

Bejoy Singh Alias Vijay Narain Singh and Others

Vs

State of West Bengal

Criminal Appeal No. 60 of 1988

(S.R. Pandian, K. Jayachandra Reddy JJ)

07.02.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. This original appeal pursuant to leave granted under Article 136 of the Constitution of India had arisen in respect of convictions of the four appellants under Section 302 read with Section 34 IPC and sentenced to imprisonment for life. They along with five others were tried by the Sessions Court. Appellants 1 and 2 herein were sentenced to death. Appellants 3 and 4 and the remaining five were sentenced to imprisonment for life. On appeal, the High Court acquitted five of the accused and confirmed the conviction of all the four appellants but the sentence for death passed against appellants 1 and 2 was reduced to imprisonment for life.

2. On July 30, 1984, at about 7.45 p.m. Teg Bahadur Singh, hereinafter referred to as the 'deceased', was in the company of his brother Arjun Singh, PW 3, Darshan Singh 13 and Pradeep Sharma PW 15 in Cotton Bazar, Calcutta after attending to a customer Ram Babu Gupta, PW 9. At about 7.45 p.m. the deceased left the shop and was proceeding towards the guddy. Then all of a sudden, appellants 2 and 4 emerged and caught hold of his hands and legs. At that time appellant 1 came with two unknown persons on a motorcycle and stopped at the spot where the deceased was held. Appellant 1 along with two unknown persons stabbed the deceased indiscriminately with knives. At that time the other accused in the case also came and shouted that the deceased should be finished. Then appellant 2 who had a knife in his hand thrust the knife in the abdomen of the deceased. The deceased fell down and the assailants ran away. PW 3 the brother of the deceased witnessed the occurrence. He could not apprehend any of them. PWs 13 and 15 also were there. They removed the victim to the hospital. PW 3 gave a statement and Sub-Inspector of Police registered the crime. PW 22 the Investigating Officer took over the investigation. An inquest was held and the dead body was sent for post-mortem. PW 11 the doctor, conducted the autopsy and he found a number of incised wounds all over the body. He also found injuries Nos. 8 to 13 and 16 on the right and left hand and right and left forearm and the fingers. He opined that these injuries were defensive in nature. He also found an injury on the abdomen. On internal examination he found that vital organs were injured and death was due to these injuries. The Investigating Officer arrested the accused and at their instance it is alleged that he recovered some weapons. The Prosecution mainly relied on the evidence of the three eye-witnesses PWs 3, 13 and 15. The learned Session Judge believed their evidence and convicted every one of the accused as mentioned above. The High Court acquitted the five accused who are said to have come later. The rest of the prosecution case has been believed by the High Court.

3. Learned counsel for the appellants submits that the prosecution case that appellants 2 to 4 caught

hold of the deceased is belied by the medical evidence. According to the doctor there were a number of injuries on the hands, forearms and fingers and they were defensive in nature. The evidence of the eye-witness is that the appellants 2 to 4 caught hold of the deceased. This vague allegation cannot be believed. The High Court mostly concentrated on the appellants 1 and 2. But, however, the High Court was not prepared to place reliance on the evidence of these witnesses in respect of other five accused. In our view, the same ratio applies to the case of appellants 2 to 4 so far as the allegation that they caught hold of the deceased goes. That apart, a number of injuries that are found on the deceased would also go to show that nobody could have held him in the manner spoken to by these witnesses. Having carefully considered the evidence and the facts and circumstances of the case and the medical evidence, we are of the view that the prosecution case suffers from a serious infirmity in respect of the allegation made against accused 2 to 4 namely that they caught hold of the deceased. If we look at the injuries and particularly on the hands and also on other parts of the body, the case that they caught hold of him falls to the ground and their conviction on the basis of this unsatisfactory evidence may result in miscarriage of justice. Therefore, interference is called for. So far as appellant 2 is concerned, a further allegation is that he had a knife and thrust it into the stomach after Bejoy Singh, appellant 1 and the two unknown persons stabbed him indiscriminately. This appears to be clearly an afterthought. In the earliest report given by PW 3 the principal witness, it is not mentioned at all that Ujagar Singh, appellant 2 had a knife and stabbed the deceased in the abdomen after Bejoy Singh, appellant 1 and the two unknown persons inflicted so many injuries on him. As a matter of fact it is in the FIR that only Bejoy Singh, appellant 1 and the two unknown assailants were cutting the deceased all over body with their weapons and the three appellants including appellant 2 only held the deceased in such a way that he could not move and PW 3 went in front of his elder brother and on seeing him all the assailants ran away leaving the deceased. We are satisfied that the overt act attributed to appellant 2 namely that he stabbed the deceased is clearly an afterthought. Therefore this aspect of the prosecution case also is unacceptable. So far as appellant 1 is concerned, the evidence against him is consistent, In the earliest report it is mentioned that he along with two unknown assailants came and stabbed the deceased. The evidence of PWs 3, 13 and 15 also is consistent against him. It was he who brought the other two unknown assailants who also inflicted injuries on the deceased. The medical evidence also corroborates.

4. For these reasons the convictions and sentences passed against appellants 2 to 4 i.e. Ujagar Singh, Narender Singh and Ajoy Singh are set aside. The conviction and sentence passed against Bejoy Singh, appellant 1 are confirmed. The appeal is allowed in respect of appellants 2 to 4 and dismissed as against appellant 1.

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