

SUPREME COURT OF INDIA

Prem Singh

Vs.

State of Haryana

Crl.A.No.934 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

06.05.2009

JUDGEMENT

S.B. Sinha, J.

1. Leave granted.

2. This appeal by special leave is against a judgment and order dated 25.2.2008 passed by a Division Bench of the High Court of Punjab & Haryana at Chandigarh affirming a judgment of conviction and sentence dated 9.9.1998 passed by the Sessions Judge, Rohtak convicting the appellants herein for commission of an offence under Section 302/34 of the *Indian Penal Code* (for short, "IPC")

3. A First Information Report (for short, "FIR") was lodged on 8.10.1994 at about 5.50 p.m. by Prem Singh (P.W.1) inter alia alleging that Chand Ram, Ajmer and Dilbagh and the appellants (Prem Singh and Karambir @ Pappu) herein were responsible for causing death of his brother Krishan (the deceased).

“They were charged under Sections 148 and 302/149 of the IPC. The prosecution in order to prove its case examined six witnesses.”

4. P.W. 1 in his deposition before the learned Sessions Judge stated that on the date of occurrence he was in his Bajra field along with the deceased.

“At about 1.00 p.m. one Samunder and accused Ajmer were taking their bullock cart through their mustard crop which was objected to by the deceased as a result whereof they were forced to take back the same. They went away threatening to see the deceased later. At about 3.00 p.m. on the same day, accused persons came and started assaulting the deceased. Prem Singh (Accused No.2) is said to have given a jelly blow on the chest of the deceased whereas Karambir @ Pappu (Accused No. 3) inflicted a farsa blow on his head; Chand Ram (Accused No.1) is said to have given a jelly blow on his abdomen whereas Ajmer (Accused No.4) inflicted a jelly blow on his left knee.

Dilbagh (Accused No. 5) is said to have given a jelly blow with a lathy on the back of the deceased. While being taken to hospital, the deceased died at about 5.00 p.m.”

5. The learned trial judge on analysis of the entire evidence brought on record and after noticing the purported contradictions in the statements of the prime witnesses, namely, Prem Singh (P.W.1) and Baljit Singh (P.W.4) found all of them guilty for commission of murder of the deceased. The High Court, however, while disposing of the appeal preferred by them inter alia on the premise that the injuries attributed to the three others apart from the appellants herein having not been found on the person of the deceased gave them the benefit of doubt while affirming the judgment of conviction and sentence against the appellants.

6. Mr. Anil Agrawal, learned counsel appearing on behalf of the appellant would raise the following contentions before us in support of this appeal:

“i. All the accused persons having been charged for commission of murder of the deceased Krishan under Section 302/149 of the IPC and three of them having been acquitted, appellants could not have been convicted under Section 302 of the IPC.

ii. Both the courts below having noticed the serious discrepancies and contradictions in the evidences of P.Ws. 1 and 4, the impugned judgment is wholly unsustainable.”

7. Ms. Pragati Neekhara, learned counsel appearing on behalf of the State, however, would support the impugned judgment.

8. P.W. 1 - Prem Singh - was with the deceased from the very beginning. He was a witness to both the stages of occurrence, namely, the act of the two accused to drive bullock cart through the agricultural field where mustard crop had been grown as also the assault on the deceased by all the accused persons which had taken place at about 3.00 p.m.

“Indisputably, the deceased was taken to a hospital. The hospital and the Police Station at Meham was situated at a distance of about 10 kilometers from the village Nidana where the incident had taken place. P.W.4 - Baljit Singh was also nearby. The deceased was taken to the hospital by a buggy. The FIR was lodged at about 5.10 p.m. and it was recorded at 5.50 p.m. P.W. 3 - Om Prakash Patwari drew the sketch map.”

9. As was stated by Dr. Narender Singh (P.W.2), Medical Officer In- Charge of the Madhath Dispensary, Rohtak, following injuries were found on the person of the deceased :

"1. A contusion reddish colour 8 cm x .5 cm about 7 cm below right axilla on right chest.

