

Hardial Singh

Vs

State of Punjab

Criminal Appeal No. 779 of 1980

(P. B. Sawant, K. Jayachandra Reddy, N. P. Singh JJ)

06.08.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. The appellant herein is original accused No. 2 in the Sessions case. He along with four others were convicted under Ss. 302, 149, 148 and 447, IPC and sentenced to undergo imprisonment for life, one year R.I. and six months R.I. respectively. All the convicted accused preferred appeal in the High Court. A Division Bench of the High Court acquitted the other four accused and convicted the appellant alone under S. 302, IPC simpliciter and sentenced him to undergo imprisonment for life. The prosecution case is that on 22-7-78 at about 8 p.m. they formed into an unlawful assembly and attacked Kabal Singh, the deceased on the roof of his house when he was lying on a cot and inflicted several injuries as a result of which he died. It is alleged that the appellant was armed with a gandasi and the other accused were armed with Takwa, lata and sticks. All the five accused are alleged to have gone up on the terrace and attacked the deceased while he was sleeping. The appellant is alleged to have inflicted an incised wound on the abdomen. The rest of the accused inflicted other injuries in total 16. A report was made after 22 hours though the police station was quite nearby. Autopsy was performed by P.W. 3, the Doctor and he opined that injury No. 6 alleged to have been inflicted by the appellant was individually sufficient to cause death in the ordinary course of nature and other injuries were opined to be collectively sufficient to cause death in the ordinary course of nature.

2. The case rested on the evidence of three eye-witnesses P.Ws. 4, 5 and 7 who are all interested. The High Court after considering the evidence of these three eye-witnesses exhaustively was not prepared to accept their evidence in respect of other four accused. The High Court convicted the appellant on the sole ground that the fatal blow was attributed to him. At one stage the High Court even commented that there is every possibility of the witnesses committing mistake in identifying the assailants. Having made, such observations on the basis of which the evidence of the eye-witnesses was rejected in respect of four other accused, we are unable to see as to how the same can be relied upon in respect of the appellant. The general grounds on which the evidence of the eye-witnesses has been rejected would equally apply to the case of the appellant also. Merely because the fatal blow is attributed to him that does not in any way negative the infirmities which are of general nature affecting their veracity. The evidence is common to all the accused. If the identification of the assailants is found to be doubtful then that benefit would also accrue to the appellant equally. If there was delay of 22 hours in giving the FIR and if the same creates a doubt about the truthfulness of the prosecution case the benefit of the same accrues to the appellant also.

We are therefore of the view that the reasons given for the acquittal of the other four accused would equally apply to the case of the appellant also and he is also entitled to the benefit of doubt. Accordingly we set aside the conviction and sentence of the appellant and if he is on bail, his bail bond shall stand cancelled. The appeal is allowed accordingly.

Appeal allowed.

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