

Suresh Pal and Others

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 68 and 69 of 1980

(O. Chinnappa Reddy, Baharul Islam JJ)

23.02.1981

JUDGMENT

CHINNAPPA REDDY, J. –

1. Suresh Pal, Bir Mahendra and Mahabir were tried along with three others, Yash Pal, Sohan Pal and Rajendra Singh for the murders of Charan Singh and Balbir Singh and for causing injuries to Jabar Singh (PW 8). All six were convicted by the learned Additional Sessions Judge, Meerut, but on appeal, the High Court of Allahabad acquitted Yash Pal, Sohan Pal and Rajendra Singh and convicted Suresh Pal, Bir Mahendra and Mahabir under Section 302 read with Section 34, Indian Penal Code and Section 323 read with Section 34, Indian Penal Code. The convicted accused have preferred these two appeals by special leave of this Court. The case of the prosecution briefly was that there was enmity between Rattan Singh and his sons (the appellants and the acquitted accused) on one side and the family of Jabar Singh on the other. It must be mentioned here that Charan Singh and Balbir Singh, the two deceased, were the brothers of Jabar Singh (PW 8). On the day of occurrence (December 6, 1973) at about 7 p.m. Jabar Singh, Charan Singh and Balbir Singh went to their fields and were cutting the bunds in order to take water to their fields. The six accused who were hiding in their sugar-cane field came out crying "it is a good chance kill them today". Rajendra Singh had a spear, Sohan Pal had a tabal (a sort of battleaxe) and the rest had lathis. All of them began to beat PW 8 and the two deceased. Balbir Singh and Charan Singh were beaten to death on the spot. Hearing the shouts raised by PW 8 and the two deceased when they were being beaten Ved Singh and Mahak Singh, PWs 10 and 11 came to the scene. They also witnessed the occurrence. When they heard the shouts they were at the sugar-cane crusher of Asha Ram. After Charan Singh and Balbir Singh had fallen down dead the accused ran away. PW 8 then went to the village, got a report written by one Raj Singh and took it to the police station where he gave it to the officer-in-charge. Thereafter the usual investigation followed. The autopsy on the body of Charan Singh revealed six lacerated wounds, two contusions and multiple abrasions. The inferior orbital bone was fractured. The membrane was congested. The middle fossa of the skull was also fractured. Death, according to the doctor was due to the head injury. The autopsy on the body of Balbir Singh revealed one incised wounds, seven lacerated wounds and multiple abrasions. The occipital bone was fractured. The membrane was congested. Death was due to the head injury according to the doctor. The medical officer found one lacerated wound, two bruises, a swelling and three abrasions on the person of PW 8. All the injuries were simple.

2. The High Court doubted whether Ved Singh and Mahak Singh were witnesses to the occurrence as they had no field near the scene of occurrence and the reason given by them for their presence in the vicinity, namely, that they had gone to the sugar-cane crusher of Asha Ram in order to talk to him appeared to be unconvincing since admittedly Asha Ram's house was near their house and it

was far easier for them to go to his house than to the sugar-cane crusher. The High Court, however, held that Jabar Singh's presence could not be doubted as he had received as many as seven injuries. Even so the High Court gave the benefit of doubt to Yash Pal, Rajendra Singh and Sohan Pal. The High Court took the view that Yash Pal was a mere boy, fourteen years of age, and was not likely to have participated in the commission of the offence. Rajendra Singh and Sohan Pal were said to be armed with a spear and a tabal respectively. There was only one incised wound on the body of Balbir Singh and it was not possible to say whether Rajendra Singh or Sohan Pal was responsible for the injury. The High Court, therefore, thought that only one of them might have participated in the occurrence but since it was not possible to say with certitude who it was that participated, both were entitled to the benefit of doubt. On that reasoning Yash Pal, Rajendra Singh and Sohan Pal were acquitted. The conviction of the three remaining accused was confirmed by the application of Section 34 instead of Section 149, Indian Penal Code.

3. The submission of Shri R. K. Garg, learned counsel for the appellants was that the High Court was in error in basing the conviction of the appellants on the sole testimony of Jabar Singh in view of the fact that the High Court had disbelieved his evidence in material particulars, namely, regarding the presence of the other two alleged eyewitnesses Ved Singh and Mahak Singh and the participation of the three acquitted accused, Yash Pal, Rajendra Singh and Sohan Pal.

4. It would be incorrect to say that the evidence of Jabar Singh had been found to be false in material particulars. Yash Pal was given the benefit of doubt as the High Court thought that it was not probable that he participated in the commission of offence as he was only a boy of fourteen years of age. But the High Court also found that it was likely that Yash Pal was present there without sharing the common object or common intention with others. The High Court said, "by way of abundant caution he can be given the benefit of doubt". It is impossible to construe this finding as a finding that Jabar Singh had given false evidence implicating Yash Pal. Similarly with regard to Rajendra Singh and Sohan Pal the High Court said :

It is true that only one of the injuries received on the side of the prosecution was an incised wound. It is also true that it could be inflicted by a spear as well as by a tabal and consequently it cannot be held with certainty whether it was inflicted by Rajendra Singh or Sohan Pal appellants. It is quite likely that only one of the two appellants viz. Rajendra Singh and Sohan Pal participated in the occurrence, and both were named brothers inter se. Since it cannot be held as to whether it was Rajendra Singh or Sohan Pal who participated in the occurrence the benefit of doubt can be given to both of them.

This finding of the High Court cannot also be construed as a finding that Jabar Singh had given false evidence implicating Rajendra Singh and Sohan Pal. Regarding the evidence of Jabar Singh about the presence of the other two eyewitnesses Ved Singh and Mahak Singh we are unable to say that the evidence of Jabar Singh was false. The High Court did not give any categorical finding that Ved Singh and Mahak Singh did not witness the occurrence but thought that their presence was doubtful. The High Court observed : "In view of all the aforesaid reasons there appears a substance in the contention raised by the learned counsel for the appellants that in all probability Ved Singh and Mahak Singh did not witness the occurrence". It is, therefore, not possible to accept the submission of Shri R. K. Garg that on the finding of the High Court the appellants were entitled to be acquitted. 5. The High Court has found that Jabar Singh's presence could not be doubted as he had received a number of injuries. We have already referred to the injuries found on the bodies of Balbir Singh and Charan Singh. There were as many as thirteen injuries on the body of Charan

Singh, twelve on the body of Balbir Singh and seven on the person of Jabar Singh. There were three victims of the attack, of whom two died on the spot. The number of victims and the number of injuries received by them clearly indicate that many more than three persons participated in the attack. The High Court took a broad view of the facts and acquitted everyone about whose participation there was any possible doubt. We do not think that there is any scope for rejecting wholesale the evidence of Jabar Singh and for acquitting the appellants also. In the result the appeals are dismissed.

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