

Jagdeo Singh and Others

Vs

State of Maharashtra

Criminal Appeal No. 294 Of 1975

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

05.12.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. Jagdeo Singh, Baldeo Singh and Labh Singh along with five others were tried by the learned Additional Sessions Judge, Nagpur. While the other five were acquitted these three persons were convicted under Sections 147, 148, 302 read with Section 34, Section 302 read with Section 149, Section 307 read with Section 34 Section 302 read with Section 149, IPC. The case of the prosecution briefly was that there was rivalry between two groups of truck owners. The accused persons belonged to one group and the trucks bearing No. BRV 4482, BRV 5575 and BRV 5657 were operated by them. The trucks of the opposite group were those belonging to Kesar Singh, Jit Singh and the deceased Kripal Singh. Truck No. BRV 5161 which belonged to this group was driven by the deceased Kripal Singh. Kripal Singh's nephew Rajender Singh (PW 3), a lad of sixteen years was working as a cleaner in truck No. BRV 5161. After discharging a load of bricks at Bhilai truck No. BRV 5161 was driven towards Nagpur on the evening of March 15, 1971. After reaching Nagpur Kripal Singh made a telephone call from Paul's Petrol pump to one Surti Dalal (PW 37), a broker whose business was to arrange loads of goods for trucks. Kripal Singh was informed that Surti Dalal had gone to the Santra Market. So, the deceased and PW 3 took their truck to Santra Market. They met Surti Dalal there and were told by him that no load of goods was available that day. From the Santra Market all of them went in the truck to Surti Dalal's office, in Gandhibagh. The time was about 10.50 p.m. then. The three trucks of the accused group were then standing in front of Dalal's office. Jagdeo Singh, Baldeo Singh, Gurmel Singh, Labh Singh, Harbans Singh (absconding accused) and five others were standing near the truck. Jagdeo Singh, Harbans Singh and Labh Singh were the drivers of the three trucks. Seeing Kripal Singh, Jagdeo Singh came near their truck and asked him to take away his truck as their trucks were already there. Without giving any reply Kripal Singh got down from the truck and went inside the office of the Surti Dalal. PW 3 was asked to enquire if any food was available in a neighbouring hotel. On being told that no food was available Kripal Singh telephoned to Paul's Petrol pump and asked the hotel keeper who ran a restaurant near the petrol pump to prepare meals for two persons. The hotel keeper agreed to do so. Kripal Singh and PW 3 then started proceeding in their truck towards Paul's petrol pump. After they had gone some distance truck No. BRV 5657 overtook them and went ahead. Kripal Singh remarked to PW 3 that Jagdeo Singh appeared to be bent upon picking up a quarrel and therefore they should be cautious. When they had reached the Mehta Petrol Pump on the Bhandara Road they saw that truck No. BRV 5657 had stopped ahead of them on the road. So they stopped their truck. Immediately five persons Jagdeo Singh, Baldeo Singh, Gurmel Singh and two others got down from truck No. BRV 5657 and came towards Kripal Singh's truck. Jagdeo Singh was armed with a sword, Baldeo Singh with a kirpan and Gurmel Singh with an iron rod. The other two persons were armed

with a stick and iron rod. The accused opened the right-hand side door of the truck and dragged Kripal Singh out of the truck. Kripal Singh picked up a knife which was lying in the dashboard of the truck. Jagdeo Singh hit him with the sword but Kripal tried to ward off blow by raising his left hand. He received a cut on his left palm. Kripal Singh began to run away. The five persons chased him. Meanwhile a second truck (No. BRV 5575) came and stopped very near truck No. BRV 5161. Labh Singh, Harbans Singh and two others got out of the truck and opening the left-hand side door of the truck of the deceased, dragged PW 3 out of it and began to beat him. Labh Singh had an iron rod, Harbans Singh had a sword and the other three persons had sticks and iron rods. Labh Singh gave a blow with the iron rod on the shoulder of PW 3 while Harbans Singh struck him on the left side of the neck with a sword. There was a cut on the neck. When Harbans Singh raised his sword to strike a second blow PW 3 put his right hand near his neck. The blow fell on his hand and four fingers of PW's right hand were cut off. PW 3 became unconscious and fell on the ground. Sometime later PW 11 who was going along the road found the truck No. BRV 5161 standing on the road and a crowd near it. When he went near he found a boy lying by the side of the truck. He was unconscious and his clothes were soaked in blood. He went to the petrol pump and from there he telephoned to the police informing them that a boy was lying unconscious in a pool of blood. The police arrived on the spot and arranged to have PW 3 and the dead body of Kripal Singh removed to the hospital. Kripal Singh's dead body was found at a distance of about 384 feet from the truck. At about 3.30 or 4 a.m. truck No. BRV 4482 was found near the Santara Market. Jagdeo Singh, Billa Singh and Sher Singh were found in the truck and they were arrested. Next day at about 4 p.m. the Taluqua Magistrate, on the instructions of the City Magistrate went to the hospital and after satisfying himself that PW 3 was in a fit condition to make a statement, recorded the statement of PW 3 in the form of questions and answers. In this statement PW 3 mentioned that when they started from Gandhibagh with their truck, Jagdeo Singh, Baldeo Singh, Harbans Singh, Labh Singh and others were there and they chased their truck. After they had gone some distance on Bhandara Road they found truck No. BRV 5657 coming from the opposite side, and truck No. BRV 5575 behind them. Jagdeo Singh and Baldeo Singh got down from the truck and went towards Kripal Singh While Harbans Singh and Labh Singh came towards him. Kripal Singh got down from the truck and started running. Jagdeo Singh, Baldeo Singh and some others chased him. Harbans Singh hit PW 3 with a sword and he became unconscious. The police also recorded his statement. After arresting the accused and completing the investigation a charge-sheet was laid against nine persons out of whom Harbans Singh could not be tried as he was absconding. The remaining eight persons were tried by the learned Additional Sessions Judge. Five were acquitted. Jagdeo Singh, Baldeo Singh and Labh Singh were convicted and they are the appellants before us.

