

Jai Pal and Another

Vs

State of U.T. Chandigarh

JAI SHAM

Vs

State of U.T. Chandigarh and Others

Criminal Appeals No. 1264 of 1997 with Nos. 1192-93 of 1997

(M. K. Kukherjee, D. P. Wadhwa JJ)

29.07.1998

JUDGMENT

M. K. MUKHERJEE, J. -

1. These three appeals, which have been heard together, stem from an FIR lodged by Riaz Masih (PW 8) on 16-11-1991 at Mani Majra Police Station for the murder of Chhinda in an incident that took place earlier on that day in Bapu Dham Colony. Pursuant to the charge-sheet submitted by the police in that case, three separate trials were held. In one of them, Jai Sham, Durga-Das and Pawan Kumar figured as accused, in another Jai Pal and Padam, who were juveniles, were tried and the third related to the trial of Jai Sham for the offence under Section 25 read with Section 27 of the Arms Act, 1959 for being in unauthorised possession of the knife with which the murder was committed. The trials ended in acquittal of all the accused and aggrieved thereby, the State preferred appeals before the High Court. In allowing the appeals by a common judgment, the High Court convicted Jai Sham under Section 302 IPC and Sections 25/27 of the Arms Act and sentenced him to suffer imprisonment for life and rigorous imprisonment for three years, respectively, with a direction that the sentences shall run concurrently. Accused Durga Das and Pawan Kumar were convicted under Sections 302/34 IPC and each of them was sentenced to imprisonment for life. The High Court convicted the two juveniles also and directed their detention in a Special Home for a period of seven years, in accordance with the provisions of Section 38 of the Juvenile Justice Act, 1986. Aggrieved by the convictions and sentences recorded against him, Jai Sham has filed two of these appeals while the other appeal has been filed by the two juveniles challenging their conviction and detention in the Special Home. The other two convicts, namely Durga Das and Pawan Kumar, however have not filed any appeal.

2. (a) Shorn of details, the prosecution case is that on 9-11-1991 at or about 5.00 p.m. when PW 8, his brother-in-law Dayal Masih (PW 9), brother Chhinda (deceased) and Joginder Singh (PW 11), all employees of Bhushan Factory in the local industrial area, were going to ease themselves, they saw five young boys carrying two bags of aluminium powder with them. On suspicion that they were carrying stolen property, PW 8 and his companions accosted them. In retaliation, they started abusing and one of them grappled with Chhinda and then left the place.

(b) A week later, on 6-11-1991 to be precise, at or about 4.30 p.m. when PWs 8, 9 and the deceased were on their way to the factory, those five boys ambushed them and gave out that Chhinda would not be allowed to go alive. Immediately, four of them namely Durga Das, Pawan Kumar, Padam Singh and Jai Pal caught hold of Chhinda and Jai Sham started giving blows with a knife which he brought out from his pocket. Instinctively, when PWs 8 and 9 shouted for help, they took to their heels.

(c) Within a short while, the police party came on the spot and with their help, Chhinda was removed to the hospital, where he succumbed to his injuries. PW 8 gave a statement about the incident which was recorded by SI Sukhdev Singh (PW 13) and the case was registered.

3. To prove its case, the prosecution examined a number of witnesses of whom PWs 8 and 9 figured as eyewitnesses. On a detailed discussion of their evidence, the trial court found the same unacceptable; and the reasons canvassed by it for such conclusions are, that the evidence as to with whom and where the first information report was lodged was highly discrepant, that though PWs 8 and 9 admitted that the father's names of the accused and their addresses were not known to them from before, those particulars find place in the FIR and no explanation was forthcoming from the prosecution about the same, and that the evidence of the two eyewitnesses as also that of the two Investigating Officers was contradictory on material particulars. In upsetting the findings of the trial court, the High Court held that the evidence of the two eyewitnesses was reliable and can be made the basis for conviction.

4. With the assistance of the learned counsel for the parties, we have gone through the material evidence on record. Our such exercise persuades us to hold that the High Court was not at all justified in convicting the accused persons for none of the reasons given by the trial court can be said to be perverse. On the contrary, in our considered view, each of the reasons is substantial and based on proper appreciation of evidence. The High Court, therefore, ought not to have set aside the acquittal merely because a different view of the evidence can be taken. Accordingly, we allow these appeals, set aside the impugned judgment of the High Court and acquit the three appellants before us. Since this judgment of ours is based on an overall consideration of the prosecution case and not qua any particular accused, the benefit of this order should also go to the other two accused, namely Durga Das and Pawan Kumar, even though they have not preferred any appeal before this Court. We, therefore, direct that Jai Sham, the appellant in Criminal Appeals Nos. 1192-1193 of 1997, and convicts Durga Das and Pawan Kumar, all of whom are in jail be released forthwith, unless wanted in connection with some other case. Further, we set aside the direction of the High Court to detain the two juveniles, namely Jai Pal and Padam, in the Special Home.