State of Haryana

Vs

Chandvir and Others

Criminal Appeal No. 107 of 1994

(K. Ramaswamy, S.P. Bharucha JJ)

17.04.1996

ORDER

1. This appeal by special leave arises from the judgment of the Division Bench of the Punjab and Haryana High Court made in Criminal Appeal No. 424 of 1985 on 3-9-1986. The case of the prosecution is that on 21-9-1984 at about 4.30 p.m. Smt Chandro, a witness of the prosecution, had a quarrel with one Smt Sunita who had drawn water stealthily from the well dug by the prosecution party. Pursuant to that, what Rajpal-deceased was proceeding by the side of the house of the accused at 5.45 p.m., there ensued a quarrel between Subhash and Rajpal, now deceased, and others. In the quarrel the intervener had separated them. While the deceased was proceeding towards his house at 6 p.m., it is the case of the prosecution that all the accused, who were standing near the house of Medu, one of the accused, had attacked the deceased and when other parties had come to intervene, they were also beaten up. The deceased almost died instantaneously; after he was taken to the hospital he was declared dead. Thereafter a report was lodged at about 11.30 p.m. by Medu, PW 9. Investigation was made. The accused were arrested and were charged for various offences, including the offences under Sections 148, 302/149, 324, 325, etc. The trial court acquitted five accused and convicted A-1 to A-8 for various offences, including the offences under Section 302 read with Section 149. On appeal, the High Court set aside the convictions and acquitted them of all the charges. Thus this appeal by special leave.

2. The learned counsel for the appellants has contended that the medical evidence established that the deceased died due to shock and haemorrhage on account of the injuries to the lung and heart, which, in the ordinary course of nature, causes death. Therefore, there is no dispute as regards the homicide of the deceased Rajpal. He contended that PWs 9, 12 and 13 are the injured witnesses. There is also an independent witness. All have spoken of the participation of the accused in the commission of the crime. The prosecution, therefore, has established the case beyond reasonable doubt. The High Court, therefore, was not right in giving benefit of doubt to the respondents.

3. Having gone through the evidence and the reasoning given by the High Court, we do not think that the case warrants interference. It is seen that the prosecution has deliberately separated two incidents which occurred at 5.45 p.m. and 6 p.m. on that date. A reading of the evidence clearly goes to show that after the first incident of quarrel between the ladies had taken place, when the deceased Rajpal was passing through the road and had come near the house of the accused, there appears to have arisen a quarrel between the accused party and the prosecution party. Both the incidents had taken place during the course of the same transaction. The question then is : whether it is possible to believe the evidence of the injured witnesses implicitly to base the conviction of the respondents ? It would appear from the evidence adduced that there is no common object or intention to kill the deceased. It would appear that it is a case of free fight between the accused party

and the prosecution party on account of the quarrels between the two families. There is evidence that some of the accused suffered injuries in the same transaction and the prosecution has not explained injuries on them. In those circumstances, the liability of each of the accused has to be considered independently. In the attempt, we have scanned the evidence of injured witness carefully vis-a-vis the reasoning given by the High Court. It would appear that all the witnesses have improved upon the their version stated in the statement recorded under Section 161, CrPC. In fact, the Sessions Court itself has noted that some of the witnesses have spoken falsely in their evidence with regard to some of the accused. Under those circumstances, would it be possible to place implicit reliance on the evidence of these injured witnesses, though their presence stands confirmed ? We have given our anxious consideration to the facts in this case. We find that it is absolutely difficult to place implicit reliance on their evidence. It is true that falsus in uno, falsus in omnibus has no application in criminal trial. Court has to endeavour to separate the grain from the chaff and accept that part of the evidence which is found to be truthful and consistent. Having made that attempt, we find that on the facts of this case, it is very difficult to separate the grain from the chaff. If is seen that the participation of five of the accused is totally disbelieved by the Sessions Court as well as the High Court. As regard the participation of the eight accused in the commission of the crime, it is seen that witnesses fabricated and improved their version from stage to stage. Therefore, it would be very difficult to place implicit reliance on each of their evidence or cumulatively to convict Accused 1 and 2. The two accused are alleged to have attacked the deceased. Each of the injuries is not independently sufficient to cause death. Moreover, in a case of free fight, Section 149 cannot be applied. It is difficult to accept the prosecution case to hold that A-1 and A-2 alone had attacked the deceased in the melee. It might be that some other had attacked the deceased. PW 9, father of the deceased is found to have given false evidence. On the facts and circumstances, neither Section 34 nor Section 149 can be applied to any of the accused.

4. It is seen that A-1 and A-2, namely, Chandvir and Rohtash are alleged to have attacked the deceased. In the narration of the facts, it was the accused party which pitched upon to kill the deceased and they were armed with deadly weapons. If that be so, one would expect that all of them would have attacked the deceased in the first incident and if any other prosecution party attempted to intervene, they would have been beaten up, but that is not the evidence at the trial. It is seen from the evidence that A-1 and A-2 attacked the deceased only in midway while the attack on other parties was going on. Under these circumstances, if we disbelieve the version of the prosecution, as spoken in respect of A-3 to A-13, it would be equally difficult and unsafe to accept that part of the evidence that A-1 and A-2 alone attacked the deceased and convict them for the individual offences. As found earlier, on the state of evidence, the possibility of some other accused having attacked the deceased and of falsely implicating A-1 and A-2, cannot, with reasonable certainty by excluded. Moreover, PW 9, Medu was found to have given false evidence and cumulative effect of the injuries is the cause of the death. Considered from this perspective, we find that it will be highly unsafe to accept the evidence of the witnesses to base conviction of A-1 and A-2 for the offences of murder of deceased Rajpal punishable under Section 302 read with Section 34. The order acquittal recorded by the High Court is not warranted to be interfered with, though for different reasons.

5. The appeal is accordingly dismissed.