2. A semi circular wound (punctured) .9 cm x .6 cm x 4 cm, (punctured wound) just above sternal notch.

3. A semi circular wound (punctured) .9 cm x .6 cm x 4 cm, 5cm away from above injury on left chest below left sternoclavicular joint."

All the injuries were found to be sufficient to cause death in the ordinary course of nature.

Correctness of the said medical report is not in dispute. Homicidal nature of death of the deceased is also not in dispute.

10. We have gone through the evidence of the first informant Prem Singh (P.W.1) and Baljit Singh (P.W.4). Whereas P.W.1 was examined on 9.2.1996, P.W. 4 was examined on 9.5.1997.

11. Both the learned Sessions Judge as also the High Court did not find any material discrepancy in their depositions. Some contradictions and/or inconsistencies in their testimonies were natural, but they were found to be not very material. We may in this regard place on record the following findings of the learned Sessions Judge:

"There is nothing on record to prove that the two witnesses had swerved from the path of truth, either by suppression or by concoction or by the embellishment of facts which are untrue.

Undeniably, there are contradictions in their testimonies and they have made slight improvements from the version given by them before the police, but the hub of their testimony remains intact and the criticism leveled against their testimonies does not seem to be well founded."

The appreciation of evidence on the part of the learned Sessions Judge cannot be faulted. In his judgment, he had analysed the depositions of P.W.1 and P.W. 4 at great details. He not only placed on record the slight improvements made by the witnesses from their statements made before the police but also pointed out some inconsistencies in their depositions in the court. But the testimonies in material particulars were found to have been truthful.

The High Court recorded a judgment of acquittal in favour of Chand Ram, Ajmer and Dilbagh only on the premise that the role said to have been played by them was not corroborated by the medical evidence. The High Court arrived at the said finding despite the fact that it placed implicit reliance upon the testimonies of P.W.1 - Prem Singh and P.W. 4 - Baljit Singh, opining:

"PW-1 Prem Singh and PW-4 Baljit, being real brothers of the deceased, will be the last persons to leave out the real accused and implicate the appellants. Their presence in the fields was quite natural. Their version has remained unshaken in the cross-examination. No major discrepancy has been pointed out in the testimony of PW-1 Prem Singh and PW-4 Baljit. We are of the view that there is no reason to reject the

testimony of PW-1 Prem Singh and PW-4 Baljit qua appellants Prem and Karambir @ Pappu. Adequacy or absence of alleged motive has no significance where reliable eyewitnesses' account is available."

12. Strong reliance has been placed by the learned counsel on a decision of this Court in *Balaka Singh and Ors. vs. The State of Punjab*¹ wherein the four accused who were said to have taken active part in the assault of the deceased had not been named in the inquest report as also in the brief statement by the very person who had lodged the FIR prior thereto. The Court found that their names were deliberately added in the inquest report at the instance of the prosecution and thus there was no guarantee as regards their participation in the assault on the deceased. The injuries found on the body of the deceased were either contusions, abrasion or lacerated wounds. No penetrating or incised wounds were found to be present and, thus, the use of sharp-cutting instrument, such as, barchha or spear was held to be belied. This Court in the peculiar facts of that case held that grain cannot be separated from the chaff being inextricably mixed up as in the process of separation the Court would have to reconstruct an absolutely a new case for the prosecution by divorcing the essential details presented by it completely from the context and the background against which they are made. It is on the aforementioned finding the prosecution case was not believed. Such is not the case here.

13. It is now a well settled principle of law that the doctrine 'falsus in uno falsus in omnibus' has no application in India. In *Jayaseelan vs. State of Tamil Nadu*², this Court held:

"The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence.'"

{See also *Mani @ Udattu Man & Ors. vs. State Rep. by Inspector of Police*³}

14. It is also not a case where the testimonies of the eye-witnesses had been totally disbelieved.

"Benefit of doubt has been given only because the testimonies of the witnesses in regard to the place of assault on the person of the deceased were not corroborated by the medical evidence. The High Court failed to notice that all the accused persons were charged of having common object of causing murder. A few of them might have taken active part and others might have aided and abated the commission of the offence. It is, however, neither possible nor necessary to delve into the said question as the State has not filed any appeal questioning the correctness of the said order. The fact, however, remains that both the courts below have placed implicit reliance on both P.W.1 and P.W.4. We see no reason to take a different view."

