

Harbhajan Singh

Vs

State of Punjab

Criminal Appeal No. 263 of 1978

(A. P. Sen, V. B. Eradi JJ)

12.02.1987

ORDER

1. In this appeal by special leave, the only question is whether the conviction of the appellant Harbhajan Singh by the High Court under Section 302 of the Indian Penal Code, 1860 for having committed the murders of the deceased Bhag Singh and Amrik Singh can be sustained on the findings reached by the High Court.

2. The only contention on behalf of the appellant and the other co-accused before the High Court was that Section 34 of the Indian Penal Code was not attracted and therefore they could not be convicted under Section 302 read with Section 34. The High Court accepted the contention and set aside the conviction of the other accused and convicted the appellant alone under Section 302 of the Indian Penal Code. In dealing with the contention that Section 34 was inapplicable, the High Court found that the appellant was not carrying a kirpan, as alleged by the prosecution witnesses. It also found that the true genesis of the occurrence was not known, that the immediate cause of the fight was shrouded in mystery, and that the two conflicting versions given in that respect by the prosecution and the defence could not be accepted, observing that both the prosecution and the defence had put up a distorted version of the whole incident. We may extract the relevant observations :

The time and place of the occurrence and the nature of the weapons carried by the accused further renders the prosecution version that they went armed to attack Bhag Singh at his house situate in a thickly populated locality, highly improbable. Though Harbhajan Singh is alleged by the prosecution to be armed with a kirpan but taking into consideration the probabilities of the case, we feel that this was an improvement made by the prosecution witnesses and it was Amrik Singh deceased who was armed with a kirpan as claimed by the defence.

3. The High Court then observed :

It appears that when Harbhajan Singh, Mohan Singh and Bara Singh were returning from their fields in the evening and reached near the house of Bhag Singh, the fight ensued between them. Amrik Singh having noticed the same from the petrol pump also came armed with a kirpan and joined the fight. What was the immediate cause of the fight is shrouded in mystery and the two versions given in this respect by the prosecution and the defence cannot be accepted. Both the sides appear to have put up a distorted version of the true facts which led to the present occurrence.

4. Learned counsel for the appellant drew our attention to these observations made by the High Court. He rightly contends that on the finding reached by the High Court that the appellant was unarmed and therefore he should not be convicted under Section 302 of the Indian Penal Code for having caused the two murders in question.

5. We are constrained to observe about the unsatisfactory manner in which the High Court has dealt with the appeal. It is difficult to sustain the two conflicting versions made by it during the course of the judgment. The basis upon which the High Court has convicted the appellant under Section 302 is not discernible. We are left with no other alternative but to remit the appeal to the High Court for disposal afresh.

6. Accordingly, the appeal succeeds and is allowed. The judgment and sentence passed by the High Court are set aside and the appeal is remanded to the High Court for a hearing and decision afresh. The appellant shall continue to remain on bail till the disposal of the appeal.

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