

Jangir Singh and Others

Vs

State of Haryana

Criminal Appeal No. 818 of 1981

(K. Jayachandra Reddy, G. N. Ray JJ)

25.09.1992

JUDGEMENT

G. N. RAY, J.:-

1. This appeal is directed against the Judgment and order dated February 23, 1981 passed by the High Court of Punjab and Haryana in Criminal Appeal No. 133-DB of 1980. The said Criminal Appeal arose out of the Judgment and order dated December 24, 1979 passed by the learned Additional Sessions Judge, Sirsa, in Sessions Trial No. 82 of 1979. Seven accused persons including the four appellants in this appeal were convicted on a charge under Sections 148, 302/149, 325/149, 324/149 and 323/149, IPC. Accused No. 1, Jangir Singh accused No. 2, Makhan Singh, accused No. 3, Baj Singh, accused No. 6, Jit Singh, are the appellants in the instant appeal. The remaining accused, namely, accused No. 4, Kashmiria Singh, accused No. 5, Bahal Singh, accused No. 7, Jaswant Singh, have been acquitted by the High Court in the said Criminal Appeal No. 133-DB of 1980. The prosecution case in short is that on February 20, 1978, P.W. 10, Kashmiria Singh, P.W. 11, Dalbir Singh and P.W. 12, Gurbax Singh, along with Jangir Singh, the deceased were working on the road at about 9.00 a.m. The appellants in this appeal and the said three acquitted accused came out of the fields. The appellant No. 1, Jangir Singh, was armed with a gandasa, the appellant No. 2, Makhan Singh, was armed with a pistol, the appellant No. 3, Baj Singh, was armed with a 12 bore gun, and the appellant No. 4, Jit Singh, was armed with a gandasa. The other co-accused since acquitted by the High Court were also variously armed, namely, Kashmiria Singh with a gandasa, Bahal Singh with a barchhi and Jaswant Singh with a sword. On the lalkara of accused Nos. 2 and 3, Makhan Singh, and Baj Singh, Makhan Singh fired a pistol at Jangir Singh. Baj Singh fired his gun on Jangir Singh and being hit by the shots, Jangir Singh fell down. P.W. 10, Kashmiria Singh, was given a gandasa blow by Jit Singh. The other accused persons also inflicted injuries to the other eye-witnesses. P.W. 10, Kashmiria Singh, thereafter, went to the village Kharia and brought a jeep from the said village. He then removed Jangir Singh, the deceased and the injured persons to hospital at Rania. Thereafter, the said Kashmiria Singh went to the Police Station and lodged the first information report with the Sub-Inspector of Police, P.W. 15, Shri K. K. Sethi. The motive for the attack as alleged by the prosecution is that about four years prior to the occurrence, a dispute had taken place between the accused party and the complainant party over the possession of a plot of land. The deceased, Jangir Singh, was on the side of Kashmiria Singh and others. There was a fight between the two sides in which a case under Section 307, IPC was registered and the said case was then pending. The police had taken proceedings against both the parties. Another case was also registered under Section 107/151, Criminal Procedure Code and such proceedings were also pending. At about 10.45 a.m. on the date of occurrence, namely, February 20, 1978, P. W. 3, Dr. D.

L. Gupta, examined Jangir Singh and noted about 14 injuries on the person of the said Jangir Singh. The said doctor at about 2.30 p.m. on the same day also examined Baj Singh and noted five injuries on his person and at the same time he also examined Dalbir Singh and noted three injuries on his person. Jangir Singh, however, succumbed to his injuries at about 2.00 p.m. on the same day and intimation was sent to the Station House Officer, Rania Police Station immediately. The medical examination report of Jangir Singh was prepared at about 3.00 p.m. At about 12.15 p.m. next day, Dr. Golyan held a post mortem examination on the dead body of Jangir Singh and noticed 17 injuries both internal and external including incised and punctured wounds. In the opinion of the doctor holding the post mortem examination, the cause of the death was due to shock and haemorrhage as a result of the said injuries which were ante mortem in nature and in the normal course of life the injuries were sufficient to cause death. After obtaining the opinion of the doctor attending Baj Singh and Dalbir Singh that they were fit to make statements, the Police Officer, Shri K. K. Sethi, recorded their statements and he also got Kashmira Singh medically examined and supplementary statement from him was also recorded by the Police Officer. The police arrested five of the accused persons on February 27, 1978 and they remained in police custody. On 5th March, 1978, the said arrested persons were interrogated in the presence of the prosecution witnesses, Inder Singh and Jagtar Singh, and on the basis of disclosure statement made by the accused, Jit Singh, a gandasa was recovered from near the tubewell of Arjan Singh. Bhalla was also recovered on the basis of disclosure statement made by the accused, Bahal Singh, from near the tubewell of Arjan Singh. A gandasa was also recovered on the basis of the statement made by Jangir Singh and 12 bore pistol and one live cartridge were also recovered on the basis of the statement made by Makhan Singh. Similarly, 12 bore single barrelled gun was recovered on the basis of the statement made by accused No.6, Baj Singh, from the courtyard of his house and all the said articles were taken into possession after observing the formalities.

