by Jaspal Singh in an injured condition. This circumstance indicated in the absence of an explanation to a different effect, that if Bhupinder Singh received injuries in between his going to Chuni and his return to the village, it must have been caused by the appellants and no others. The evidence of the doctor who held the post-mortem clearly shows that the injuries on the deceased were caused by a rupture of the bladder which could have taken place as result of being run over by the cart.

7. Apart from this there is the evidence of PWs 5, 6 and 11 to show that when they visited the deceased in the hospital three or four days after he was sent there, the deceased regained consciousness for some time and narrated the entire incident to these witnesses. These witnesses further prove that apart from the oral statement given by the deceased to them even the accused Jaspal Singh has also told him that he had driven the cart and wheel was passed over the body of Bhupinder Singh and that he had committed a mistake and would bear all the expenses of the treatment of the deceased. We have perused the evidence of these three witnesses and we do not see

any reason to disbelieve them. The Sessions Judge relied on the evidence of these witnesses and although the High Court did not specifically mention this part of the evidence it has generally affirmed the findings of the learned Sessions Judge.

8. Learned Counsel for the appellants also relied on the evidence of Dr. Mohinder Partap PW 1, who has stated that the deceased had reached the hospital on August 4, 1971 at 2 a.m. Although the injured was speaking something his statement could not be recorded. On the other hand, the witness recorded the statement of the mother Tej Kaur who seems to have given a different version and suggested that her son Bhupinder Singh deceased had an injury on his abdomen which was caused by the falling of a bag containing wheat on his stomach. The thumb impression of Tej Kaur on the alleged statement was sent to the expert who was of the opinion that this could not be the thumb impression of Tej Kaur. The science of identifying thumb impression is an exact science and does not admit of any mistake or doubt. The report of Dr. K. S. Puri clearly demonstrates that the thumb impression on the statement Ex. P.B. was not that of Tej Kaur but was of some other woman who appears to have falsely represented to the doctor that she was the mother of the deceased. This is supported not only by the fact that the thumb impression of Tej Kaur on the statement Ex. P.B. was forged but also by the categorical statement of PW 6 wherein she denied having made any such statement before the doctor. The doctor although examined as a witness in court was never made to identify Tej Kaur who was also one of the witnesses, nor was any application given by the accused that the doctor should be called upon to identify Tej Kaur PW 6 in order to test the validity of the statement that it was really Tej Kaur who made the statement Ex. P.B. before the doctor. In these circumstances, therefore, the evidence of the doctor does not appear to be of any assistance to the defence.

9. Thus, the cumulative effect of the circumstances clearly shows that the deceased was actually put on the ground and then run over by the cart driven by Jaspal Singh. At the same time the conduct of Jaspal Singh in meeting the witnesses in the hospital and taking steps to bear the expenses of the treatment of the deceased clearly shows that they had no clear intention to cause the murder of the deceased. In the circumstances, therefore, the Sessions Judge was right in convicting the appellants not under Section 302 but under Section 304, Part II of the Indian Penal Code. Apart from the argument that the High Court made no mention of evidence of PWs 5, 6 and 11 which proves the oral dying declaration and the extra judicial confession made by Jaspal Singh, Mr. Anthony, learned Counsel for the appellants had no other comments to make against the witnesses.

10. For these reasons, therefore, on a careful scrutiny of the evidence and the circumstances of the case we find ourselves in complete agreement with the view taken by the Sessions Judge and the High Court. The appeals are without any force and are accordingly dismissed.

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