

Gurnek Singh and Another

Vs

State of Punjab

Criminal Appeal No. 444 of 1978

(M. P. Thakkar, B. C. Ray JJ)

27.09.1988

JUDGMENT

THAKKAR, J. -

1. The trial court held, and the High Court concurred, that appellants were the culprits who had fired at and injured Gurdarshan Singh (who succumbed to his injuries) as also his father, brother and mother (injured eye-witnesses PWs 8, 9 and 10). The appellants have assailed the said finding and the order of conviction and sentence for the murder of Gurdarshan Singh and the attempt to commit the murder of PWs 8, 9 and 10.

2. The occurrence took place on October 13, 1972 at about 7 p.m. near the haveli of the victims and near the house of appellant 1 Gurnek Singh which adjoins the said haveli. The appellants had firearms with them and they had fired at the victims from the roof of their house. Deceased Gurdarshan Singh and the three injured eye-witnesses viz. PWs 8, 9 and 10, namely, the father, brother and mother of Gurdarshan Singh were hit by pellets and injured in the course of the very same transaction. One Sandhura Singh (not examined as witness) was also hit with pellets and sustained injuries in the course of the same transaction.

3. The evidence relied upon by the prosecution in order to establish the guilt of the appellants consisted of :

(1) the evidence of PWs 8, 9 and 10, the three injured eye-witnesses; (father, brother and mother respectively of deceased Gurdarshan Singh);

1. For the former offence appellants are convicted under Section 302 read with Section 34 of the Indian Penal Code and sentenced to imprisonment for life. For the latter they have been convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 4 years

(2) evidence pertaining to motive;

(3) the dying declaration made by gurdarshan Singh before the police officer at the hospital;

(4) recovery of firearms at the instance of appellants 1 and 2; and

(5) evidence regarding the absconding of the appellants.

4. The evidence regarding motive was to the effect that the father of appellant 1 viz. Shri Ajit Singh had a dispute with the father of the deceased about partition of the land belonging to the family to which both of them belonged. Appellant 1 had demanded plot No. 111, admeasuring 19 marlas which had fallen to the share of PW 8 (father of the deceased) which demand had not been acceded to by PW 8. Appellant 1 had also heaped his bricks on that part of the land and PW 8 had protested against the action of appellant 1. The trial court did not consider the evidence as regards motive reliable. The High Court, on the other hand, came to the conclusion that the evidence regarding motive was satisfactory and that the trial court was not justified in rejecting this evidence. However, the High Court proceeded to observe that ultimately nothing turned on it as the evidence regarding motive, if believed, would merely strengthen the prosecution case and would provide further assurance to the other evidence connecting the appellants with the crime. Even if therefore the evidence was ignored it did not make any difference in the ultimate outcome of the matter in view of the fact that the evidence of the injured eye-witnesses PWs 8, 9 and 10 was considered reliable by the trial court and inasmuch as the High Court concurred with the assessment of the evidence made by the trial court.

5. We have carefully scrutinized the evidence of the three injured eye-witness. We are of the opinion that the trial court and the High Court were right in accepting there evidence. The presence of these three witnesses at the time of occurrence is beyond question having regard to the fact that all the three of them have sustained injuries by pellets on account of the gun shots fired at them in the course of the very same transaction at the very time and place of occurrence. The fact that they are related to the deceased victim does not detract from the value of their evidence having regard to the fact that their presence at the scene of offence is natural and their presence near the deceased has been established beyond a shadow of doubt by reason of the fact that they themselves have sustained injuries attributable to firearms at the same time and on the same spot. We have therefore no hesitation in upholding the finding recorded by the trial court as confirmed by the High Court that the evidence of these three witnesses as regards their presence is reliable. It is no doubt true that the fact that they were present does not necessarily mean that they had identified the assailants. The evidence of these three witnesses reveals that there was an electric lamp nearby and that there was sufficient light to enable the witnesses to identify the assailants. Besides, their evidence goes to show that there was exchange of words with appellant 1 just before the occurrence. The trial court and the High Court have recorded a concurrent finding of fact that the evidence regarding identification was satisfactory. We see no reason to differ from the concurrent finding recorded in this behalf. We are of the same opinion.