2. The learned Sessions Judge held Jangir Singh, Makhan Singh, Baj Singh, Kashmira Singh, Bahal Singh, Jit Singh and Jaswant Singh, all guilty under Sections 148, 302/ 149 325/149, 324/149 and 323/149, IPC and convicted each of the seven accused persons under Section 302/149, IPC to undergo imprisonment for life and to pay fine of Rs. 100/- each and in default further rigorous imprisonment for two months. Each of the said seven accused persons were also sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 100/- and in default further rigorous imprisonment for three months under Section 325/149, IPC. Each of the seven accused persons were also sentenced to undergo rigorous imprisonment for three years under Section 324/149, IPC. Each of the seven accused persons were further sentenced to undergo rigorous imprisonment for six months under Section 323/ 149, IPC.

3. In the appeal before the High Court it was contended on behalf of the appellants that according to the statement of doctor, the stomach of the deceased, Jangir Singh, was empty and small intestines contained gases and semi-digested food material. The said fact clearly indicated that the incident had taken place in the early hours of the morning when it was dark and not at 9.00 a.m. as alleged by the prosecution. Such contention was, however, not accepted by the High Court in view of the deposition of the eye-witnesses that they had taken food in the morning before coming to the place of occurrence and the deceased had expired at about 2.00 p.m. so that by time the food taken in the morning had left the stomach. The High Court also indicated that there was no other material suggestion to the effect that the occurrence had taken place early in the morning. The High Court also did not accept the contention made on behalf of the accused /appellants that the injuries suffered by some of the eye-witnesses were fabricated and they were self-inflicted injuries. It was pointed out by the High Court that the occurrence had taken place at about 9.00 in the morning. The injured persons reached the hospital at a distance of six miles at 10.30 a.m. Moreover, at that time

the deceased, Jangir Singh, was alive and if there was any intention to implicate the accused persons, the same could have been done with Jangir Singh alone. It was indicated by the High Court that the injured persons having reached the hospital within a short time, there was hardly any reasonable time for the witnesses to suffer self-inflicted injuries. On the question of suffering prejudice by the accused/ appellants for not examining the other injured witnesses until 2.30 p.m., the High Court has indicated that Dr. Gupta has given a very reasonable explanation by stating that Jangir Singh was in a serious condition and even his medico legal report could not be made ready by 3.00 p.m. The doctor also stated that Kashmira Singh was not present when other injured persons were examined and his absence could be explained by the fact that after taking the deceased and other injured persons to the hospital, Kashmira Singh had left the hospital for the Police Station to lodge the first information report by 10.58 a.m. and at the time of lodging the first information report, the Sub-Inspector, Shri Kewal Krishan Sethi, had noticed the injury on the person of Kashmira Singh. Thereafter, he accompanied the Police to the place of occurrence. Precisely for the said reason he could not be medically examined till 5.30 p.m. It was contended on behalf of the accused/ appellants that although the eyewitnesses had stated that the shots were fired from the opposite side on Jangir Singh but the injuries noted on the person of the deceased, Jangir Singh, suggested that the two shots from two sides were fired at him. The High Court, however, did not accept the contention sought to be made on behalf of the accused/ appellants that the eye-witnesses had not been telling the truth by indicating that in the very nature of things, the details of the incident were not expected to be given in the first information report by Kashmira Singh who lodged the first information report because he himself was injured. Moreover the close relations of Kashmira Singh had been seriously injured and they had been taken by him to the hospital. The mind of Kashmira Singh was, therefore, quite disturbed and omission of the details in the first information report was of very little consequence. That apart, Jangir Singh must have been trying to save himself and it was also not improbable that in the process when he was trying to run away one of the assailants had overtaken him and fled from the other side. The High Court, however, after indicating the reasons, gave benefit of doubt to Kashmira Singh, Bahal Singh and Jaswant Singh and set aside their conviction and sentences and acquitted them. The accused/ appellants, thereafter, preferred this appeal.

4. The learned counsel for the appellants has contended that it has been established in the instant case that there was previous enmity between the two groups and criminal proceedings had been pending against some of the members in the group of the prosecution. Moreover, the deceased and the prosecution witnesses and the accused persons are known to each other and some of them are very closely related. In the backdrop of such facts, the case of the prosecution ought to have been considered in the proper perspective with much circumspection by the High Court and true import of the contradictions in the evidences should have been taken note of by the courts below and the benefit of doubt should have been given to all the accused. The learned counsel has contended that recovery of weapons alleged to have been used at the instances of the accused persons should not weigh with the Court. The accused persons were in police custody and manipulations can always be made by the police in noticing recovery of weapons. The learned counsel has also contended that in this case, the pellets found in the body of the deceased were not sent for examination by the ballistic expert. Since they were recovered from the body of the deceased, such examination was necessary for the purpose of establishing as to whether or not the pellets were fired from the gun stated to have been used by the accused persons. He has also stated that the anxiety of the prosecution to implicate innocent persons is amply demonstrated by the fact that the High Court has acquitted three of the accused persons by holding that their complicity could not be established. The learned counsel has also contended that non-examination of the injured persons by the doctor for a long time has caused