2. Shri A. N. Mulla learned counsel for the appellants took us through the relevant evidence and submitted that the evidence of PW 3, the sole eye-witness to the occurrence, was full of infirmities and therefore, no conviction should be based on his evidence. He submitted that PW 3 had no genuine opportunity of identifying the assailants of Kripal Singh as Kripal Singh must have got down from the truck and run away as soon as he sensed danger. He was apparently attacked at a distance of 380 feet from the truck 1 whereas PW 3 was attacked near the truck itself. In the circumstances PW 3 would not have been able to identify the assailants of the deceased. Considerable argument was advanced on the circumstance that the right-hand side door of the truck was found shut whereas the left-hand side door of the truck was found open when the police arrived on the spot. This according to Shri Mulla indicated that the assailants did not drag the deceased out of the truck by opening the right-hand side door. The deceased himself must have run away. Shri Mulla also commented on the circumstance that there were no blood-stains on the driver's seat of the truck whereas there were blood-stains on the cleaner's seat. He also drew our attention to the

circumstance that there was practically no light near the spot where the dead body of the deceased was found lying. Shri Mulla further argued that PW 3 had made considerable improvements to the version originally given by him in the statements made by him to the magistrate and the police. He particularly drew our attention to the fact that the overt acts now attributed to the accused were not mentioned in the statement made to the magistrate.

3. We have considered the submissions of Shri Mulla carefully. We are not impressed with the submissions. On the other hand we are greatly impressed by the evidence of PW 3. His evidence regarding the complicity of the appellants before us is corroborated by the statement made by him to the Taluqua Magistrate soon after he regained consciousness in the hospital. Very great weight has necessarily to be attached to the statement having regard to the circumstances in which it was made. He was removed from the scene of occurrence in an unconscious state. The statement was recorded soon after he regained consciousness before he could possibly be contacted by anyone. He was obviously under great strain and pain at that time. His answers were brief and to the point. He confined himself to the questions put to him and gave direct answers. In fact if he did not give more details of the occurrence it was obviously because he was merely answering the questions put to him by the magistrate. We do not think that the several omissions in the statement which have been pointed out to us are of any great significance in the circumstance of the case. His statement shows that Jagdeo Singh and Baldeo Singh went after Kripal Singh while Labh Singh and Harbans Singh attacked him. No doubt the overt acts now attributed to the assailants were not mentioned in the statement. That does not detract from the credibility of the witness in the particular circumstances of this case. We are not impressed with the argument that PW 3 could not have identified the assailants of the deceased. Both Jagdeo Singh and Baldeo Singh were quite well known to him, and according to his evidence they came near the truck and dragged the deceased out. Whether he was dragged out or whether he himself got down from the truck it must be from the right-hand side door only since PW 3 was sitting in the cleaner's seat and it would not have been easily possible for Kripal Singh to escape from the left-hand side door. Further the plan prepared by the investigating officer shows that the spot where his dead body was found and, therefore, the direction towards which he ran was on the same side as the truck No. BRV 5657. If the assailants were coming from the truck No. BRV 5657 the deceased would not have run in that direction but he would have run in the opposite direction. It is clear to our minds that the deceased must have been dragged out of the truck by the accused. As already mentioned by us we are greatly impressed by the evidence of PW 3. We do not think it necessary to consider several other minor submissions made by Shri Mulla as we agree with the reasons given by the High Court to affirm the conviction of the three appellants. Shri Mulla raised a special plea on behalf of Jagdeo Singh and urged that he was a driver of truck No. BRV 4482 and that this truck never came upon the scene and therefore Jagdeo Singh would not have participated in the occurrence. We do not agree with this submission. We do not think that it was necessary for all the three trucks to have come to the scene of occurrence. Obviously Jagdeo Singh came to the scene in the truck No. BRV 5657. Shri Mulla also submitted that Labh Singh could not be convicted of murder as there were no grounds for applying Section 34 or Section 149. We see no force in this submission either. The attack on both the deceased and PW 3 were part of the same transaction. That some as assailants came in one truck and attacked the deceased and the other assailants came in another truck and attacked PW 3 does not make any difference. It is a clear case there was prior concert and planning by all the accused. We are satisfied that the appellants have been rightly convicted. The appeal is, therefore, dismissed.

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