

State of Haryana

Vs

Lakhbir Singh and Another

Criminal Appeal No. 1 of 1979

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

11.09.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. The State of Haryana by special leave has filed this appeal against the judgment of the High Court of Punjab and Haryana rendered in Criminal Appeal No. 483 of 1974 whereby the High Court had allowed the said appeal preferred by respondents 1 and 2 and acquitted them of their convictions under Section 302 IPC and under Section 302 read with Section 109 IPC respectively and the sentence of imprisonment for life and fine of Rs. 500 in default to undergo imprisonment for a further period of two years, imposed by the Additional Sessions Judge, Hissar. The relevant facts of the case are as follows :

Jagdish Chander (PW 3) and Krishan Kumar (the deceased herein) are the sons of one Sheo Narain. On June 25, 1972 at about 6.30 p.m. whilst the deceased Krishan Kumar was proceeding to his field after taking his meal, was waylaid by respondent 1, who was armed with a single barrel 12 bore gun and accompanied by respondent 2, Dalip Singh. He abused the deceased in filthy language to which the deceased took a strong objection. This led to a quarrel between them. PW3 on being attracted by the hue and cry emanating from the scene of occurrence proceeded to the scene accompanied by one Jai Narain and found Krishan Kumar and respondent 2 grappling, each one pulling the hair of the other. During the scuffle, respondent 1, at the instigation of respondent 2, fired a shot at the deceased who on receipt of a gunshot wound on the right side of his face fell down. Thereafter, both the respondents made good their escape. PW 3 leaving Jai Narain near the injured Krishan Kumar came to the village and took his father Sheo Narain to the place of occurrence. On enquiry by Sheo Narain, Krishan Kumar told that respondent 1 fired a shot at him. Then Sheo Narain went to the police station, Tohana and laid the report at about 4.30 a.m.

2. The Assistant Sub-Inspector of Police after registering the case went to the scene of occurrence. In the meantime, Krishan Kumar had died. ASI took up the investigation and he recovered a fired cartridge from the scene spot and two bills marked as Ex. P.S. and P.T. which were the bills for purchase of ammunition by respondent 1.

3. ASI arrested respondent 1 on June 28, 1972 and recovered the weapon of offense, namely, the gun. He sent the fired cartridge and the gun to the forensic expert who after examining them gave his opinion that the fired cartridge recovered from the scene of occurrence had been the one fired from the gun.

4. The Medical Officer who conducted post-mortem examination on the dead body of the deceased

found as many as 4 gunshot wounds and gave his opinion that the deceased had died on account of the gunshot injuries to the lungs and the said injuries were sufficient in the ordinary course of nature to cause death. PW 3 and Jai Narain figured as eye-witnesses whilst Sheo Narain deposed that the deceased gave an oral dying declaration saying that he was shot by respondent 1. Both the respondents were examined under Section 342 of the Code of Criminal Procedure (old). They denied their complicity with the offence in question. The learned trial Judge convicted both the respondents for the offences charged and sentenced them as aforesaid. Both the convicted respondents preferred the criminal appeal before the High Court which for the following reasons set aside the judgment of the trial court and acquitted the respondents. They are :

- (1) The occurrence took place at about sunset.
- (2) The medical evidence is irreconcilably in conflict with the prosecution version in that while the deceased is said to have left his house after taking his last meal, the medical officer has opined that the deceased would have taken his last meal about 3 hours before his death.
- (3) The circumstances when examined in the light of the medical evidence show that the occurrence should have taken place by about 9.30 p.m.
- (4) Whilst the evidence of the eye-witnesses is that only one shot was fired, the doctor is of the definite opinion that injuries 1 and 2 found on the person of the deceased were as a result of two separate and independent shots.
- (5) The very fact that PW 3, who is none other than the brother of the deceased had not taken any step to remove the alleged injured Krishan Kumar to the hospital to save his life indicates that Krishan Kumar should have died instantaneously on receipt of the injuries.
- (6) Considering the nature of the injuries inclusive of the injuries to the tongue and mouth of Krishan Kumar, the Medical Officer is of the firm opinion that Krishan Kumar could not have uttered any word after receipt of the injuries.
- (7) The evidence of Sheo Narain that his son gave on oral dying declaration is nothing but a tissue of falsehood.
- (8) The conspicuous omission in the first information report about the presence of the fired cartridge at the scene discredits the prosecution version that the fired cartridge was recovered from the scene by the investigating officer.

5. The plea of the appellant, namely the State in the present appeal that the reasons assigned by the High Court for recording the order of acquittal are erroneous, cannot be accepted for a moment since in our considered opinion the High Court has given valid and weighty reasons for its inassailable logical conclusion. As rightly pointed out by the High Court, the entire version of the prosecution and the evidence of the eye-witnesses as well the evidence of Sheo Narain are directly in conflict with the opinion of the Medical Officer whose opinion is based on the nature of the injuries suffered by the deceased and the presence of semidigested food in the stomach of the deceased. Therefore, the conclusion arrived at by the High Court, in our view, cannot be termed as either perverse or fallacious and hence we do not find any compelling reason to take a contrary view to that of the High Court.

6. In the result, the appeal is dismissed.

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