

Satbir

Vs

State of Haryana

Criminal Appeal No. 391 of 1975

(Syed M. Fazal Ali, A. Varadarajan JJ)

08.01.1981

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgement of the Punjab & Haryana High Court in which the conviction of the appellant under Section 397 to 7 year's RI, under Section 394/34 to 2 1/2 years' RI and under Section 323 to 2 months' RI have been upheld. The prosecution case is detailed in the judgments of the High Court and that of the trial court. According to the complainant Bhagwant Singh he was robbed by Satbir and Daya Nand (Daya Nand, acquitted accused) of a watch and a cycle. It was also alleged that the complainant was assaulted by fists and kicks by Daya Nand and also at a later stages by the appellant. FIR was lodged on September 23, 1973 giving then details of the properties robbed. The appellant was arrested on September 29, 1973 and identification parade was arranged to be held on October 9, 1973 but the parade could not take place because the appellant refused to participate in the same on the ground that he had been shown to the witnesses. The defence of the appellant was that he had been falsely implicated and that he had not committed any offence. The High Court came to a clear finding that as PW 3 Bhagwan Singh was the only witness to identify the appellant and as no test identification parade could be held, his identification in court was of no value and such an identification would not be sufficient to found a conviction of the appellant. The High Court, however, based the conviction of appellant mainly on the recovery of watch made from the accused on September 29, 1973 when he was arrested in the course of ambush and presumption under Section 114 of the Evidence Act. There is the evidence of PW 7 Dhanpat and some other police officers to prove the recovery of the watch from the possession of the appellant.

2. We have heard counsel for the parties and we find that there are certain intrinsic circumstances which throw considerable doubt on the complicity of the complainant in the crime alleged. To begin with it appears that on September 27, 1973, Daya Nand the accused filed an application before the magistrate alleging clearly that the police had arrested the appellant Satbir in connection with the FIR lodged by the Bhagwant Singh (and) was trying to arrest Daya Nand also in order to implicate him falsely and to get him identified, This statement was made at a time when there was no warrant against Daya Nand and he merely apprehended his arrest. This statement clearly shows that there is a possibility of the appellant having been arrested on September 27, 1973 or even before that. If there is any truth in this statement which was made at a time when there was no dispute then the evidence of recovery produced by the prosecution becomes extremely suspicious. Mr. Bhagat appearing for the State very vehemently argued that the application filed by Daya Nand was not admissible and could not be taken into consideration in order to dislodge the prosecution case. It is true that the application does not have much evidentiary value but it is undoubtedly relevant under

Section 11(2) of the Evidence Act or at any rate it could be considered as a part of the statement of Daya Nand, accused under Section 342 of the Criminal Procedure Code, 1898 and therefore could be considered by the court for whatever worth it is. We do not mean to suggest for a moment that this application is by itself sufficient to discard the prosecution case. But taking in conjunction with other circumstances referred to hereinafter this document throws considerable amount of doubt on the prosecution case of recovery. It is positive case of the complainant Bhagwant Singh that he was given fist blows by Daya Nand and in his evidence in the court he adds that both the accused the appellant Satbir and Daya Nand had given kicks to him. The doctor who examined Bhagwant Singh found abrasion and opined that the injures could be caused by a blunt weapon. The doctor does not say that the injures caused to the deceased could be caused by fists or even by kicks. In view of the inconsistency in the medical evidence and the ocular evidence coupled with the recitals in the application filed by Daya Nand, clearly shows that the story of the arrest of the accused on September 29, 1973 and recovery is not aboveboard. Moreover the High Court has acquitted Daya Nand and having regard to the nature of the prosecution case against both the accused it will be difficult to segregate the case of Satbir from that of Daya Nand. From the narrative given by Bhagwant Singh it appears that the entire story of robbery is one integral part which is not capable of being truncated or segregated. If, therefore, this important part of the story is not believed by the High Court then indeed it would be difficult to accept the other part without doing damage to the doctrine of benefit of doubt. In view of these circumstances we are satisfied that the case against the appellant also has not been proved beyond doubt. Mr. Bhagat submitted that there are additional reasons why Daya Nand could have been acquitted. Even if that is so, the present case against the two accused persons being inseparable once a court holds that the case against one accused fails, it would be difficult to uphold the conviction of the other accused. We, therefore, allow this appeal, set aside the conviction and sentence of the appellant and acquit him of all the charges framed against him. The accused will be discharged from the bail bonds. Fine, if any, paid may be refunded.

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