

Harkirat Singh

Vs

State of Punjab

(M.K. Mukherjee, S. Saghir Ahmad JJ)

24.07.1997

JUDGMENT

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MUKHERJEE, J.

1. The appellant and four others were tried by the Sessions Judge, Kapurthala for offences punishable under Sections 148, 449/149, 302/149 and 307/149 I.P.C. The trial ended in the conviction of the appellant under Sections 302 and 307 I.P.C. and acquittal of others. As the appeal preferred by the appellant before the High Court was dismissed he has filed the instant appeal after obtaining special leave.

2. The prosecution case, briefly stated, is as under:

A civil litigation was going on between Walaiti Ram and accused Narinder Singh (since acquitted), both of whom were residents of Bholath, over a plot of land. Pursuant to the judgment of the Civil Court Walaiti Ram obtained possession of the land some times before the incident with which we are concerned in this appeal. On November 28, 1996 at or about 10 A.M. when Walaiti Ram along with his brother Kharaiti Ram, Kharaiti Lal (P.W.4) and Ajit Singh (P.W.5) was filling the foundation of the land in question the five accused persons came there armed with deadly weapons. The appellant was armed with a pistol and the other accused persons with various other weapons. Reaching there Narinder Singh gave out that they would teach a lesson for filling the foundation of the land. Immediately thereupon the appellant fired shots which hit Kharaiti Ram, brother of Walaiti Ram and one Gurmit Singh (P.W.3), who was then passing along the road. In self defence some of the members of the complainant party also assaulted the accused persons as a result of which they also sustained some injuries. After the accused persons had left the place, Kharaiti Ram was taken to the Civil Hospital where he succumbed to his injuries.

3. To sustain the charges levelled against the appellant the prosecution relied principally upon the ocular version of Gurmit Singh (P.W.3), Kharaiti Lal (P.W.4) and Ajit Singh (P.W.5). Walaiti Ram who had seen the incident and lodged the F.I.R. could not be examined as he had died in the meantime. Of the three eye witnesses Gurmit Singh however turned hostile. In their testimonies Kharaiti Lal (P.W.4) and Ajit Singh (P.W.5) supported the entire prosecution case as stated above but their cross-examination revealed that in their statements recorded under Section 161 Cr.P.C. both of them had stated that the appellant was armed with dang(stick) - and not pistol - and that it was accused Raghbir singh (since acquitted) who was armed with a pistol and had fired as a result of which Kharaiti Ram died and Gurmit Sigh sustained injuries. Undoubtedly, these material

contradictions made the evidence of these two witnesses suspect but still then, we find, Trial Court and the High Court relied upon their testimonies ignoring the above material contradictions with a finding that the investigation was perfunctory and that with the ulterior object of shielding the real accused the statements of the above two eye witnesses were recorded under Section 161 Cr.P.C. In drawing the above conclusion, the High Court made the following comments:

"P.W.4 Kharaiti Lal has made his statement in the inquest proceedings and a perusal of the same shows that he had mentioned in that statement that it was Harkirat Singh who had fired the shots from the pistol. Even in the First Information Report, it is clearly mentioned that Harkirat Singh had fired the shots. The statement in the inquest report and the statement under Section 161 Cr.P.C. were recorded on the same day, i.e., November 29, 1986. The contradiction in these two documents shows that the investigation was not rairly conducted in this case. It appears that an effort was made to give benefit to Harkirat Singh. We do not attach any importance to the fact that the statement under Section 161 Cr.P.C. shows that it was Raghbir Singh who had fired the shots."

4. In our considered view, the High Court was not justified in treating the statement allegedly made by Kharaiti Ram during inquest proceedings as substantive evidence in view of the embargo of Section 162 Cr.P.C. Equally unjustified was the High Court's reliance upon the contents of the F.I.R. lodged by Walaiti Ram who, as stated earlier, could not be examined during the trial as he had died in the meantime. The contents of the F.I.R. could have been used for the purpose of corroborating or contradicting Walaiti Ram if he had been examined but under no circumstances as a substantive piece of evidence. Having regard to the facts that except the evidence of the two eye witnesses there is no other legal evidence to connect the appellant with the offences for which he has been found guilty and that in view of the material contradictions the evidence of the two eye witnesses cannot be safely relied upon the appellant is entitled to the benefit of doubt. We, therefore allow this appeal and set aside the order of conviction and sentence recorded against the appellant. The appellant, who is on bail, is discharged from his bail bonds.