

Mahipal @ Mahaveer Singh

Vs

The State of Rajasthan

(G.T.Nanavati, S.S.M.Quadri, JJ.)

08.01.1998

JUDGEMENT

1.This appeal is directed against the judgment and order passed by the Rajasthan High Court in D.B.Crl. Appeal No.27/79.The High Court reversed the order of acquittal and convicted the appellant for the offence punishable under Section 302 IPC.

2.Guru Nam Singh (P.W.17), Jeet Singh (the deceased) and the appellant left Calcutta in a truck. Guru Nam Singh and Jeet Singh were the drivers of the truck and the appellant was the Khalasi. Upto Indore the said vehicle was driven by Jeet Singh. At Vijay Nagar they took food in a hotel. While proceeding ahead Jeet Singh slept in the cabin which was behind the cabin of the driver. The prosecution case was that the truck then passed Nasirabad check post and reached Dundu at about 4.45 a.m.Guru Nam Singh stopped the truck there, told the appellant to look after it and went to a nearby hotel for taking tea. He also sent one cup of tea for the appellant. The appellant after taking tea went to the hotel where Guru Nam Singh was setting and returned the tumbler. Guru Nam Singh was sitting and returned the tumbler. Guru Nam Singh again told him to attend to the vehicle and continued to sit in the hotel after placing an order for some articles of food. Within a short time Guru Nam Singh was informed that near his vehicle one driver was seen lifting another driver lying on the road. Guru Nam Singh went near the truck and saw that Jeet Singh was lying on the road and the appellant was sitting with Jeet Singh's head in his lap. Guru Nam Singh asked the appellant as to what had happened and thereupon the appellant told him that Jeet Singh had fallen down from the truck and was then hit by a passing vehicle. On the basis of this information Guru Nam Singh went to the Police Station and lodged a report that an accident had taken place. After registering the offence the A.S.I. Banwari Lal reached the place of offence. While examining the place closely he noticed that there was a trail of blood up to the truck. He also noticed blood in the cabin. He also felt that the wound on the neck of Jeet Singh was not likely to have been caused by an accident but was probably caused by an accident but was probably caused by a sharp edged weapon. On further investigation he was of the view that Jeet Singh was murdered. At about 6.00 p.m. he arrested the appellant. The appellant was then tried for the murder of Jeet Singh.

3.The prosecution had examined P.W.17 Guru Nam Singh, P.W.1, Hazari Lal, P.W.2, Ram Singh and P.W.3, Narayan to prove the guilt of the appellant.P.W.3 did not support the prosecution and he was declared a hostile witness. The trial court found the evidence of P.W.17 inconsistent with the evidence of P.Ws.1 and 2 as regards who informed Guru Nam Singh about the incident and, therefore, held that his evidence could not be relied upon. It also held that the conduct of P.W.17 was not natural as he had not made further inquiries from the person who informed him as to how the incident had taken place and that also made his evidence doubtful. His evidence was also doubted on the ground that in the F.I.R. he had not stated some currency notes were found missing

from the pocket of deceased Jeet Singh. The trial Court also held that P.W.17 stood contradicted by the evidence of P.W.1, Ratan Lal who had produced the record maintained at the Check Post to show that there was no entry regarding the truck having passed Nasirabad Check Post. It also held that find of blood in the cabin was not inconsistent with some one else committing the murder of Jeet Singh in the truck and then throwing his body on the road. The trial court did not believe the evidence regarding recovery of blood stained knife at the instance of the appellant on the ground that it was lying in water for more than 24 hours. It then held that the circumstances relied upon by the prosecution were not sufficient to prove its case and, therefore, acquitted the appellant.

