Ajaib Singh

Vs

State of Haryana

Criminal Appeal No. 91 of 1981]

(S. Ratnavel Pandian, Yogeshwar Dayal JJ)

22.11.1991

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. The appellant, Ajaib Singh has directed this criminal appeal canvassing the correctness of the judgment made in Criminal Appeal No. 970 of 1979 rendered by the Punjab and Haryana High Court at Chandigarh dismissing his appeal preferred against the judgment of the trial court whereunder he stood convicted under Section 302 IPC and sentenced to imprisonment for life.

2. This appellant along with his two brothers, Sucha Singh and Ajit Singh (who were arrayed as accused 2 and 3 before the trial court) took his trial on the allegation that he on November 11, 1978 in the village Bachki caused the death of the deceased Buta Singh by stabbing him with a sua (Ex P1) and in the course of the same transaction PW 7, Jagir Singh and PW 8, Kashmir Singh sustained injuries at the hands of A3 and A2 respectively by means of barchhi (Ex. P6) and lathi (Ex. P7). In respect of this incident, PW 5 the father of the deceased laid the first information report (Ex. PJ) to PW 10 who took up the investigation and held the inquest over the dead body of the deceased in the house of PW 5 where the deceased was brought dead from the scene of occurrence. PW 10 in the course of his investigation arrested all the accused persons and recorded their statements and in pursuance of the admissible portions of their statements recovered the weapons of offence, namely, sua (Ex. P1) barchhi (Ex. P6) and lathi (Ex. P7) said to have been used in the occurrence by all the three accused persons 1 to 3. To substantiate the accusation made against the accused the prosecution examined four witnesses, namely PWs 5 to 8 of whom as we have indicated above PWs 7 and 8 were injured. Both the trial court and the High Court have rejected the evidence of PWs 7 and 8 in toto despite the fact that these two witnesses were injured. However, relying upon the evidence of PWs 5 and 6, the courts below have recorded the conviction of the appellant which is now challenged before us. It may also be noted here that the trial court has acquitted A2 and A3 of all the offences and this appellant of the offence under Section 324 read with Section 34 IPC.

3. Mr Prem Malhotra, learned counsel appearing on behalf of the appellant took us very meticulously and scrupulously through the recorded evidence as well as the judgments of both the courts below and vehemently contended that PWs 5 and 6 could not have witnessed the actual occurrence since during the time of occurrence, it was cloudy and raining. According to him, the injury found by the medical officer, PW 1 who conducted the autopsy on the dead body of the deceased is irreconcilably in conflict with an oral testimony of these two witnesses and as such no safe conviction can be recorded. He also took us to the evidence of PW 10 and vehemently contended that the alleged recovery of Exs. P1, P6 and P7 is nothing but a planted evidence. However, the learned counsel appearing for the respondent makes a futile attempt to sustain the

conviction stating that both the courts below have appreciated the evidence and concurrently found the appellant guilty of the offence of murder and hence the concurrent findings of fact need not be disturbed.

4. Now let us examine the evidence on record bearing in mind the fact that there is a concurrent finding of fact and see whether any interference is called for. The perusal of the site plan Ex. PF shows that this occurrence took place at distance of 36 feet away from the south-east direction of the house of PW 6 (Bahal Singh) who was ill-disposed towards the accused over the sharing of the produce from the lands taken on lease. The site plan also shows that the house of all the accused persons was in the north-west direction of the scene of occurrence. On the day of occurrence, admittedly there was drizzling. In fact it is brought out in the evidence of PW 5 who has stated as follows :

> "The occurrence finished within two minutes. It was cloudy at that time and it was also drizzling. The place of occurrence is kacha. I did not notice any footprints."

5. According to the evidence of PW 5, Rur Singh who was 65 years old at that time and who is none other than the father of the deceased and who had come to the house of Bahal Singh, PW 6 went to the scene of occurrence and brought the deceased to the house of PW 6. It was only thereafter according to the prosecution, the complaint was lodged at the police station. Here again the prosecution has not come forward with the true particulars as to the birth of the first information report (Ex. PJ). Though according to PW 10, PW 5 Rur Singh accompanied by Natha Singh came to the police station and lodged Ex. PJ at 11 p.m., PW 5 would give a contradictory statement that the report was recorded only at the scene, the relevant portion of his evidence reads thus :

> "I did not ask Kashmir Singh and Jagir Singh injured to accompany me to the police station for lodging a report. The police came to the spot at about 12 midnight or 1 a.m. After examining the dead body, the police also saw injuries on the persons of Kashmir Singh and Jagir Singh. The police had seen injuries on the persons of Kashmir Singh and Jagir Singh before preparing the inquest report. The police recorded my statement at the spot also after examining the injured and the dead body. The police obtained my thumb impression on a statement written at the spot."

