

PETITIONER:
JOGINDER SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 11/08/1995

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

CITATION:
1995 AIR 2394 JT 1995 (6) 81
1995 SCALE (4) 705

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVATI, J.

The appellant was tried for the offence of murder of Teja Singh before the Special Court, Patiala. The Special Court has convicted him under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay a fine of Rs.2000/-, in default, to suffer R.I. for two months more. Challenging his conviction and the order of sentence, the appellant has filed this appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984.

According to the prosecution, murder of Teja Singh was committed under the following circumstances. On 4.8.1984 Teja Singh of village Thaska had gone to the flour mill of Tek Chand at village Gulhari to collect wheat flour as his wheat was left there two or three days earlier for grinding. Jagdev Singh also of Thaska had reached that flour mill some time earlier for getting his wheat ground. While they were waiting there Hawa Singh of village Gulhari had also come there as he too wanted his grains to be ground. The flour mill was not working at that time as there was no supply of electricity. They were all waiting for Gurmel Singh who was working at the said flour mill to return, as he had gone to enquire when electric supply was likely to be resumed on that day. At about 2.00 P.M., the appellant Joginder Singh came there to collect his wheat flour. Teja Singh then demanded Rs.1000/- from the appellant as the appellant had agreed to pay that amount on the previous day, when a complaint was made by Teja Singh to the Sarpanch of the village that the appellant was not paying him his dues for thrashing wheat. The appellant became angry because of this demand and aimed a stick blow at the head of Teja Singh. Teja Singh successfully warded off the blow by raising his hand. The appellant then gave a blow on the head of Teja Singh as a result of which Teja Singh fell down and died soon thereafter.

To prove that the appellant murdered Teja Singh, the prosecution relied mainly upon the evidence of two eye witnesses PW-2 Jagdev Singh and PW-3 Hawa Singh. PW-6 Gurmel Singh the Sarpanch of the village and PW-7 Kundan Lal a member of the Panchayat, were examined to prove that on the day previous to the incident Teja Singh had complained to them about non-payment of his dues and the appellant had then agreed to pay the same on the following day. The learned Trial Judge believed the eye witnesses as their evidence was found to be consistent and reliable and the medical evidence also corroborated it. The learned Judge convicted the appellant under Section 302 IPC as the injury caused by the appellant was sufficient in the ordinary course of nature to cause death.

What is contended by the learned counsel for the appellant is that the version of the two eye witnesses that they had gone to the flour mill of Tek Chand and that Teja Singh had also come there does not appear to be probable, as on that day right from the morning there was no supply of electricity. He drew our attention to the evidence of PW-4 Babu Singh who has stated that there is only one line for supplying electricity to villages Thaska and Gulhari and that on 4.8.1984 electricity was not supplied to these villages from 3.45 a.m. to 8.40 p.m. The learned counsel submitted that the two eye witnesses and Teja Singh could not have been unaware of it and therefore it is improbable that they had really gone to the flour mill. We do not find any substance in this connection. Though non-supply of electricity at the relevant time is a fact it cannot be inferred that they all knew that supply of electricity was not likely to be resumed on that day till 8.40 p.m. No such notice was given in advance. From the evidence on record it is established that Gurmel Singh, the person who was working at the flour mill had opened the flour mill on that day and had at the relevant time left the flour mill for enquiring as to when the supply was to be resumed on that day. Thus, nobody was aware as to when the supply was to be resumed. It is, therefore, not unnatural or improbable that the two eye witnesses and Teja Singh had gone to the flour mill even though there was no supply of electricity when they left their respective homes. The incident wherein Teja Singh came to be killed undoubtedly took place in front of the flour mill. If PW-3 Hawa Singh had not gone to the flour mill and was not present at the time of the incident there was no other reason for him to remain near the dead body till the police reached there at about 6.00 p.m. Sub-Inspector Balwant Singh (PW-8) has deposed that when he had gone to the place of the incident he had found Hawa Singh sitting there near the dead body. This evidence has remained unchallenged. Even after scrutinising the evidence of the two eye witnesses with care, we do not find any serious infirmity therein. We cannot discard the evidence of Jagdev Singh (PW-2) because it was little inconsistent as regards the time when and the person by whom his wheat was left at the flour mill. So also, his evidence cannot be discarded on the ground that he was near relation of the deceased because there is nothing on record to show that he had any enmity with the appellant. Moreover, the evidence discloses that the appellant is also related to him though not closely. PW-3 Hawa Singh was resident of Gulhari and had absolutely no reason to involve the appellant falsely.

The learned counsel tried to make much out of the seizure of Bahi (account book) by the investigating officer from Prem Chand, son of Tek Chand, the owner of the flour mill. It was contended that the prosecution ought to have

examined Prem Chand in order to prove that in fact Teja Singh and the appellant had really left their wheat at the flour mill earlier for the purpose of grinding. When the Public Prosecutor dropped Prem Chand as a witness, no objection was taken on behalf of the defence. Therefore, no grievance can be made in that behalf now by the learned counsel for the appellant. No attempt was made by the defence at the trial to show that the said Bahi contained day-to-day account of all foodgrains received during the day for the purpose of grinding and from whom they were received. Therefore, no adverse inference can be drawn as contended by the learned counsel.

We, therefore, see no reason to interfere with the findings recorded by the Trial Court. In our opinion, the appellant has been rightly convicted under Section 302 IPC. The appeal therefore fails and is dismissed. The appellant, who is on bail, will now surrender to his bail bond to serve out the sentence.