4.The High Court considered each of these reasons and came to the conclusion that the sessions court did not correctly appreciate the evidence and, therefore, the inferences drawn by it were wrong. It held that it was not proper for the trial court to reject the evidence of PW-17 on the ground that in the complaint he had not mentioned that currency notes, which were in the pocket of Jeet Singh, were missing. It was a minor detail and moreover when the complaint was lodged, PW-17 had no reason to suspect his khalasi and disbelieve his version that Jeet Singh had fallen from their truck and was run over by a passing vehicle. The High Court has also rightly pointed out that the evidence of PW-17 is not inconsistent with the evidence of PWs-1 and 2 except with respect to the person who informed PW-17. Whether that person was driver as stated by PW-17 or a hotelwala as deposed by PWs 1 and 2 was of no significance in this case. The evidence of these witnesses clearly establishes that at the relevant time PW-17 was sitting in a hotel after taking tea and that on being informed about the incident he returned to his truck and enquired from the appellant as to what had happened. Unless he was so told by the appellant, PW-17 could not have stated what we find in the complaint filed by him. The conduct of PW-17 in not trying to get further information from the informer should not have been recorded as unnatural and was certainly not a good ground to reject his evidence. On being told as to what had happened, he immediately left the hotel and returned to the place where his truck was parked to find out what had happened. Thus none of the reasons given by the trial court was found sustainable by the High Court and in our opinion rightly.

5.Once we believe PW-17 that he was informed by the appellant that Jeet Singh had fallen down from the truck and was then hit by a passing vehicle, it has to be held that a deliberate attempt was made by him to mislead everyone as regards circumstances in which Jeet Singh died. The prosecution evidence also clearly establishes that there were only three persons in the truck namely, PW-17, deceased Jeet Singh and the appellant, when it left Vijay Nagar. It is an undisputed fact that Jeet Singh had slept in the rear cabin after the truck had left Vijay Nagar. The learned counsel for the appellant tried to challenge the finding recorded by the High Court that the truck had in fact passed through Nasirabad check post but in view of the admission by the accused himself in his statement under Section 313 Cr.P.C. it was a futile attempt. The learned counsel also urged that after the truck had left Nasirabad the appellant had also slept in the rear cabin on the upper berth and that he really did not know as to how Jeet Singh was murdered. The evidence of PW-17 is that after they left Vijay Nagar the appellant was sitting on the khalasi's seat and when he went to hotel at Dundu he had instructed the appellant to look after the truck. It is unbelievable that if really the appellant was also sleeping when the truck reached Dundu, PW-17 would have gone to a hotel leaving the truck unattached. The version given by PW-17, therefore, appears to be more probable and natural than the explanation given by the appellant in this behalf.

6.It was also urged by the learned counsel for the appellant that the possibility of someone else causing the death of Jeet Singh has not been ruled out in this case and, therefore, the High Court committed error in convicting the appellant. The evidence of PW-17 clearly establishes the circumstance that when he left the truck and went to a hotel at Dundu only Jeet Singh and the

appellant were in the truck. At that time Jeet Singh was sleeping on the lower berth of the rear cabin and the appellant was sitting on a seat in the front cabin. The other circumstance which also stands established is that the death of Jeet Singh took place within a short time thereafter. When PW-17 returned to the truck he and also other witnesses found the appellant sitting on the road near the body of Jeet Singh and that completely falsifies the appellant's explanation that he was all the while sleeping and woke up only when the police came on the spot. The prosecution has also established beyond any doubt that the death of Jeet Singh had not taken place as a result of fall from the truck or because he was hit by a passing vehicle but because of an injury caused by a sharp edged weapon. The circumstance that he gave a false version as regards the manner in which Jeet Singh had received the injury and had died also stands established beyond any doubt. As stated earlier blood stains were also found inside the cabin of the truck. A knife was recovered on the information given by the appellant and it was found stained with human blood. The contention of the learned counsel for the appellant that as the knife was found from a nearby water pit after about 24 hours, no blood would have remained on it cannot be accepted as the evidence shows that the knife was closed before it was thrown in that water pit. Having gone through the judgment of both the courts below and the evidence we find that the High Court has correctly appreciated the evidence and dealt with all the reasons given by the trial court for acquitting the appellant. The High Court has rightly found those reasons as improper and not sustainable. It was, therefore, justified in interfering with the order of acquittal and convicting the appellant for the offence punishable under Section 302 IPC. As we do not find any substance in this appeal it is dismissed. The appellant was released on bail during the pendency of the appeal. Therefore, his bail is cancelled and he is directed to surrender to custody to serve out the remaining part of the sentence.

