

Gajjan Singh and Another

Vs

State of Punjab

Criminal Appeal No. 730 of 1991

(G. T. Nanavati, S. P. Kurdukar JJ)

29.04.1998

JUDGMENT

NANAVATI, J. –

1. Both the appellants were convicted for the offences punishable under Section 452 and Section 302 read with Section 34 IPC by the Court of the Additional Sessions Judge, Ferozepur in Sessions Case No. 54 of 1988 (Sessions Trial No. 56 of 1990). Their conviction has been upheld by the High Court.

2. Both the courts below have accepted the evidence of eyewitnesses PWs 5, 6 and 9 after careful scrutiny thereof. It was however submitted by the learned counsel for the appellants that as the eyewitnesses were interested witnesses and there were material inconsistencies between the evidence of PWs 5 and 6 on the one hand and PW 9 on the other hand, their evidence should not have been accepted. He also submitted that though the guns stated to have been used by the two appellants were seized by the police and forwarded to the ballistic expert for examination, no report of the ballistic expert was produced to show whether they were used or not. He also submitted that the circumstances that both the gun injuries on the person of the deceased were possible by one shot, that there were no pellet marks on the walls or other parts of the Haveli and no blood was found on the ground inside the Haveli create a doubt regarding the manner in which the incident had really happened.

3. One of the inconsistencies pointed out by the learned counsel is with respect to the nature of weapons which the two co-accused carried with them. PWs 5 and 6 have stated that they were carrying guns whereas PW 9 has stated that one of them was carrying a gun and the other was having a dang (a thick stick). The other inconsistency pointed out is regarding the part of the body on which the shot fired by Ratan Singh had caused injuries to the deceased. In fact, this is not an inconsistency at all. PW 5 has not stated on which side of the chest the injuries were caused. PWs 6 and 9 have stated that the shot had hit the deceased on the left side of his chest. These are the only inconsistencies in the evidence of the eyewitnesses. One more inconsistency pointed out by the learned counsel is between the evidence of PW 9 and the investigating officer. PW 9 has stated that he had seen one pellet in the mouth of the deceased. The investigating officer has denied to have seen any pellet in the mouth of the deceased. Blood had collected in the mouth of the deceased. It is quite possible that PW 9 mistook something in the mouth of the deceased as a pellet or the investigating officer missed to notice it. It is a minor inconsistency and can have no effect on the credibility of the eyewitnesses.

4. We find that the evidence of PWs 5 and 6 is quite consistent and it clearly establishes that both

the appellants had fired one shot each at the deceased and caused injuries to him. The medical evidence shows that one injury was on the forehead and one on the chest of the deceased. As regards absence of pellet marks on the walls of the Haveli, we do not think that it is a valid ground for disbelieving the eyewitness account. It was nobody's case that pellets from any of those shots had hit the walls. The incident had happened in the outer part of the Haveli. No blood had fallen on the ground as explained by the witnesses. They have stated that immediately after the deceased was hit by the two shots, they had placed him on a cot. Both the courts below have considered these aspects and given good reasons in support of the findings recorded by them. We do not find any good ground to interfere with the findings recorded by them.

5. The two guns which were seized by the police did not belong to the appellants. They were of the other accused who were tried with the appellants but acquitted by the trial court. The witnesses have not stated that shots were fired from those two guns. Therefore, non-production of the report of the ballistic expert is of no consequence.

6. It is also submitted by the learned counsel that only Ratan Singh was alleged to have caused the death of the deceased and there was no independent charge of causing death against Gajjan Singh. He has been convicted under Section 302 read with Section 34. The evidence clearly establishes that both the appellants had gone together to the Haveli and had fired shots at the deceased. Gajjan Singh was charged with an offence punishable under Section 302 read with Section 149 IPC. Therefore, the courts below have not committed any illegality or impropriety in convicting him under Section 302 IPC read with Section 34.

7. As we find no substance in any of the contentions raised on behalf of the appellants, this appeal is dismissed.

8. As the appellants were released on bail during the pendency of the appeal, their bail is cancelled. They are directed to surrender to custody immediately to serve out the remaining part of the sentence.