

Inderjit Singh and Another

Vs

State of Punjab

Criminal Appeal No. 733 of 1979

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

07.12.1990

JUDGMENT

1. These two appellants along with two other accused took their trial on the allegations that on 31-7-75 at village Malri in furtherance of their common intention caused the death of the deceased, Gurbax Singh, in that each of the two appellants before us, namely, Inderjit Singh and Mohan Singh have a barcha blow on the right and left side of the abdomen of the deceased and in the course of the same transaction, Lember Singh injured Bikkar Singh P.W. 6 and the rest of the accused shared the common intention of Lember Singh in causing the simple injury to P.W. 6. The trial Court acquitted Lember Singh and Piara Singh and convicted these two appellants under S. 302 read with S. 34, I.P.C. and sentenced each of them to undergo imprisonment for life. The motive for the occurrence relates to a dispute with regard to the construction of a wall. Immediately after the occurrence, the deceased gave a statement (Exh. P.X.) before P.W. 10 on the basis of which the FIR Ex. PI was prepared. This statement was recorded between 7.30 a.m. and 7.35 a.m. that is within two hours of the occurrence. The deceased might have stayed away in his relation. Next day, the deceased did not turn up. Then P.W. 1 went to her Naihar and inquired from her brother P.W. 2 but he had no information about the deceased. She met appellants Nos. 1 and 2 and asked about the whereabouts of the deceased but appellant No. 1, denied of having any knowledge. Thereupon all of them went in search of the deceased. In the afternoon of 13th September, 1975 they got information that dead body of a person was lying near canal. They went there and identified the dead body as that of the deceased. P.W. 3 went to the police station and gave a report. A Sub-Inspector took up the investigation and held the inquest and the dead body was sent for post-mortem. The Doctor, who conducted the post-mortem, found one gun-shot wound and opined that the death was due to shock and haemorrhage and this injury. After completion of the investigation, the charge-sheet was laid. It is further alleged that at the instance of appellant No. 2 a gun was recovered. The prosecution examined P.Ws. 1 to 6. The circumstances relied upon by the prosecution and by both the Courts below are as follows:-

(1) The appellants had taken away the deceased from his house and thereafter he was never seen alive. (2) The dead body of the deceased was found on the bank of canal and which was identified as that of the deceased. (3) The denial of the appellants that they had never taken away the deceased for birdshooting. (4) The suggestion that why not the appellants could be falsely implicated in the case.

2. After giving our careful consideration, we are unable to agree with the Courts below. These circumstances are not sufficient to establish guilt of the accused. It is well settled that in a case

pending on circumstantial evidence, the prosecution must establish all the circumstances by independent evidence and the circumstances so established must form a complete chain in proof of guilt of the accused beyond all reasonable doubts. The circumstances so proved must also be consistent only with the guilt of the accused. Among the circumstances relied upon by the prosecution, in the light of these principles we find that except the circumstance No. 1, the other circumstances are not incriminating. In number of cases it has been held that the only circumstance namely that the deceased was last seen in the company of the accused by itself is not sufficient to establish the guilt of the accused. It is no doubt true that the deceased's death was homicidal but since there is no direct witness connecting any of the appellants with the crime we should fall back on the circumstantial evidence and we are of the view that circumstances relied upon by the prosecution are hardly sufficient to establish the guilt of the accused. The circumstance, i.e., the absence of enmity between the accused and the deceased and the witness would also show that the accused also had no enmity against the deceased. Therefore, this circumstance is neutral. However, now coming to the recovery of the gun, the High Court has acquitted him of that charge. The only relevant circumstance as pointed above is that the appellants and the deceased left the house together in a friendly manner for bird-shooting. It is needless to say that no conviction can be passed on this sole circumstance. In the result; the convictions and sentences awarded by the Courts below are set aside. The appeal is allowed. The appellants be set at liberty.

Appeal allowed.

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