

Gurdip Singh and Another

Vs

State of Punjab

Criminal Appeal No. 146 of 1985

(B. C. Ray, V. Khalid JJ)

24.02.1987

JUDGMENT

V. KHALID, J. -

1. This is an appeal against the judgment passed by the Judge, Special Court, Ferozepore convicting the appellants, two in number, viz., Gurdip Singh and Gurdas Singh for offences under Section 302, IPC and convicting them to life imprisonment.

2. Originally there were four accused, two of them were acquitted. The appellants were aged 19 and 17 years at the time of the offence. The prosecution case in short is as follows :

3. Maya Bai had two sons and two brothers. She is the mother of Jit Singh and Gurdip Singh, accused 1 and 2 in the case and sister of Teja Singh and Gurdas Singh, accused 3 and 4. The deceased is one Kishore Singh, aged 45 years. The accused suspected that Maya Bai had illicit relationship with the deceased. On March 14, 1984, the deceased was returning from Village Fattuwala and when he reached the field of Kashmiri Lal the four accused came out of the wheat field of Kashmiri Lal. The first appellant had a kirpan with him and the second appellant a kappa. It is alleged that the four accused took the deceased to the wheat field of Kashmiri Lal and threw him on the ground. One of the acquitted accused Jit Singh caught hold of the arms of the deceased and the two appellants caused injuries with the weapons in their hands, to the deceased. There was an alarm created by Lachhman Singh, PW 3, which attracted PW 4 - Rulia Singh and Mohinder Singh. When they reached the spot, the accused ran away with their weapons. PW 3 gave the FIR at 8.30 p.m. The deceased had seven injuries on his body. Injury No. 7 was fatal according to the doctor who examined him. The accused were arrested on March 18, 1984 and the alleged weapons were seized on March 21, 1984. The appellants in their statement under Section 313, CrPC denied their guilt and stated that they were innocent.

4. The learned counsel for the appellants took us through the evidence of PW 1 : Gurdev Singh Patwari, PW 3 - Lachhman Singh, PW 4 - Rulia Singh, PW 5 - Daljit Singh and PW 6 - Harbans Singh. According to him the prosecution has not come forward with the true case and as to how the incident happened in truth. There has been a deliberate twisting of the incident. A careful examination of the evidence of the prosecution witnesses, PWs 3 and 4 in particular, according to him, would clearly establish that they could not have either witnessed the incident or seen the accused running away.

5. We have examined the evidence carefully. The trial Judge found Jit Singh and Teja Singh not guilty since the case against them was not proved beyond reasonable doubt. The appellants were

convicted because they had weapons with them unlike the acquitted accused. On a consideration of the entire evidence in the case, we have no hesitation in holding that the appellants were responsible for the death of the deceased Kishore Singh, by attacking him with the weapons in their hands. However, on a re-appraisal of the entire evidence, we find it difficult to agree with the trial court that the appellants are guilty of an offence under Section 302, IPC.

6. The trial Judge was not wholly justified in observing that there was no evidence about the so-called illicit relationship between Maya Bai and Kishore Singh, the deceased. The materials available create considerable doubt in our mind as to whether the appellants really intended to kill Kishore Singh or whether his misconduct pushed them to wreak revenge against the deceased and in this pursuit attacked him. We are not unmindful of the fact that the 7th injury noted in the post-mortem certificate is in the ordinary course sufficient to cause the death of the deceased. But we are not fully satisfied that the appellants intended to kill the deceased. The correct approach on the evidence and other circumstances in this case, would according to us, be to find the accused guilty under Section 304, Part I, and to sentence them under that section.

7. Accordingly, we modify the judgment of the trial court, convert the conviction under Section 302 to Section 304, Part I and sentence the appellants to seven years' imprisonment. The appeal is dismissed with the modification in the conviction and sentence as indicated above.

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