

Milkiyat Singh and Others

Vs

State of Rajasthan

Criminal Appeal No. 271 of 1973

(A. C. Gupta, P. S. Kailasam JJ)

25.08.1980

JUDGMENT

GUPTA, J. –

1. This is an appeal from a judgment of the Rajasthan High Court affirming on appeal the order of conviction and the sentences passed on the appellants before us by the Additional Sessions Judge No. 2, Shri Ganganagar. Of the four appellants Milkiyat Singh and Chhotu Singh were convicted under Section 302 and Section 307 read with Section 34 of the Indian Penal code and sentenced to imprisonment for life under the first count and rigorous imprisonment for five years under the second; Hansa Singh and Genda Singh were convicted under Section 302/34 and section 307/34 of the Indian Penal Code and were also awarded the same sentences.

2. On March 13, 1970 Surjit Singh (PW 3) lodged the FIR in this case containing the following story. At 12.30 p.m. on that day Surjit Singh along with his brother Balbir Singh and Jagir Singh (PW 11) and Jagroop Singh (PW 4) had started from Surjit Singh's house for village Jandwala Sikhan to see the ailing wife of one Jiwan Singh and when they had reached a point near the house of one Ram Singh, they found Dal Singh, Chhotu Singh, Genda Singh, Hansa Singh and Milkiyat Singh sitting in a pit. As the complainant's party approached, Dal Singh and others stood up and Dal Singh shouted : "The enemies have come, murder them". Milkiyat Singh then fired from his gun hitting Balbir Singh in the chest and he fell dead. Chhotu Singh fired a shot as Jagroop Singh (PW 4) which hit him in the leg. The assailants then left firing shots in the air from the guns they carried to scare people away. It is stated that Balbir Singh was also armed with a 12 bore gun. It is further stated that Dal Singh and his companions had formed a "goonda party" in the village, and that on a report made by Balbir Singh the police had recovered illegal arms from the possession of Chhotu Singh, Genda Singh, Hansa Singh and Milkiyat Singh which turned them hostile toward Balbir Singh.

3. It would appear from the FIR that Dal Singh was the leader of the group and that at his call the shots killing Balbir Singh and injuring Jagroop Singh had been fired. Surprisingly Dal Singh is not named as an accused in this case. It is said a private complaint alleging an offence punishable under Section 302 of the Indian Penal Code has been filed against him. In their evidence before the court Surjit Singh (PW 3) and Jagroop Singh (PW 4) repeated what was stated in the FIR concerning the role played by Dal Singh. However in a supplementary statement to police (Ex. D-3) Surjit Singh said : "I have stated by mistake that he (Dal Singh) was in the pit...". In a similar supplementary statement (Ex. D-4) Jagroop Singh also said that Dal Singh's name was not present along with other accused in the pit and that he had mentioned Dal Singh's name in his earlier statement to the police because Dal Singh's name was mentioned by Surjit Singh. Both Surjit Singh (PW 3) and Jagroop

Singh (PW 4) denied in their depositions that they had stated to the police that Dal Singh was not present at the time of the occurrence. PW 8 Girdhari Singh who was S.H.O. of the concerned police station however said in his deposition : "On April 13, 1970 I recorded the statements of Surjit Singh and Jagroop Singh PWs, Ex. D-3 and Ex. D-4 respectively, as they deposed to, correctly. These bear my signature. The Deputy Superintendent of Police also interrogated and vertied Surjit Singh and Jagroop Singh regarding Ex. D-3 and Ex. D-4". The prosecution story as stated in the FIR and as narrated in court by the eyewitness PW 3 Surjit Singh, PW 4 Jagroop Singh and PW 11 Jagir Singh is one integrated account which gives a leading role to Dal Singh in the occurrence. It is true that if part of the story is found doubtful, it would not necessarily falsify the whole account, but in that case the rest of the story told by the alleged eyewitnesses must then be examined carefully before it is relied on. Here, in view of Ex. D-3 and D-4, supplementary statements respectively of Surjit Singh (PW 3) and Jagroop Singh (PW 4) to the police, and the evidence give by PW 8 Girdhari Singh, S.H.O. to which we have referred above, the part of the story attributing a role to Dal Singh does seem to be doubtful. It is to be seen therefore whether the rest of the prosecution story is so convincing that it can be accepted notwithstanding the questionable part of it.

