

SUPREME COURT OF INDIA

Jang Singh

Vs.

State of Rajasthan

(G.B. Pattanaik and Doraiswamy Raju JJ.)

04.05.2000

ORDER

1. These appeals are by the 4 accused persons. Two of whom had been acquitted by the learned Sessions Judge, and their acquittal was set aside by the High Court, and two others were convicted by the Sessions Judge, and their conviction was upheld in appeal by the High Court. Initially, 7 accused persons stood charged under Section 302/149, I.P.C. for having caused the murder of two persons Dalip Singh and Jeet Singh on 26.7.1975 at about 5.00 p.m. by assaulting them with different weapons in their hands. The prosecution case in nutshell, as unfolded in the First Information Report given by PW.1, is to the effect that these accused persons and the deceased belonged to two different groups and had some rivalry, and on the date of occurrence, they were all travelling in the same bus. The bus in question was stopped at a place Khare Chak when one of the passengers got down, and as soon as the said passenger got down at the bus stop, accused Jang Singh snatched the Kirpan from Jeet Singh's hand and then Balbir Singh caught hold of deceased and pushed him on the ground and thereafter rest of the accused persons got down from the bus and Balbir Singh accused No. 4 threw (him) at a distance, and then Jagdeo Singh A-6 gave a blow on Dalip Singh with gandasa on his foot, and thereafter rest of the accused persons pounced upon him. The further prosecution case is that when Jeet Singh immediately tried to run away from the bus, the accused persons chased him, caught hold of him and started beating him, it is at that point of time when passengers raised a hue and cry. The bus started moving and 3 of the accused persons Balbir Singh, Mahendra Singh and Dulah Singh came running and boarded the bus, and came away on the bus leaving the rest of the persons at the place of occurrence itself. After the bus travelled for some distance, it again stopped at a place called Morgand, and then Balbir and Mahendra got down at that place. PW.1 got down from the bus at Manmad, and then went to Hanumangarh Police Station to lodge a report, which report was ultimately treated as F.I.R., and police started investigation. On the basis of the said F.I.R. and on completion of the investigation submitted the charge-sheet. On being committed the accused persons stood their trial, as already stated. The prosecution case hinges upon the sole testimony of PW.1, inasmuch, though the prosecution pressed into service the evidence of PW.2, but he did not support the prosecution case during trial, and therefore was cross-examined by the learned Public Prosecutor. The learned Sessions Judge after scanning the evidence of PW. 1 came to hold that accused No. 4, accused No. 7, and accused No. 5, who boarded the bus, as soon as the bus started and came away, along with other passengers could not have shared the common object with those who assaulted the two deceased persons at the place of occurrence, and as such acquitted them of the charges leveled against them. But so far as accused No. 1, accused No. 3, accused No. 2 and accused No. 6 are concerned, the learned Sessions Judge relying upon the evidence of PW.2 came to hold that they are the authors of the crime, and convicted them of the

charges, as already stated. Out of these convicted persons, accused No. 1 died during the pending of the appeal in the High Court, as stated to us by Mr. Prem Malhotra. Accused No. 3 also died while the matter was pending in the High Court. Accused No. 5, who had been acquitted by the learned Trial Judge, and whose acquittal has been set aside by the High Court, however, did not prefer any appeal to this Court, and therefore these appeals are by 4 accused persons, as already stated. Since the prosecution case hinges solely upon the oral testimony of PW. 1, we have been taken through the evidence of said PW.1. On a bare perusal of the said evidence, we find it difficult to hold him to be a truthful witness, and therefore conviction could not have been maintained on the basis of his evidence. PW.1 had lodged the FIR at 8.10 p.m. on the date of occurrence. In the FIR, he had stated that the two persons, namely, Dalip Singh and Jeet Singh have died. In his evidence, however, he stated after lodging the FIR while he was still at the Police Station, the Sub-Inspector, PW.10 arrived at the hospital and told that one of the persons, namely, Dalip Singh had died, and other man is in the hospital. If he learnt about the condition of the two injured persons from the Sub-Inspector, it is not possible to imagine how in the FIR he could have indicated two of the persons have been killed. Then again, this FIR was lodged on 26.7.1975, and it reached the Magistrate on 29.7.1975, and no explanation is forthcoming as to why there has been such delay in sending the FIR to the Magistrate. That apart, intrinsically the materials brought out in the cross-examination of PW.1, persuade us to hold that said PW.1, by no stretch of imagination, can be held to be a truthful witness on whose testimony, conviction of so many accused persons can be based. It is also not clear as to why the occurrence itself having taken place at bus stop where ordinarily people must be there the prosecution has not examined any outsider witness in support of the prosecution case. At least the passenger, who is said to have got down from the bus, could have been the most natural witness, who has also not been examined by the prosecution. Even the passengers, who were travelling in bus, some of them could have been examined, but no attempt has been made by the prosecution to examine any of them. In this state of affairs, we do not think it safe to rely upon the evidence of PW.1 alone to base the conviction of these accused persons. That apart, the High Court was fully unjustified in reversing an order of acquittal recorded by the learned Sessions Judge, and acquitting those of the accused persons on the sole testimony of PW.1. In the aforesaid premises, we set aside the impugned judgment of the High Court, and hold that the prosecution has not been able to prove its case beyond reasonable doubt, and therefore accused persons are entitled to be acquitted of the charges leveled against them. Though, accused No. 5 has not preferred any appeal yet, in view of our conclusion on the nature of evidence adduced, he is also entitled to be acquitted. We, therefore, direct that accused No. 5 also should be released forthwith from the jail where he is being lodged. The appeals are allowed. The appellants before us be released forthwith.