

Kanwarjeet Singh

Vs

State of Punjab

Criminal Appeal No. 425 of 1981

(R. C. Pathak, K. Jayachandra Reddy JJ)

13.05.1992

JUDGEMENT

K.JAYACHANDRA REDDY, J.:-

1. The appellant Kanwarjeet Singh is convicted under S. 302, I.P.C. and is sentenced to imprisonment for life by the learned Sessions Judge, Ludhiana. Along with him three other persons also were tried but they were acquitted. Kanwarjeet Singh, the appellant preferred an appeal. The State also preferred an appeal against the acquittal of the other three persons. The High Court dismissed both the appeals. Hence the present appeal.

2. The prosecution case is as follows.

3. Four original accused, deceased Jaswant Singh and the eye-witnesses PWs 9 to 12 belong to Ludhiana. There was enmity between PW 12 and Joginder Singh, one of the accused. The appellant and other two accused were the associates of Joginder Singh. On 20th August, 1978 at about 10. 15 p.m. PW 9, the deceased and PW 11 were coming from the side of Chowk Khud Mohalla taking their usual evening stroll. When they reached near the wholesale godown of Mohan Meakins they saw the four accused and they started beating PWs 11 and 12. The appellant was armed with a knife. PW 10 whose shop is nearby along with two others were trying to separate the two fighting parties. Meanwhile PW 9 also came there and ,started altercating. Joginder Singh the accused raised a Ialkara saying that the deceased has come to the help of PW 12 and that he should not be allowed to go alive. On that the appellant dealt a blow with his knife on the left side of the chest of the deceased and the other accused Jagjodh Singh gave a blow with his knife into his abdomen. On receipt of these two injuries the deceased fell down. When PW 9 and his companions stepped forward to pick up the fallen deceased they were attacked by the other acquitted accused. When PW 9 and others raised aloud alarm the accused ran away. The deceased was placed on a cot and when being taken to the hospital he died on the way. PW 9 went to the police station and gave a report. A.S.I. registered the crime, issued the F.I.R., held the inqiiest and sent the dead body for post-mortem. PW 2, the doctor conducted the post-mortem and found one incised injury on the chest and the other incised injury on the abdomen cavity. The injury to the chest pierced the lungs and the other injury pierced abdomen wall. The doctor opined that the death was due to shock and haemorrhage as a result of multiple injuries. Meanwhile PW 1 another doctor examined the appellant and found two incised wounds, one abrasion and a defused swelling. He also examined PWs 10 and 11 and found some simple lacerated injuries on them. After completion of the investigation the charge-sheet was laid. The prosecution mainly relied on the evidence of the eye-witnesses PWs 9 to 12. All these witnesses have unanimously stated that the appellant gave one knife blow. The plea of the accused has been one of denial. The appellant, however, in his statement

under S.313, Cr.P.C. stated that when he and another accused were going to the house from the shop they were waylaid by PWs 9 to 12 and they inflicted injuries on both of them with knives. He, however, added that the deceased who intervened received injuries at the hands of PW 11 Kuldip Singh and they have been falsely implicated at the hands of the henchmen of the deceased and the PWs. The trial court observed that there was long delay in giving the F.I. R. but, however, convicted the appellant as there was a consistent version by the eye-witnesses that he stabbed the deceased. The High Court taking into consideration the fact that the accused also had injuries and that statement of the appellant also disclosed that there was a fight, observed that there was an altercation between the four accused persons on one side and PWs 9, 11 and 12 on the other. The High Court, however, held that the evidence of PW 9 and 10 is without any blemish. The evidence of all these eye-witnesses establishes that the appellant caused one of the fatal injuries to the deceased.

4. Learned counsel for the appellant submitted that both the courts below have rejected the evidence of these eye-witnesses in respect of three of the accused and therefore the same should have been rejected with regards the appellant also. The further submission is that the prosecution has not offered any explanation for the serious injuries found on the appellant and another accused. It is also his submission that the appellant has given his own version as to how he received injuries and how the deceased received injuries and that the same should have been accepted.

5. The doctor who examined the appellant found two incised injuries on the scalp and the forehead and a defused swelling in the right hand and X-ray was also advised. The trial court also noticed that the whole of the truth has not been stated by the prosecution witnesses. No doubt at a later stage during the trial PW 11 came forward with a theory that he was carrying a small kirpan with which he caused the injuries to some of the accused persons. This explanation was not found to be satisfactory by the courts below.

6. The mere fact that the other three accused are acquitted is not a ground, in our view, to reject the same. So far as the part played by the appellant is concerned right from the stage of F.I. R. it has been stated that the appellant inflicted one blow with the knife on the deceased which along with another injury caused by another accused proved fatal. To that extent having gone through the evidence of the eye-witnesses carefully, we see no grounds to reject this version implicating the present appellant.

7. However, one important question that remains for consideration is whether the appellant had a right of self-defence. Both the courts held that there was an altercation. The presence of incised injuries on the appellant that too on the head would show that one of the members of the prosecution party had a knife and that those incised injuries have been inflicted on the head of the appellant. There is no proper explanation from the side of the prosecution. In such an event a doubt arises whether the appellant acted in exercise of his right of self-defence and that benefit has to go to him. Therefore, the submission of the learned counsel that the appellant might have acted in exercise of his right of self-defence has some force. But having regard to the seriousness of the injuries and the weapons used we are of the view that he has exceeded his right of self-defence and therefore Exception II to Section 300, I.P.C. is attracted. For these reasons we set aside the conviction of the appellant under S. 302 and the sentence of imprisonment for life. Instead we convict him under S. 304 Part I, I.P.C. and sentence him to seven years rigorous imprisonment. With this modification of sentence the appeal is disposed of. Order accordingly.

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