4. The defence version of the occurrence is that the complainant's party attacked first and each side opened fire only once, Balbir Singh firm the complainant's party and Chhotu Singh of the accused. PW 1 Dr. Om Prakash Sharma has said in his deposition that "Jagroop Singh and Balbir Singh might have been hit by the same fire with the disappeared pellets if they were standing within the range of dispersion". The evidence of the Assistant sub-Inspector of Police Ali Sher (PW 7) is that Balbir Singh's gun "was not found used on the day because the barrel were clean when I recovered it". Admittedly he was no ballistic expert but the High Court thought that even a layman could find out whether a gun had been used or not on a day, Ali Sher also did not find any empty cartridge inside the barrel of the gun or near Balbir Singh's body which one would have expected to find if Balbir Singh had fired from his gun. These factors according to the High Court falsify the defence story. The conclusion reached by the High Court however does not take note of the fact that Ali Sher did not also find any empty cartridges in the pit from where according to the prosecution Milkhiyat Singh and Chhotu Singh had fired against the complainant's party. It also appears that PW 7 Ali Sher did not seal the gun of Balbir Singh which he recovered. There is another circumstance which makes one hesitate before accepting the evidence of this witness. To prove the presence of the appellants in the pit he says in examination-in-chief : "In the pit at two places there were marks to indicate that somebody had sat there"; on cross-examination he admits that there was a dust storm was still blowing when he reached the spot. The being so, it seems extremely doubtful if the marks indicating that somebody had sat in the pit would remain undisturbed for the witness to make the inference. We therefore do not find it safe to place implicit reliance on what PW 7 Ali Sher says.

5. Of the accused, Genda Singh and Chhotu Singh appear to have received injuries. Genda Singh had only an abrasion. Dr. Om Prakash Sharma (PW 1) who examined Chhotu Singh on March 16, 1970 described his injury as follows : "One punctured wound 1/2 inch diameter and one inch deep on the lateral aspect of right thigh middle 1/3 inch. It is simple. At that time it appeared to me gunshot injury but I was not sure and wanted to get it confirmed by X-ray". PW 9 Dr. Moman Ram who had Chhotu Singh's injury X-rayed says that he could find no pellet or bullet in the wound. He adds that "if a pellet is embedded one inch deep in the muscle, the chances of its coming out are less. It can come out if there is hemorrhage in the tissues and the wound, if pressed, it can come out in some cases". PW 1 Dr. Om Prakash Sharma says further on cross-examination : "In some cases the pellet may be lost in the body by travelling up and down with the circulatory system and in some cases the pellet can slip out of the entry with the oozing out of the blood". On re-examination by the prosecution PW 1 adds : "In case of Chhotu Singh if the injury was by a gunshot, the pellet

must be found inside the wound. There was no chance of the pellet coming out of the wound with the flow of the blood. The pellet could not be lost in the body in the circulatory system." The defence counsel wanted to cross-examine this witness after he made the aforesaid statement or re-examination but the prayer was disallowed. The High Court disbelieved the defence case that Chhotu Singh had suffered this injury when Balbir Singh fired at him from his gun on the view that if this were true, a pellet would have been found in the wound. The High Court thought that Chhotu Singh's wound was self-inflicted to give it the appearance of a gunshot injury. But in arriving at this conclusion the High Court does not appear to have taken note of what PW 1 himself had stated in his deposition that "in the fabricated injury pellet can be planted in the wound easily to give appearance in the X-ray". It is only reasonable to think that if Chhotu Singh caused the injury to himself to simulate a gunshot wound have planted a pellet inside the wound which was easy to do according to PW 1 to make the deception complete. On this aspect of the case the High Court also failed to consider the further fact appearing from the deposition of PW 1 that in the case of Balbir Singh deceased the witness found only one pellet and "in the other wound no pellet was found". The wound in which no pellet was found was gunshot wound. It is difficult to see why what was possible medically in the case Balbir Singh could not be so in the case of Chhotu Singh accused. DW 1 Dr. Sohan Lal Gupta was examined for the defence. The High Court accepted his evidence to find that Balbir Singh after receiving the gunshot injury could not have moved an inch and he must have been hit at the spot indicated as point No. 2 in the site plan where his body was found and not at point No. 1 as PW 4 had deposed. On Chhotu Singh's injury DW 1 says :

Now I have seen the healed injury on the right thigh of Chhotu Singh, present in the court. In this regard I have read the statements of Dr. O. P. Sharma and Dr. Moman Ram and have also examined the original X-ray plate Ex. P-31. ..

This possibility is also there that such a small pellet in such nature of wound may go in other part of the body and in that case it would be very difficult to find out the pellet... From the particulars of the injury given by Dr. O. P. Sharma and while seeing the mark of the present injury, this can be said that more possibility is that this injury can be caused by the pellets.

6. In this state of evidence, specially the medical evidence, it is difficult to hold with any certainty that the occurrence had taken place in the way the prosecution witnesses allege. From the medical evidence it is difficult to reach a firm conclusion that the defence version is altogether false. In these circumstances we do not find it safe to maintain the conviction of the appellants. We therefore allow the appeal, set aside the conviction of the appellants and the sentences passed on them and acquit them of the charges framed against them; they are on bail, the bail bonds furnished by them are discharged.

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