

PETITIONER:
SHRI SAT PAL

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT 08/09/1995

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

CITATION:
1996 AIR 201 JT 1995 (6) 379
1995 SCALE (5) 235

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

Sat Pal, the appellant herein, and one Des Raj were placed on trial before the learned Judge, Special Court, Ferozepur for committing the murder of Iqbal Chand in furtherance of their common intention. The trial ended with an order of conviction under Section 302 I.P.C. and sentence of imprisonment for life recorded against Sat Pal and acquittal in favour of Des Raj. Hence this appeal at the instance of Sat Pal.

According to the prosecution case, Iqbal was a medical practitioner in his village Chak Burwala and, normally, used to come back home by 10 P.M. As, on September 20, 1984 he did not return home by then his mother Bishan Devi went in his search and found Sat Pal and Des Raj assaulting him with Kulhari and kirch respectively in the premises where he used to practice. She immediately raised alarms and attracted thereby her another son Gurdip, who lived nearby reached there. When both of them started shouting the appellants ran away with their respective weapons. Iqbal, however, died in the meantime.

As Wasawa Ram, father of the deceased, had gone to village Dilia Ram which was about 20 kms, from their village, Jaila Singh, uncle of Wasawa Ram, was asked by Bishan Devi to fetch him. After Wasawa Ram arrived in the following morning Bishan Devi, accompanied by him, went to the police station and lodged an information about the incident at 8.30 A.M. On that information a case was registered and investigation was taken by the S.I. Baljinder Singh. He proceeded to the spot, held inquest upon the dead body of Iqbal and after seizing the wearing apparels, sent it for post-mortem examination. He also seized the cot on which his dead body was found and some blood stained earth and made separate parcels in respect of them. He also prepared a rough sketch plan.

In course of the investigation the appellant was arrested on September 24, 1984 and the shirt he was wearing was seized by the Investigating Officer as he found some blood stains on it. He then interrogated the appellant and pursuant to the statement made by him recovered a blood stained kulhari. The other accused was also apprehended and a blood stained kirch was recovered pursuant to his statement. After examining the witnesses and completing other formalities of investigation the Investigating Officer submitted charge-sheet and in due course the case was committed to the Special Court for trial.

The motive that was ascribed by the prosecution for the murderous assault on Iqbal was that the appellant suspected liaison between his sister and the deceased.

The appellant pleaded not guilty to the charges levelled against him and contended that he had been falsely implicated.

To prove its case the prosecution examined five witnesses of whom Bishan Devi (P.W.3) and Gurdip (P.W.4), figured as eye-witnesses. Besides, the prosecution tendered the evidence of some police officials, which was of a formal character, through affidavits and also exhibited the reports of the chemical examiner and the serologist.

Though P.W.3 and 4, who narrated the prosecution case as detailed earlier, were subjected to searching cross-examination on behalf of the appellant, nothing could be elicited wherefrom it could be said that their version was improbable or unreliable. The F.I.R. that was lodged by P.W.3 on the following morning also corroborates her evidence.

The learned counsel appearing on behalf of the appellant, however, strenuously argued that the unusual delay of about 10 hours in lodging the F.I.R. and absence of any satisfactory explanation for such delay makes the entire prosecution case suspect. According to the learned counsel the murder was a blind one and only to falsely implicate the accused persons a story was concocted by the members of P.W.3's family and F.I.R. lodged on the following morning. The learned counsel submitted that if the uncle of the deceased could cover a distance of 20 kms, to inform the deceased's father he could have certainly gone to the police station, which was at a distance of 6 kms, only, that very night, to lodge the F.I.R. if really the incident took place in the manner alleged by the prosecution. We do not find any substance in this contention. Considered in the light of natural and probable human conduct it was only expected of P.Ws.3 and 4 to first report the incident to Wasawa Ram, father of the deceased and await his arrival before taking any other action. No exception can, therefore, be taken to such reaction of P.Ws.3 and 4 nor can it be said there was an unexplained delay in lodging the F.I.R. raising thereby a doubt about the bonafides of the prosecution case. On the contrary, it appears to us, that having regard to the fact that the incident took place in the night at about 10 P.M. the lodging of the F.I.R. in the following morning immediately after arrival of the father of the deceased was a prompt one.