6. Thus, we find a diametrically contrary assertion between the evidence of PWs 5 and 10 which adversely affects the veracity of the prosecution case even with regard to the place of recording the first information report Ex. PJ. The trial court examined this aspect of the case and recorded its findings holding, "The statement thus no doubt leads one to infer that the first information report was most probably written at the spot."

7. The High Court has attempted to get away with this aspect of the case in paragraph 12 of its judgment observing that PW 5 due to faulty memory or under some wrong impression had given his evidence that his statement was recorded at the spot because PW 10 had recorded his inquest statement at the spot and that probably PW 5 had wrongly accepted in the cross-examination that the first information report was recorded at the spot.

8. After deeply going through the evidence of PW 5, we are left with an impression that the prosecution has not placed the true version with regard to the place and time of recording the first information report.

9. There is yet another strong circumstance which compels this Court to interfere with the concurrent finding of fact that circumstance being, an irreconcilable conflict between evidence of PW 1 on the one hand and the evidence of PWs 5 and 6 on the other. As we have pointed out in the earlier part of this judgment, the medical evidence does not corroborate the oral testimony of PWs 5 and 6.

10. It is absolutely difficult to accept the testimony of PWs 5 and 6 when they claimed to have witnessed the occurrence during night hours from a distance of 36 feet away from the scene that too while it was cloudy and raining and also to have witnessed the entire occurrence including the nature of the weapons used by the assailants besides their identity.

11. The medical officer, PW 1 who conducted autopsy on the dead body of the deceased has described the injury as a penetrating wound over the left side and front of neck, circular in shape, with inverted margins, one cm in diameter. Wound was situated four cm away from the mid-line and five cm from the left sterno-clavicular joint and it was 8 cm deep, going in the direction downward and backwards. PW 1 in his cross-examination has admitted that Ex. P1, sua was blunt from all sides and its pointed portions was not very sharp, and it was not round in shape but having four corners. According to him, the injury he found on the person of the deceased was circular in shape. Having regard to this nature of the evidence given by PW 1, the trial court has rightly concluded that the injury found on the person of the deceased could not have been caused by a sua like Ex. P1. The relevant portion of the finding of the trial court reads thus :

> "He, further deposed that it is not found in shape and has four blunt corners. But the injury which he found on the person of Buta Singh was circular in shape and which could be caused by a round and pointed weapon. Thus, the injury on the person of the deceased could not possibly be caused with sua Ex. P1."

12. The High Court without adverting to the evidence of PW 1 which gives a death knell to the prosecution case and the observation made by the trial court has concluded in paragraph 14 of its judgment stating that "in view of the two witnesses, Rur Singh and Bahal Singh, PWs 5 and 6 the prosecution evidence regarding the infliction of fatal blow by Ajaib Singh, cannot be held to be in any manner doubtful".

13. Now, we come to the evidence regarding recovery of the weapon Ex. P1. PW 10 has admitted that he arrested all the accused on November 14, 1978 but interrogated the appellant only on November 17, 1978 and the rest of the accused on November 18, 1978. PW 10 further states that in pursuance of the admissible portion of the statement of the appellant under Ex. PV he seized the weapon Ex. P1, sua. We are not concerned about the recovery of P6 and P7 pursuant to the statements of A2 and A3 as both these persons are not before us and who were acquitted by the trial court and whose acquittal has not been challenged by the prosecution. It is quite ununderstandable as to why the investigating officer has failed to interrogate the appellant even on November 14, 1978 and attempted to secure the weapon of offence. The delay of three days in interrogating the appellant and the seizure of the Ex. P1 when examined in the light of the evidence given by PW 1 leads to an illation that the prosecution has miserably failed in its attempt that it was only the sua Ex. P1 which was seized by PW 10, used in causing the injury to the deceased.

14. There is one more disturbing feature in this case with regard to the time of occurrence. PW 1 while giving the probable time of the occurrence has stated that the occurrence would have taken place within 35 hours before the post-mortem examination. In that case, one has to reach the

conclusion that it was probable that the occurrence would have taken place even at 11 p.m. on November 10, 1978.

15. It is very unfortunate that both the courts below have conveniently omitted and ignored these disturbing features appearing in this case which compel this Court to interfere with the findings of the courts below though the findings are concurrent. In our considered opinion, the conclusions arrived at by the courts below are improper and perverse.

16. In the result, we hold that the prosecution has miserably failed in establishing the guilt of the appellant and that both the courts below have conveniently overlooking and ignoring the vital defects in the prosecution case which have been indicated above, arrived to a perverse conclusion that the prosecution has made out a case of murder against the appellant which conclusion in our opinion has to be set aside in the interest of justice.

17. Accordingly, we allow the appeal and set aside the conviction of the appellant under Section 302 and the sentence of imprisonment for life imposed therefor and acquit him. Bail bonds are discharged.

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