6. The trial court and the High court have accepted the evidence which establishes that both the appellants were not traceable in the village immediately after the occurrence when the police officers were searching for them in the village in connection with this occurrence. Appellant 1 surrendered some 20 days later, on November 4, 1972 and appellant 2 surrendered some one-and-a-half months after the occurrence, viz. on December 1, 1972 at Delhi. Both of them surrendered after proceedings under Sections 87 and 88 of the CrPC had been initiated against appellant 1. The appellants did not explain how they disappeared from the village and were not seen in the village from the day of the occurrence and how and in what connection they had been away from their residence at the village. The evidence regarding absconding which both the courts have accepted and which is adequate and satisfactory, lends further credence to the prosecution case.

7. Learned counsel for the appellants has contended that the following circumstances have not been accorded due weight by the High Court :

- (1) the evidence regarding motive was not considered satisfactory by the trial court;
- (2) the evidence regarding dying declaration had not been accepted by the trial court;
- (3) the evidence regarding recovery of weapons was not considered reliable;
- (4) the firearms which have been recovered were not shown to have been used in the commission of the crime;
- (5) the only independent witness viz. Sandhura Singh who was not related to the deceased had not been examined;
- (6) there was a delay in lodging of the FIR; and
- (7) the medical evidence rendered the prosecution version is suspect.

We have given our anxious consideration to the submission urged by the learned counsel for the appellants. In our opinion having regard to the evidence of PWs 8, 9 and 10 which has been considered worthy of acceptance and irreproachable and the evidence regarding absconding which has lent further assurance to the prosecution case, the aforesaid circumstances can be of little avail to the defence. With regard to the evidence pertaining to the motive, the High Court has accepted it and we concur with the view taken by the High Court that the trial court made an erroneous approach to the evidence. With regard to the dying declaration no reliance had been placed on it by the High Court and nothing turns on it inasmuch as the other evidence of the injured eye-witnesses is satisfactory and sufficient to establish the guilt of the appellants. With regard to the evidence regarding the recovery of the weapons, this evidence has not been taken into consideration in order to support the finding of guilt. If this evidence had been accepted it would have provided further corroboration. Since however the other evidence is satisfactory and adequate, the fact that the court has considered that it is not safe to rely on the evidence regarding recovery does not detract from the merits of the evidence of the eye-witnesses which has been considered to be beyond reproach. The same reasoning applies to the submission urged in the context of the fact that the firearms which were recovered were not proved to have been used in the commission of the offence. With regard to the argument advanced in the context of the delay in lodging FIR, we are of the opinion that the trial court and the High Court were perfectly justified in taking the view that there was nothing unreasonable in the three witnesses, namely father, brother and mother of the deceased rushing to the hospital on account of the anxiety to save the life of Gurdarshan Singh instead of running to the police station. There is nothing unnatural in it. In fact that is precisely the manner in which one would have acted in the circumstances of the case. A message was sent from the hospital to the police station that Gurdarshan Singh has been brought to the hospital in an injured condition with the history of being fired upon with a firearm, within a few hours of the occurrence. Besides, as rightly stressed by the trial court and the High Court the anxiety of the three injured eye-witnesses (father, mother and brother of Gurdarshan Singh) who were under great tension was to ensure that the life of Gurdarshan Singh should be saved by rushing him to the hospital apart from the fact that they themselves had sustained injuries in the course of the occurrence. The factor regarding delay, we are satisfied, has received appropriate consideration and after considering fully all the relevant circumstances the trial court and the High Court have rightly reached the conclusion that the delay in lodging of the formal FIR has been satisfactorily explained.

8. As regards the submission in the context of the medical evidence the High Court has rightly

reached the conclusion that there is nothing in the medical evidence which improbabilises the evidence of PWs 8, 9 and 10 or renders their evidence suspect. It is true that Sandhura Singh who was also injured has not been examined presumably because he has been won over. His non-examination is of no consequence as the evidence of the three injured eye-witnesses is considered reliable, trustworthy, and safe to act upon.

9. Having taken into consideration the evidence on record and the submissions urged on behalf of the appellants, and after according our anxious consideration, we are satisfied that the view taken by the trial court as confirmed by the High Court is fully warranted by the record. We accordingly confirm the finding of guilt and the order of conviction and sentence recorded against the appellants.

10. The appeal, therefore, fails and is dismissed. The appellants shall surrender to custody in order to undergo the remaining part of the sentence. They shall be taken into custody in order that they undergo the remaining part of the sentence. Order accordingly.

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