

Chandigarh Administration, Chandigarh

Vs.

Dharam Singh

Criminal Appeal No. 306 of 1975.

(R.S. Pathak, A.N. Sen JJ)

29.07.1985

JUDGMENT

PATHAK, J. -

1. This appeal by special leave is directed against an order of the High Court of Punjab and Haryana declining leave to the appellant under sub-section (3) of Section 378 of the Code of Criminal Procedure to appeal to the High Court against an order passed by the learned Sessions Judge, Chandigarh acquitting the respondent.
2. The respondent, Dharam Singh, and his father, Karam Singh were charged for an offence under Section 302 read with Section 34 of the Indian Penal Code for the murder of Vinod Kumar. In addition, a substantive charge was framed under Section 302 of the Indian Penal Code against the respondent. It appears that Vinod Kumar occupied a barsati above a shop-cum-flat in Sector 18-D, Chandigarh along with Ram Lok. The respondent and his brother and their family lived on the floor immediately below the barsati. The case of the prosecution is that on March 1, 1974 at about 4.30 in the afternoon the two accused went up to the barsati and while Karam Singh caught hold of Vinod Kumar the respondent stabbed him with a knife in the abdomen. The motive suggested by the prosecution is that the accused suspected that Vinod Kumar was carrying on an illicit relationship with their sister Ajit Kaur. The learned Sessions Judge recorded evidence in the case and after considering the material before him he held that it was not sufficient to establish the charges beyond doubt against the accused, and he acquitted him. The appellant, the Chandigarh Administration, applied to the High Court for leave to appeal, but the application was summarily dismissed. Against that order this Court granted special leave to appeal confined to the case against the respondent, Dharam Singh.
3. We have heard learned counsel for the parties at length and have perused the entire evidence on record, and we are not satisfied that the High Court has erred. The learned Sessions Judge carefully considered the testimony of the prosecution witnesses, Surinder Kumar Gupta and Ram Lok, and took into account all the evidence, and after weighing the facts and circumstances of the case he was unable to hold that the charges were substantiated. We have been taken through the record by learned counsel and we see no reason to differ. It does appear that the respondent and his family suspected that the deceased was carrying on an illicit affair with Ajit Kaur but that is wholly insufficient by itself to establish that the deceased was murdered by the respondent. There are several weaknesses in the testimony of the prosecution witnesses to which the learned Sessions Judge has drawn pointed attention and, to our mind, it is difficult to find fault with his appraisal of the evidence. The evidence and circumstances may conceivably give rise to the suspicion that the respondent was involved in the incident, but suspicion cannot serve as evidence. The High Court

was justified in refusing leave to the appellant to appeal to it, and we see no reason to hold a different view.

4. The appeal is dismissed and the bail bond tendered by the respondent shall stand cancelled.

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