

PETITIONER:
BALBIR SINGH

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT 16/08/1995

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

CITATION:
1995 SCC Supl. (3) 472 1995 SCALE (4) 764

ACT:

HEADNOTE:

JUDGMENT:
THE 16TH DAY OF AUGUST, 1995

Present:

Hon'ble Mr. Justice M.K. Mukherjee
Hon'ble Mr. Justice G.T. Nanavati
Mr. M.R. Sharma, Sr. Adv. Mr. R.C. Kohli, and Ms. Bani
Sharma, Advs. with him for the Appellant.
Ms. Rupinder Wasu, Adv. for Mr. R.S. Suri, Adv. for the
Respondent

J U D G M E N T

The following Judgment of the Court was delivered:
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 495 OF 1985

BALBIR SINGH
V.
THE STATE OF PUNJAB

J U D G M E N T

NANAVATI, J.

The appellant along with three other accused was tried for an offence punishable under Section 302 read with Section 34 I.P.C. in the Court of Additional Judge, Special Court, Amritsar. The learned Additional Judge acquitted the other three accused but convicted the appellant under Section 302 I.P.C.

The charge against the appellant and the three acquitted accused was that on 19.3.1984 at about 6.00 P.M. when Rasal Singh, Dalip Singh, Mukhtiar Singh and Amrik Singh were returning from their fields the appellant and three accused assaulted Amrik Singh. The appellant gave a kirpan blow to Amrik Singh on his head as a result of which Amrik Singh fell down and became unconscious. Two lathi blows were given by the other accused on his left leg. As a result of the injuries received by him Amrik Singh died on 21.3.1984.

Before the Special Court prosecution mainly relied on the evidence of three eye witnesses, namely, P.W.9 Rasal

Singh, P.W.10 Mukhtiar Singh and P.W.11 Dalip Singh. The learned Additional Judge did not rely upon the evidence of Mukhtiar Singh but relying upon the evidence of the other two eye witnesses and the medical evidence he held that it was proved beyond any doubt that the appellant gave a kirpan blow on the head of Amrik Singh and as a result of that injury Amrik Singh died. In view of the delay in lodging the F.I.R. the learned Additional Judge held that there was a possibility of implicating the other three accused, who are, the father, brother and friend of the appellant even though they had not taken any part in the incident. These three accused were, therefore, acquitted.

What is urged by the learned counsel for the appellant is that the learned Additional Judge having disbelieved the two eye witnesses as regards the other accused ought not to have convicted the appellant on the basis of their evidence without independent corroboration. As stated earlier the lower court gave benefit of doubt to those accused as there was some delay in lodging the F.I.R. The incident had taken place some time after 6.00 P.M. at village Virum but the F.I.R. was lodged at Khalra police station at 2.00 P.M. The evidence discloses that condition of Amrik Singh was serious and, therefore, he was taken to the Rural Hospital at Algon as the doctor in charge of that hospital was known to be very competent. The evidence also discloses that village Algon is at a distance of 8 to 9 miles from Village Virum and that Rasal Singh and Amrik Singh had reached the hospital at about 9.00 P.M. The doctor became available at about midnight and actual medical treatment of Amrik Singh started at about 3.00 A.M. Dr. Kuldip Singh Sodhi (P.W.7) was the only doctor available in that hospital as no other doctor was posted there at that time. Dr. Kuldip Singh prepared the medico legal report in the morning and sent it to Khalra police station. It was received by ASI Pal Singh (P.W.13) who after making an entry in Roznamcha, left for the hospital at Village Algon, where he reached at 1.35 P.M. He first tried to record statement of Amrik Singh but the doctor informed him that he was not in a fit condition to make a statement. He, therefore, recorded statement of Rasal Singh and sent it to the police station for registration of the offence. It, therefore, cannot be said that delay in registering the offence was for some ulterior motive. Moreover, apart from the injury on his head Amrik Singh had two abrasions on his leg and they were possible by stick blows according to the medical evidence.

Therefore, the evidence of the two eye witnesses, cannot be said to be unreliable merely because the trial court did not think it safe to convict the other three accused on the basis of their evidence and gave them benefit of doubt. We have carefully gone through the evidence of the two eye-witnesses and we do not find any serious infirmity in their evidence as would require independent corroboration.

It was next contended that in any case it was not proper to convict the appellant under Section 302 I.P.C. The contention deserves to be accepted. This was not a case of premeditation as the accused and the deceased met by chance and the appellant had given only one blow. The evidence regarding raising of a Lalkara by the other accused has not been believed by the trial court. On the basis of the evidence led in this case it is not possible to say with certainty under which circumstances the appellant gave a kirpan blow to Amrik Singh. No attempt was made by him to give another blow. The injury caused on the head of Amrik Singh does not appear to have been caused intentionally.

Therefore, in view of the facts and circumstances of this case we are of the opinion that the lower court committed an error in convicting the appellant under Section 302. He should have been convicted under Section 304 Part I. Therefore, we alter the conviction of the appellant from Section 302 I.P.C. to Section 304 Part I I.P.C. The sentence of R.I. for life is set aside and instead he is ordered to suffer R.I. for 10 years. This appeal is allowed to the aforesaid extent. As the appellant has been released on bail he is ordered to surrender to his bail bond, so as to serve out the sentence imposed upon him.

JUDIS