

PETITIONER:
SMT. JASWINDER KAUR & ANR

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 26/07/1995

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
MUKHERJEE M.K. (J)

CITATION:
1995 AIR 2327 JT 1995 (5) 532
1995 SCALE (4) 546

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

This appeal is filed under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984 against the order of conviction and sentence passed by the Special Court, Hoshiarpur, in Case FIR No.103 of 1984.

Appellant No.1 Smt. Jaswinder Kaur is the wife of appellant No.2 Shri Jaswinder Singh. Appellant No.2 has been convicted under Section 302 and appellant No.1 under Section 302/34 IPC, for causing death of Surjit Singh, brother of appellant No.2

The prosecution case was that Surjit Singh (deceased) Jaswinder Singh (accused) and Kewal Singh were living together along with their parents. Surjit Singh alone used to manage the family affairs. This was not liked by Jaswinder Singh and therefore there used to be quarrels between them. The last quarrel was on 24.5.84. On 25.5.84 Surjit Singh after taking food at about 12.00 noon slept on a cot in dalan of their house. Since some time prior to 2.30 P.M. Raj Rani, wife of Surjit Singh and his two sisters Kewal Kaur and Jaswinder Kaur were sitting together on a cot in the dalan and were talking with each other. The appellants were sitting on a separate cot and they were also talking with each other. At about 3.30 P.M. appellant No.1 Jaswinder kaur brought some clothes, gave them to appellant No.2 and told him as to what he was waiting for. Appellant No.2 took those clothes and got up from the cot. He then picked up an axe lying in one corner of the dalan and gave two blows on the neck of Surjit Singh. He gave one more blow near his right shoulder. On cries being raised by Raj Rani, Kewal Kaur and Jaswinder Kaur the accused ran away from the place. Raj Rani then approached Tarsem Singh, a member of the Panchayat and along with him went to Dasuya Police Station at a distance of 8 K.M. There she lodged the FIR at 3.30 P.M.

Appellant No.1 was tried for commission of an offence punishable under Section 302/34 IPC and appellant No.2 under Section 302 IPC. Before the trial court, the prosecution mainly relied upon the evidence of three eye witnesses PW-4 Raj Rani, PW-5 Kewal Kaur and PW-7 Jaswinder Kaur. The prosecution also relied upon an extra judicial confession alleged to have been made before PW-6, Sarwan Singh, a member of the Panchayat who was approached by the appellants for producing them before police. The prosecution also relied upon recovery of an axe from appellant No.2. The learned Addl. Judge did not rely upon the alleged extra judicial confession and the recovery as the evidence in that behalf was not found satisfactory. The learned Addl. Judge did not believe the two defence witnesses, DW-1 Mangal Singh, father of the appellant No.2 and DW-2 Jarnail Singh, brother of appellant No.2, examined to prove that the appellants were in their field at the relevant time. Relying upon evidence of the eye witnesses and the medical evidence the learned Addl. Judge convicted both the accused as stated above.

What is contended by the learned counsel for the appellants is that the learned Addl. Judge ought not to have discarded the evidence of the defence witnesses as being equally related to appellant No.2 and the deceased they had no reason to tell what was not true. It was further submitted that their evidence establishes that both the appellants were not present in the house at the time of the incident but were in the field belonging to the family. Both the defence witnesses deposed that at about 2.30 P.M. Raj Rani came to the field and informed them that Surjit Singh was lying dead in the house. They also stated that she was having illicit relationship with Kewal Singh, elder brother of the deceased and appellant No.2; and, as that was not liked by the appellants, she was on inimical terms with them. They also stated that Kewal Kaur was with them in the field thereby indicating that she was not present in the house when the incidence took place. They further stated that PW-7 Jaswinder Kaur was at the relevant time at her in-law's place and she was sent for because of the death of Surjit Singh. Both these witnesses took no steps to inform either the village people or the police. They did not make any complaint to any authority that the two appellants were falsely involved by the police. Apart from the fact that the allegation of illicit relationship is totally denied by PW-4 Raj Rani, PW-5 Kewal Kaur and PW-7 Jaswinder Kaur, it does not appear to be true for the reason that if it was really so then the parents and other family members would have also reacted to the same. It is difficult to appreciate that of all the family members only the appellants objected and for that reason PW-4 Raj Rani would have gone to the extent of falsely involving them for the murder of her husband. Surely the two sisters PW-5 Kewal Kaur and PW-7 Jaswinder Kaur would not have supported her, if the allegation made against her was true and their brother had not caused the death of Surjit Singh. After carefully considering the evidence of the defence witnesses, we are of the opinion that they have deposed falsely in order to save the appellants. DW-1, the father having lost one son (Surjit Singh) obviously did not want to lose his other son (appellant No.2) by getting him convicted. So also DW-2 being the brother tried to save appellant No.2 by deposing like that.

So far as the three eye witnesses are concerned, we find that their evidence is quite consistent and acceptable. Their presence in the house was natural. PW-4 Raj Rani, immediately after the incidence, contacted Tarsem Singh,

went to the Police Station, and lodged the First Information Report at Dasuya Police Station within an hour. She had stated all the material facts in the First Information Report. The conduct of this witness and promptness with which the FIR was lodged make her evidence trust-worthy. In our opinion, the learned Addl. Judge has rightly relied upon her evidence. The evidence of PW-5 Kewal Kaur and PW-7 Jaswinder Kaur does not suffer from any serious infirmity and no good reason could be urged by the learned counsel for not relying upon their evidence. Their evidence establishes beyond any doubt that appellant No.2 Jaswinder Singh had given axe blows to the deceased and he died as a result thereof. In our opinion, appellant No.2 has been rightly convicted under Section 302 IPC for causing death of his brother Surjit Singh.

So far as appellant No.1 Jaswinder Kaur is concerned we find that there is no sufficient evidence to sustain her conviction under Section 302/34 IPC. What the evidence of the three eye witnesses establish is that immediately before the incident she had whispered something in the ears of her husband, appellant No.2, had given him a bundle of new clothes, and had told him as to what he was looking for. From this evidence it cannot be inferred that she had incited him to commit the murder of his brother. All the three eye witnesses have stated that she had given a bundle of new clothes to her husband before telling him as to what he was waiting for. This would indicate that in all probability she wanted him to leave the house as she and her husband did not like the importance given to the deceased in the matter of their house-hold management. Therefore, we are of the opinion that her conviction under section 302/34 is not at all proper and that she deserves to be acquitted.

In the result, the appeal is partly allowed. The conviction of appellant No.2 and the order of sentence passed against him are confirmed and to that extent the appeal is dismissed. The conviction of appellant No.1 and the order and sentence passed against her are set aside and to that extent the appeal is allowed. As she is on bail her bail bonds are ordered to be cancelled.