Tota Singh and Another

Vs

State of Punjab

Criminal Appeal No. 225 of 1978

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

01.04.1987

JUDGMENT

BALAKRISHNA ERADI, J. -

1. After hearing Shri A. N. Mulla, Senior Advocate for appellants and Shri R. S. Sodhi, counsel appearing on behalf of the respondent and having carefully examined all aspects of the case in the light of the submissions made at the Bar, we have unhesitatingly come to the conclusion that this appeal has to be allowed.

2. The four appellants before us - Tota Singh, Dauli Singh, Mithu Singh and Mukhtiar Singh were tried by the Court of Sessions, Faridkot on charges under Section 302 IPC read with Section 34 IPC and Section 323 IPC read with Section 34 IPC. After detailed consideration of the entire evidence adduced in the case, the learned Sessions Judge by his judgment dated May 30, 1974 acquitted the appellants of all the charges laid against them. Against the said decision of the Sessions Judge, the State of Punjab preferred Criminal Appeal No. 1106 of 1974 in the High Court of Punjab and Haryana. A Division Bench of the High Court by its judgment dated April 9, 1978 allowed the State's appeal, set aside the order of the Sessions Judge acquitting the appellants and convicted the appellants under Section 302 IPC read with Section 34 IPC as well as under Section 323 IPC read with Section 34 IPC. On the first count all the appellants were sentenced to undergo rigorous imprisonment for life and on the second count they were ordered to undergo rigorous imprisonment for one year each with a further direction that the substantive sentence of imprisonment in respect of all the appellants shall run concurrently.

3. We do not propose to set out in extenso the facts of the case nor to discuss in detail the oral and documentary evidence adduced. We say this for the reason that we are fully satisfied that the approach made by the High Court to a consideration of the appeal was wholly vitiated by a manifest illegality inasmuch as the High Court has acted in total disregard of the principles repeatedly laid down by this Court delineating the restricted grounds on which alone interference may be made by a court of appeal with an order of acquittal passed by a lower court.

4. The occurrence that led to the prosecution took place on July 19, 1973 at about 4 p.m. in village Bishmandi, Police Station Jaitu in District Faridkot. The case of the prosecution is that the deceased Gurdev Singh accompanied by Ajmer Singh PW 2 and Malkiat Singh PW 6 was going from the house of Ajmer Singh to the house of the deceased on that fateful day. While they were approaching the house of one Moda Singh Jat, the four appellants, all carrying a gandasa each, suddenly besieged them from behind the Chelianwali Street raising a "lalkara" proclaiming that they were going to take their revenge for outraging the modesty of Malkiat Kaur and they attacked the deceased as well as

Ajmer Singh and Malkiat Singh by inflicting gandasa blows on them. It was alleged that this was a preplanned and concerted attack made by the appellants as a reprisal for an incident of alleged rape of one Malkiat Kaur by Ajmer Singh (PW 2). Gurdev Singh (deceased) is said to have fallen down on the spot as a result of the blows inflicted on him and PWs 2 and 6 are said to have suffered simple injuries due to the attack with gandasa. According to the prosecution version on hearing the cries for help raised by PW 2 and PW 6, Kaur Singh, son of deceased Gurdev Singh came to the place of occurrence and thereupon all the four appellants ran away from the spot leaving PW 6 near Gurdev Singh, who was lying on the ground in an injured condition. PW 2 is said to have gone to the Sarpanch and the Panch of the village and informed them about the incident. Thereafter he returned to the scene of occurrence and himself along with PW 6 are said to have put Gurdev Singh on a bullock cart and got him admitted in the injured condition in the hospital. PW 2 and PW 6 were also admitted in the same hospital. Gurdev Singh was subsequently transferred to the Christian Medical College at Ludhiana, where he succumbed to his injuries on July 30, 1973.

5. The learned Sessions Judge after a careful analysis of all the facts and circumstances as disclosed by the evidence adduced in the case came to the conclusion that the testimony of Ajmer Singh PW 2 and Malkiat Singh PW 6 who were examined by he prosecution as eye-witnesses to prove the occurrence could not be safely accepted and acted upon as true. The trial Judge set out in his judgment detailed and cogent grounds for arriving at the said conclusion. In his opinion there was no proper explanation for the inordinate delay in reporting the crime to the police and there was also no adequate proof of any motive. The learned Sessions Judge rejected the theory put forward by the prosecution that it was a preplanned attack made by the appellants with a view to avenge the alleged molestation of Malkiat Kaur by Ajmer Singh PW 2 by pointing out that if such had been really the case, the target of attack by the appellants would have been Ajmer Singh to whom only simple injuries were caused and not Gurdev Singh who had nothing to do with the alleged incident of molestation. The learned Sessions Judge was inclined to accept the defence version that the appellants being 'siris' had some trouble with PW 2 and PW 6 about the apportionment of 'batai' and this might have led to their false implication in the case. In the absence of any independent corroboration of the testimony given by the two alleged eye-witnesses (PW 2 and PW 6), the learned Sessions Judge who had seen them giving evidence in the box was not impressed by their evidence specially having regard to the fact that both of them had been appearing as prosecution witnesses in a large number of police cases. The testimony of PW 2 and PW 6 having been found to be not worthy of belief, the learned Sessions Judge acquitted the appellants on both the charges levelled against them.

6. The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW 2 and PW 6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the appellate court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an

appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous.

7. Tested in the light of the above principles, it must be held that the interference made in the present case by the High Court with the order of acquittal passed by the learned Sessions Judge was wholly unwarranted. We accordingly, allow this appeal, set aside the judgment of the High Court and restore the judgment and order of the learned Sessions Judge acquitting the appellants of all the charges framed against them.

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