

Dalbir Singh and Others

Vs

State of Punjab

Criminal Appeal No. 312 of 1978

(G. L. Oza, V. Khalid JJ)

10.04.1987

JUDGMENT

OZA, J. -

1. This appeal has been preferred by the appellants by leave granted by this Court against their conviction under Section 302 read with Section 149 and sentence of imprisonment of life and fine of Rs. 2000 in default one year's rigorous imprisonment and under Section 148 a sentence of one year's rigorous imprisonment to each one of the appellants awarded by Additional Sessions Judge, Amritsar by his judgment dated March 14, 1975 and maintained on appeal by the high Court of Punjab and Haryana by their judgment dated May 11, 1978.

2. The prosecution case at the trial was that on May 30, 1974 Hans Raj and Makhan Singh (deceased) were going in a rickshaw to the house of Hans Raj situated in Model Town, Chheharta with a bag of wheat. They had come from village Muradpura, when they reached near the gate of Guru Nanak University, Amritsar at about 2.30 p.m. all the five appellants Dalbir Singh alias Bhira, Balvinder Singh, Joginder Singh, Mohinder Singh and Karma waylaid them. At that time Dalbir Singh and Joginder Singh were armed with kirpan, Balvinder Singh and Mohinder Singh were armed with gandasis and Karma was armed with sua. They challenged (lalkara) the deceased and on this Hans Raj and Makhan Singh tried to run away, Joginder Singh and Mohinder Singh appellants caused injuries to Makhan Singh with their respective weapons and Bhira, Balvinder Singh and Karma appellants caused injuries to Hans Raj, with their respective weapons. This was witnessed by Joginder Singh, PW 3 who was going from village Muradpur to Basarke Gill on a bicycle and was behind the rickshaw of Hans Raj and Makhan Singh and also by Bakhshish Singh who was also coming in a rickshaw behind the rickshaw of Hans Raj and Makhan Singh.

3. A. S. I. Satya Pal, PW 11, who was returning from Kot Khalsa to Police Station Sadar, Amritsar after the investigation of a theft case, met S. I. Jagan Nath, PW 12 at about 2.35 p.m. on Surta Singh Road. Jagan Nath was going to Police Post Chheharta after doing parivi of the cases pending in the district courts.

4. On getting the information about the occurrence from a passer by A. S. I. Satya Pal and S. I. Jagan Nath reached the place of occurrence and saw two persons lying injured on the left side of the road. At the time Hans Raj was unconscious and the condition of Makhan Singh was also precarious but he was in his senses and could speak. There was no one else at that time near about.

5. Apprehending that Makhan Singh may not live long, S. I. Jagan Nath, PW 12 recorded his statement Ex. PY (dying declaration) which was read out to him (Makhan Singh) and got his thumb

mark in token of the correctness of the statement. This dying declaration Ex. PY was attested by A. S. I. Satya Pal and S. I. Jagan Nath also. A memorandum of injuries of both Makhan Singh and Hans Raj was also prepared and later a supplementary statement of Makhan Singh Ex. PZ was also recorded.

6. Hans Raj's wife's sister's son Mohan Lal, PW 9 arrived on the spot and S. I. Jagan Nath asked him to take the injured persons in a three-wheeler to V.J. Hospital, Amritsar and Mohan Lal carried both the injured to the hospital where Makhan Singh was admitted at 3.50 p.m. by Dr. Suresh Chander Saini, PW 2 while Hans Raj was declared dead at 4 p.m. by him. At 5.15 p.m. Makhan Singh also died and an intimation about this was sent to the Casualty Medical Officer.

