

Mohar Singh and Others

Vs

State of Punjab

Criminal Appeals Nos. 250 of 1976 and 63 of 1977

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

31.03.1981

JUDGMENT

FAZAL ALI, J. –

1. These appeals by special leave are directed against the judgment and order of the Punjab & Haryana High Court affirming the conviction of Ajmer Singh, Mohar Singh, Jaggar Singh and Baldev Singh under Section 302/34, Indian Penal Code and the sentence of imprisonment for life. The prosecution case has been detailed in the judgment of the High Court and the trial Court and need not be restated here.
2. It appears that on March 8, 1971 an altercation between the deceased and the accused seems to have taken place over some irrigation dispute, when the accused wanted to irrigate the land out of turn. In the course of the irrigation the deceased Kartar Singh is said to have been assaulted by the accused by the front and the blunt sides of the spade with which the earth was being dug. Kartar Singh was taken to the hospital and on receipt of a report therefrom ASI Nirmal Singh, the investigating officer reached the hospital and recorded a statement (Ex. P-19) at 10 p.m. on March 8, 1971 which was treated as the FIR as also the dying declaration. Although PW 3, the wife of Kartar Singh, is alleged to have accompanied the deceased to the hospital, yet she does not appear to have been examined by the investigating officer on that day. The investigating officer reached the spot and after completing the usual investigation, submitted a chargesheet as a result of which the appellants were placed on trial and convicted and sentenced by the Sessions Judge, as indicated above. The appellants appealed before the High Court which was dismissed and hence these appeals by special leave.
3. The central evidence against the appellants consisted of the dying declaration recorded by the investigating officer, ASI Nirmal Singh (PW 12) which was said to have been corroborated by the ocular testimony of PWs 3 and 4. PW 3 was the wife of Kartar Singh, deceased and PW 4 was a ten-year-old son. Both the High Court and the trial Court based the conviction mainly on the dying declaration recorded by PW 12. The evidence of PWs 3 and 4 were used by the courts below to corroborate the evidence furnished by the dying declaration.
4. Learned counsel, Mr. Garg appearing for the appellants submitted that the dying declaration relied upon by the courts below is extremely suspicious and ought to have been rejected as it could not have been made by the deceased. In support of his arguments, the learned counsel has relied on the following circumstances :

(i) The evidence of Dr. Sandhu, PW 2 shows that at the time when the deceased

reached the hospital, he had as many as 21 injuries on various parts of the body. His blood pressure was 60/40 mms of Hg. and pulse was 100 per minute weak. The evidence also shows that he was in a state of shock.

(ii) It is true that Assistant Inspector, Nirmal Singh had obtained a certificate from Doctor Sandhu, PW 2 that the deceased was fit to make a statement but having regard to the serious condition of the deceased even though he might have been conscious, he could have made only a brief statement regarding the occurrence.

5. We have, however, been taken through Ex. P-19, the statement of the deceased Kartar Singh and we find that he has given a very detailed and graphic narration of the entire history of the case, starting from the motive, the enmity and minutest features of the assault excluding the individual acts committed by the appellants. He has also mentioned that the appellants assaulted him with kassi. The ocular evidence however is that the deceased was attacked not by kassi but by spade. In view of the detailed and extremely coherent nature of the dying declaration, we find it impossible to believe that the deceased even if conscious would have made such a detailed statement. We are, therefore, inclined to think that this statement smacks of concoction or fabrication in order to make the present case foolproof. At any rate, we find it wholly unsafe to rely on the dying declaration, particularly when PW 12 did not take the necessary precaution of getting the dying declaration attested by the wife who was stated to be present there or the doctor who was alleged to be present in the hospital. Thus, the dying declaration has to be excluded from consideration. That being the position the only evidence which we are left with consists of the statements of PWs 3 and 4. The evidence of these witnesses also cannot be relied upon. They are in direct conflict with the medical evidence. While both the witnesses categorically state that the appellants assaulted the deceased with spades with which the earth was being dug out either from the sharp or the blunt side, the doctor (PW 1) who held the autopsy of the deceased has clearly stated that the injuries could be caused only by a kassi. No question was put by the prosecution to the doctor whether any or all of the injuries on the deceased could be caused in the manner alleged by the witnesses i.e. by a spade.

6. In view of this glaring inconsistency between the ocular and medical evidence, it will be extremely unsafe and hazardous to maintain the conviction of the appellants on such evidence. For the reasons, therefore, we are clearly of the opinion that the prosecution case has not been proved beyond reasonable doubt. The appeals are accordingly allowed and the appellants are acquitted of the charges framed against them. The accused-appellants will now be discharged from their bail bonds and need not surrender.

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