The other contention which was raised on behalf of the appellant was that though independent witnesses were available none was examined and therefore an adverse presumption under Section 114 (g) of the Evidence Act should have been drawn by the trial Court against the prosecution. To buttress the above submission the learned counsel drew our attention to the cross-examination of Bishan Devi wherein she had stated that there were a number of houses in

an around the place where the incident took place. The above answer by itself does not support the above contention for there is no evidence on record to show that anyone of the nearby houses had witnessed the incident. While on this point we cannot lose sight of the time when the incident took place and the fact that a reign of terror was prevailing in the State of Punjab at the material time.

The next circumstance that corroborates the eye-witnesses is the evidence of Dr. Mittal (P.W.1) who held post-mortem examination and found the following injuries on the person of the deceased:

1. Incised wound 12 cms. x 3 cms. on the front lateral right side on the elbow with muscles underneath partially cut, verticle and oblique in direction.
2. Incised wound horizontal in direction 17 cms. x 12 cms. cutting through the neck except flap of the skin on the right side at the level of cervical vertebra (5th and 6th). All the structures including the spinal cord were cut. There were multiple cuts producing step ladder pattern at four sides.
3. Incised wound 12 cms. x 1 cm. muscle deep horizontal in direction 2 cms, below injury No.2.
4. Incised wound 5 cms. x 1 cm. with bone underneath fractured on the chin middle part.
5. Incised wound 12 cms. x 3 cms. horizontal in direction with bone underneath cut at places on the left side of the face at the level of the middle of the pinna. The lateral end was seen cutting the pinna.
6. Punctured wound 0.75 cm. x 0.5 cm. on the front of the chest 6 cms. below middle of left clavical with margins inverted and clean cut parallel to each other. The angles were sharp on one side but slightly lacerated on the other. The wound was going backward and injuring the pleura and lung tissues.
7. Punctured wound of similar description and size 7 cms. below the nipple injuring the left lung and the pleura.
8. Punctured wound of similar size and description 5 cms. lateral to injury No.7 piercing the wall of the chest injuring lung and diaphragm.
9. Punctured wound of similar size and description 5 cms. below injury No.8 piercing the abdominal wall peritoneum and injuring the spleen.
10. Punctured wound of similar description 0.5 cm. x 0.25 cm. on the right chest 2 cms. from midline at the level of the nipple bone deep.
11. Punctured wound of similar description and size as injury No.9 on the front of the abdomen midline 5 cms. below the sternum injuring the peritoneum and left lobe of the liver.
12. Punctured wound of similar size and description on the posterior side of left fore-arm 4 cms. below elbow, bone deep.
13. Punctured wound of similar size and description on the front side of left fore-arm 4 cms. below elbow, bone deep."

According to him the incised wounds could have been caused by the kulhari (Ex.M/0/1). which was shown to him. The statement made by the appellant (Ex.P/10) pursuant to which the above kulhari was recovered from under a heap of turi in his field also lends assurance to the evidence of P.Ws. 3 and 4. The report of the Serologist and Chemical Examiner that besides the kulhari the seized earth, shirt & pyjama of the deceased and the charpai contained human blood also to some extent support the prosecution case.

Now that we have found that the prosecution has conclusively proved that the appellant had assaulted the

deceased with kulhari on his person, the next question is what offence the appellant committed thereby. This question arises in the context of the fact that it was the prosecution case that both the appellant and Des Raj committed the murder in furtherance of their common intention; and since the latter's acquittal is not based on mistaken identity, the appellant will be liable for his acts only. It, however, appears from the opinion of the doctor that injury No.2 was caused by a kulhari and it was sufficient in the ordinary course of nature to cause instantaneous death. When the nature and location of the injury No.2 is read in the context of the above opinion of the doctor the conclusion is inevitable that the appellant is liable for the offence under Section 302 IPC simpliciter.

For the foregoing discussion we uphold the judgment of the trial Court and dismiss the appeal. The appellant, who is on bail, will now surrender to his bail bond to serve out the sentence.