7. A. S. I. Satya Pal took blood-stained earth from the place of occurrence. A case was registered on the basis of dying declaration at Police Station Sadar, Amritsar. An inquest report of Hans Raj And Makhan Singh was prepared and the dead bodies were sent for post-mortem examination. Autopsy was conducted by Dr. D. S. Bedi PW 1 on May 31, 1974. He found 16 injuries on the dead body of Hans Raj and 13 injuries on the dead body of Makhan Singh. During investigation the instruments of offence were also recovered and were found stained with human blood but the trial court as well as the High Court rejected the evidence about the recoveries but convicted all the appellants on the basis of dying declaration coupled with the direct testimony of PW 3 corroborated by medical evidence.

8. Learned counsel appearing for the appellants contended that in the dying declaration recorded on the basis of which the first information report was recorded all the appellants are alleged to have been carrying kirpans but after the police officers observed the injuries on the persons of the two deceased they discovered that some of the injuries were such which could only be caused by hard and blunt object and therefore an additional statement of injured Makhan Singh was recorded which is Ex. PZ but which does not bear the thumb impression and the explanation of the police officers is that at that time he was not in a position to put his thumb mark. It was contended that this was an attempt on the part of the investigating officer to improve the evidence which apparently as it stood originally in the first information report was not consistent with the medical evidence, makes investigation suspect and in this context it was also contended that the two witnesses examined in defence indicates that Devinder Singh son of Chet Singh one of the brothers of Dalbir Singh and Balvinder Singh had filed a complaint against these police officers and it was because of this prejudice and enmity, according to the learned counsel, the accused persons were falsely implicated and it was contended as to how an attempt was made even to make recoveries of instruments of offence but the courts below rejected the evidence of recovery.

9. It was contended that according to the prosecution itself there was one more eye witness who according to the learned counsel, was the only independent witness. It is Bakhshish Sing whose name also appears in the inquest memo as an eye witness but he was not examined whereas PW 3 Joginder Singh was examined. His cross-examination disclose that he is a person of doubtful character and it was therefore contended that in such a situation where the medical evidence is not consistent with the version in the FIR and the only eye witness examined is not above suspicion the courts below committed an error in convicting the appellants.

10. It was also contended that the FIR which was recorded at 3.25 p.m. on March 30 itself was sent to the nearest magistrate at 8 a.m. on May 31, 1974 and it was contended that this delay also throws suspicion on the prosecution case. Learned counsel in respect of various principles of appreciation of evidence referred to decisions of this court and also of the High Courts.

11. The circumstances which admittedly emerge clearly disclose that the incident took place at about 2.30 p.m. or little after that. It also appears that when the two police officers happened to pass through the place of incident they found two persons lying injured on the left side of the road and it is in that condition that the Fir (dying declaration of Makhan Singh, Ex. PY) appears to have been recorded by the police officers. It is beyond suspicion that this report is recorded after 2.30 p.m. and before 3.50 p.m. because at 3.50 p. m. Makhan Singh had been admitted in the hospital by Dr. Suresh Chandra Saini. The FIR mentions the time as 3.25 p.m. and not much could be said about it. In fact even the learned counsel for the appellants built up his whole argument on the basis of this dying declaration recorded at 3.25 p.m. This dying declaration clearly mentions all the accused persons, the present appellants and there is no doubt about their identity. The only inconsistency with the medical evidence which has been the main plank of the arguments of the learned counsel is that the instruments of offence used have been described as kirpan whereas injuries indicated that they were inflicted not only by kirpans but probably by some hard and blunt object also and there are penetrating injuries as well. It could not be disputed that the injuries as they are described by the doctor who examined Makhan Singh and the doctor whom conducted autopsy clearly shows in what condition Makhan Singh must have been having received all those injuries and a short time before his death. Apart from it the mental condition in which this injured may have been when shortly after the assault on these two persons, the police officers arrived and the person gave a statement it cannot be doubted that it is not expected of a person in such a situation physically and in such a mental state, he should in a very candid manner describe each of the instruments of offence and the manner in which the injuries were inflicted. If this is expected of a person in such a state of affairs, in our opinion, it would only be expecting too much.