a serious prejudice to the accused/ appellants and in any event Kashmira Singh should have got himself examined by the doctor much earlier. He has contended that the prosecution witnesses have given unnatural details about the particular weapons used on the particular parts of the body of the deceased. Such facts clearly indicate that they were partisan and tutored witnesses and very little reliance can be placed on their depositions. It has also been contended by the learned counsel that if discovery of the weapons alleged to have been used by the accused persons is made after a considerable delay when the accused persons had remained in the police custody, such recovery is generally viewed with suspicion and is attributed to use of a third degree method or even planting by the police. The learned counsel has also contended that the incident had not taken place at 9.00 a.m on the road as alleged because at the time of post mortem examination, no undigested or semi-digested food could be seen in the stomach of the deceased, Jangir Singh. Such fact contradicts the case of the prosecution that they had taken food in the early morning before going to work on the road at 9.00 a.m. The learned counsel has contended that the deceased was in a precarious condition and in all probability the digestive system did not function after being critically injured. The learned counsel has further submitted that the cumulative effect of the infirmities have not been considered in the proper perspective. In a case, where enmity existed between the parties and there was a strong motive to implicate the accused persons and when it has been held by the High Court that the three of the accused persons were innocent and were wrongly implicated, infirmities in the evidence assumed considerable importance. In the aforesaid facts, the courts below should have come to the finding that a case of reasonable doubt has emerged and it is not safe and proper to prosecute the accused persons on a charge of murder and other serious charges. He has, therefore, submitted that the appeal of the appellants should be allowed by this Court and they should be acquitted of all the charges framed against them. The learned counsel for the appellant has also pointed out that being prima facie satisfied about the strong case of the appellants, this Court granted bail to the appellants on April 9, 1982 and it will be unjust to convict the appellants and to direct them to suffer imprisonment after such a long lapse of time. Even if it is assumed that some of the appellants had taken part in the assault as alleged by the prosecution, they have suffered serious prejudice on account of the pendency of the criminal trial since 1978 and they have suffered both mentally and physically and also financially for the criminal proceedings hanging for years. The learned counsel for the State has, however, submitted that simply because there were enmities between the two groups, the evidences of the eye-witnesses cannot be discarded outright. On the contrary, the factum of such dispute according to the learned counsel supports the motive on the part of the accused/appellants to commit the crime. The learned counsel has contended that within a very short time after the incident, all the injured persons had been taken to the hospital and Kashmira Singh after taking the injured persons to the hospital had gone to the Police Station and lodged the first information report. The High Court has taken note of the fact causing some delay in examining the other injured persons including Kashmira Singh. The doctor, an uninterested and respectable witness, has deposed that as the condition of the deceased, Jangir Singh, became very serious and critical, the other injured persons could not have been examined earlier and as a matter of fact even his medico legal report could not be made ready before 3.00 p.m. So far as Kashmira Singh is concerned, he had accompanied the police to the place of occurrence after lodging the first information report and precisely for the said reason he could not be examined before the afternoon. The learned counsel for the State has also submitted that non-examination of the pellets by the ballistic expert has not rendered the prosecution case unbelievable because in the instant case, there are straightforward evidences of a number of eyewitnesses. Such evidences had been believed by the courts below and there is no occasion to discard their evidences by this Court. The learned counsel for the State has submitted that it has not been held by the High Court that the three innocent persons were falsely implicated but in view of some discrepancy in the evidences, their

complicity could not be established beyond all reasonable doubts. The benefit of doubt was, therefore, given in their favour and they were acquitted. Such acquittal does not ex facie establish that the eye-witnesses were partisan and had come to deliberately make false statements. The learned counsel has, therefore, submitted that the appeal should be dismissed and the conviction and the sentences imposed by the High Court should be affirmed.

5. After taking into consideration the facts and circumstances of the case and the submissions made by the learned counsels for the parties, we find no reason to interfere with the decision taken by the High Court. In the instant case, the incident of assault is established by the eye-witnesses who themselves got injured in the said incident. The injured persons had been taken to the hospital within a very short time and the first information report was promptly lodged. It will be unreasonable to hold that in the facts of the case, a false first information report was lodged to implicate the accused persons. The witnesses were not tutored is demonstrated by the fact that they deposed in a straightforward manner resulting in some discrepancies in their evidences. As a result, three accused persons were given the benefit of doubt and were acquitted. In our view, the High Court has appreciated the evidences properly and has analysed the facts of the case with reference to the evidences with cogent reasons. It also appears that in the matter of awarding the sentences, the High Court has taken a compassionate and reasonable view. In the instant case, one person lost his life and a number of persons were injured. Guns and other weapons were freely used. Accordingly, we do not find any reason to reduce the sentences any further and the fact that the accused/ appellants have been released on bail will not justify any further reduction in the sentences imposed on the appellants. The appeal is, therefore, dismissed and the bail bonds of the appellants are cancelled. The appellants are directed to serve out the sentences.

Appeal dismissed.

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