15. The second contention of the learned counsel, in our opinion, is also without any merit. It may be true that all the five accused persons were said to have a common object; they were punished under Section 302/149 of the IPC; but the same would not mean that only because three of them were given benefit of doubt on a premise which may not be wholly correct, no case of common intention has been made out against the appellants.

They came together armed. They had threatened the deceased. They went back together. It has not been established that the appellants herein had in any way been prejudiced by non-mentioning of Section 34 of the IPC in the concluding portion of the judgment of the High Court. The High Court, in its judgment, however, categorically stated:

" As regards Karambir @ Pappu, who has been attributed simple injury on the head, we are of the view that both the accused clearly shared common intention. They came prepared with deadly weapons and both have assaulted the deceased on vital parts of the body. It is not a case of sudden occurrence. The deceased died almost immediately as a result of the injuries received.

There is no reason to doubt sharing of common intention by Karambir @ Pappu. He cannot, thus, avoid responsibility for causing of the death. Even if injury individually attributed to him is held to be simple, it cannot be held that he could not have pre-conceived the result of the assault.

Accordingly, while conviction and sentence of Chand Ram, Ajmer and Dilbagh are set aside and qua them, the appeal is allowed and they are acquitted, conviction and sentence of Prem and Karambir @ Pappu is upheld and qua them, the appeal is dismissed."

16. A judgment as is well known is not to be read as a statute. It must be read reasonably and in its entirety. The effect of a judgment must be found out from the wordings used by it and the attending circumstances in which they have been used. The High Court, on a plain reading of its judgment has attributed common intention on the part of the appellants in committing the aforementioned crime. Their conviction under Section 302/34, therefore, was justified. In absence of any prejudice having been shown on the part of the accused, this court on such technicalities alone would not interfere with the impugned judgment.

In *Dhaneswar Mahakud & Ors. vs. State of Orissa*⁴, this court held:

"23. The nature of the injuries sustained by the deceased clearly indicates the intention of the accused-appellants to do away with the deceased.

The evidence of the witnesses along with the injuries reported in post-mortem reports clearly bring out the common intention of the accused- appellants and we do not think that the accused- appellants would be prejudiced merely because the charge was framed under Section 302 read with Section 149, IPC and not under Section 302 read

with Section 34, IPC. From the evidence of two witnesses, PW-5 and PW-7, it would appear that the accused-appellants shared the common intention to cause death of the victims."

17. While we say so, we are not oblivious of the distinction between the common object and common intention. But when a common intention can also be found out on the basis of the testimonies made by the witnesses examined on behalf of the prosecution, the High Court in a situation of this nature was totally justified in affirming the said opinion.

"See *Jaswant Singh v. State of Haryana*⁵ paragraph 22 to 25] Recently in *Y. Venkaiah vs. State of A.P.*⁶, this Court held:

"31. The Constitution Bench of this Court in *Mohan Singh and Anr. v. State of Punjab*⁷, construed the scope of Section 34 and compared it with Section 149 and pointed out the essential distinction between the two. Justice Gajendragadkar (as His Lordship then was) speaking for the Constitution Bench held that like Section 149, Section 34 also deals with cases of constructive criminal liability in the sense where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone. According to the Constitution Bench, the essential constituent of the vicarious criminal liability contemplated by Section 34 is the existence of common intention.

When such common intention animates the accused persons and leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act done by one of them.

The Constitution Bench held that in some ways Section 34 and Section 149 are similar and in some areas they may overlap but nevertheless the common intention, which is the sine-qua-non of Section 34 is different from the common object which brings together an unlawful assembly of persons within the meaning of Section 149 of the Code."

18. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly.

¹[(1975) 4 SCC 511]

²[2009 (2) SCALE 506]

³[2009 (3) SCALE 431]

⁴[(2006) 9 SCC 307]

⁵[(2000) 4 SCC 484]

⁶[2009 (4) SCALE 154]

⁷AIR 1963 SC 174