12. It is significant that there is no clear evidence to indicate that the injuries which are described as abrasion or contusion on the person of the two deceased could not have been caused in the process of the assault by fall or by collision with the parts of cycle-rickshaw. Learned counsel could not refer to any part of the medical evidence to indicate that such injuries are not possible in any other circumstance except as was suggested by the eye witness or the additional statement recorded of the deceased. In any event the dying declaration in our opinion, could not be discarded merely on the ground that it does not give precise description of all the instruments of offence and also the precise description of the manner in which the injuries were inflicted and on this basis therefore it could not be contended that this dying declaration should be rejected as it is not consistent with the medical evidence. It is plain that substantially it is corroborated by medical evidence and also corroborated by the testimony of eye witness.

13. As regards the non-examination of one of the eye witnesses Bakhshish Singh the judgment of the Sessions Court indicates that this witness was not examined as having been won over and therefore it could not be said that this witness was not examined without giving any reasons. So far as PW 3 Joginder Singh is concerned in his cross-examination there is nothing on the basis of which it could be suggested that he is not a truthful witness. The only thing on which emphasis was laid was that he is not a man of character above suspicion but merely on this ground his testimony could not be rejected when he was examined during investigation immediately and the learned Sessions Judge before whom he was examined has also accepted his testimony.

14. As regards the sending of the FIR to the nearest magistrate the learned counsel contended that the delay itself is sufficient for drawing an inference of concoction and therefore the whole investigation is suspect. The learned counsel referred to a decision of the Punjab High Court in Gurdev Singh v, State (1963 Punj LR 409, 412). In this decision it was observed that delay in lodging the first information report creates suspicion and therefore it is observed that report in

cognizable case should be lodged as soon as possible :

One of the essential requisites to ensure a fair trial is that the first information report in respect of a cognisable offence should be lodged as soon as possible. Where the lodging of the report is delayed, it not only gets bereft of its spontaneity, danger also creeps in of the introduction of coloured versions, thought out stories and twists to actual facts. The interested parties can then be sounded and some of them shown as false witnesses. Likewise, some innocent persons can be roped in and named as culprits as a result of much thought, consultation and discussion. To avoid these dangers, the courts have always insisted upon the prompt lodging of the report to the police. In murder cases, because of the enormity of the stakes involved, certain additional safeguard are provided to ensure that the version of the occurrence is disclosed as soon as possible thereafter. One of those safeguards is that in murder cases a copy of the first information report should be sent to the Ilaqa Magistrate immediately after the report is made. This is provided in Rule 24.5 of the Punjab Police Rules.

After quoting the rules framed by the Punjab Police their lordships considered the delay in sending the report to the magistrate. So far as the case in hand is concerned it is not in dispute that if the report was recorded at 3.25 p.m. on May 30, 1974 and it was sent to the magistrate on May 31, 1974 at 8 a.m. It is apparent that if the report itself was recorded at 3.25 p.m. and the police officer was investigating the offence, next morning the report had been despatched to the magistrate. It is also significant that initially as the report was recorded on the basis of dying declaration of Makhan Singh an offence under Section 307 read with Section 148 and 149 only was registered. It therefore could not be said that there was any delay in sending the report to the magistrate.

15. Learned counsel on question of appreciation of evidence referred to number of decisions but it could not be disputed that no hard and fast rule could be laid down about appreciation of evidence. It is after all a question of fact and each case has to be decided on the facts as they stand in that particular case. In our opinion, therefore not much assistance could be sought from the decisions referred on the question of appreciation of evidence.

16. The manner in which the incident took place clearly establishes that the appellants were members of an unlawful assembly and were lying in wait for the two deceased persons and in view of this their conviction under Section 148 could not be assailed and in the context of this as they were members of unlawful assembly it is not necessary to go into the question as to which of the appellants inflicted what particular injury.

17. In this view of the matter we see no reason to entertain this appeal. The appeal is therefore dismissed. The conviction and sentence passed against appellants are confirmed. The bail bonds of the appellants shall stand cancelled.

</html