Keisam Kumar Singh And Anr. vs State Of Manipur on 26 July, 1985

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Bench: A. Varadarajan, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. By our Order dated July 16, 1985, we had dismissed the appeals. : We now proceed to give reasons for the same.

2. The prosecution case has been detailed in the judgments of the High Court and the trial court and it is not necessary for us to repeat the same all over again. The accused, Keisam Kumar Singh, Bijoy Singh and Sagolsem Ibotom-cha Singh were put on trial before the Sessions Judge for an offence Under Section 302/34, IPC for causing murder of the deceased, Raghumani Singh,

3. The entire case hinges on the evidence of the two eyewitnesses, PW 1 (Oken Singh) and PW 2 (Manihar Singh), who were actually friends of the deceased and belonged to the same village which was situated within the jurisdiction of Moirang police station.

4. According to the prosecution, on December 14, 1970, PWs 1 and 2 accompanied by the deceased, went to Hotel Deluxe and took their meals in room No. 2 at about 4.30 p.m. Thereafter, they visited Usha Talkies to see the film 'Romeo & Juliet' which started at 5.15 p.m and ended at 7.30 p.m.

5. The learned trial Judge seems to have made an absolutely artificial and computerised approach regarding the timings of the various places visited by PWs 1 and 2 and the deceased. It was further alleged that after the show had ended, PW 1 found his fountain pen missing and when the same could not be traced in the cinema shall they went to Hotel Deluxe. On reaching the Hotel, the deceased went inside room No. 2 and found it occupied by the three accused persons, on which Bijoy Singh took exception to the conduct of the deceased, Raghumani Singh, entering the room

without permission and disturbing them. This resulted in a short altercation and exchange of abuses. The deceased asked his friends to go to the residence of one Mirtunjoy Singh to get back his book which he had loaned to him. While they were proceeding towards Keisampat Bridge on Paon Road and had proceeded about 300 to 400 yards from the Hotel, they found the accused persons standing on the western side near the office of the Industries Department. Bijoy Singh ordered them to halt and the three accused rushed towards them and when the deceased and PWs 1 and 2 tried to get away, Bijoy Singh and Keisam Kumar obstructed the way of Raghumani. Thereafter, the accused, Ibotomcha stabbed the deceased with a dagger in his stomach. After the stabbing incident, the accused ran away from the place of occurrence.

6. It is the common case of the parties that two of the three accused were not earlier known to PWs 1 and 2, the two main eye-witnesses, who saw the assault on the deceased and recognised the assailants in the light which was coming from an electric pole. It is also not disputed that the accused were put at a T.I. parade shortly after their arrest and PWs 1 and 2 identified them both in the T.I. parade and also before the trial court. The defence was one of complete denial of the occurrence.

7. We have gone through the judgments of the High Court and the Sessions Judge and we are convinced that the learned Sessions Judge had acquitted the accused on the basis of trivial discrepancies which do not affect the main case of the prosecution. To begin with, one of the main reasons given by the Sessions Judge is that as the accused were not known to the witnesses they could not have been identified by them, forgetting that before the incident there were several opportunities for the witnesses to have seen the accused though for a very shortwhile, viz., at the Hotel and at the place of occurrence. The occurrence had taken place at about 7.30 p.m. PW 1 had lodged the FIR promptly at about 9.20 p.m. There was no time for concoction. Only Bijoy Singh is named in the FIR and it is stated that the other two could be identified. It is significant to note that no major part is attributed to Bijoy Singh by PWs 1 and 2. It is the prosecution case that only accused (Ibotomcha) stabbed the deceased. Secondly, there was electric light where the deceased was stabbed which also was sufficient to enable the witnesses (PWs 1 and 2) to identify the assailants.

8. Another insipid reason given by the Sessions Judge was that the story of the deceased and PWs 1 & 2 having gone to the Hotel does not appear to be true for two reasons-(1) that the witnesses had taken their meals at Hotel Deluxe at 4.00 p.m. which was not a time for anybody to take meals, and (2) that as the Cinema Hall Manager had said that the show had finished at 7.30 p.m., the witnesses could have reached Hotel Deluxe only after 7.30 p.m.

9. All these arguments are based purely on speculation and surmises. There is no evidence to show that either the Cinema Hall Manager or the witnesses (PWs 1 and 2) had any watch with them nor was there anything to show that the room in the Hotel where the said altercation took place had any wall-clock. It was, therefore, not open to the learned Sessions Judge to have presumed all these things in order to acquit the accused.

10. The reasoning of the Sessions Judge that nobody would take meals at 4.00 p.m. seems to be unacceptable. Here also, the Sessions Judge gravely erred in proceeding on the footing that the witnesses must have taken food at 12 Noon or 1.00 p.m. and, therefore, they could not have again taken food at 4.00 p.m. There is no clear evidence to prove these facts. Assuming that the conclusion of the learned Sessions Judge is true, it cannot be overlooked that the witnesses may have felt hungry or desired to take some snacks in the Hotel before proceeding to the Cinema Hall where they were to slay for two hours and could not have come out before the show was over. This reasoning, therefore, also is based on pure surmises.

11. The learned Sessions Judge also found that there could not have been any light at the place of occurrence but the evidence, however, runs counter to this finding. There is clear evidence to show that there were as many as three electric poles near about the place of occurrence and even if instead of three there was only one pole, that would be sufficient for any person to witness the occurrence and identify the assailants, not to speak of the witnesses (PW 1 and 2)who had already seen the accused in the Hotel before the occurrence.

12. There is no evidence of any previous enmity between the accused and deceased and there is no reason why PWs 1 and 2 should have falsely implicated the accused particularly when they had identified them (accused) at the T.I. parade as also in the court.

13. Lastly, the learned Sessions Judge relied on the local inspection made by him. Here, the High Court rightly pointed out that the learned Sessions Judge had committed a serious error of law. Normally, a court is not entitled to make a local inspection and even if such an inspection is made, it can never take the place of evidence or proof but is leally meant for appreciating the position at the spot. The Sessions Judge, seems to have converted himself into a witness in order to draw full support to the defence case by what he may have seen.

14. This Court in Pritam Singh and Anr. v. State of Punjab AIR 1956 SC 415 observed thus :

> A Magistrate is certainly not entitled to allow his view or observation to take the place of evidence because such view or observation of his cannot be tested by cross-examination and the accused would certainly not be in a position to furnish any explanation in regard to the same.

15. We are satisfied that in the instant case the learned Sessions Judge has exceeded his jurisdiction in making a local inspection.

16. These are the main reasons given by the learned Sessions Judge for having acquitted the accused and rejecting the testimony of PWs 1 and 2 who were independent witnesses.

17. For the reasons given above, we are satisfied that the judgment of the Sessions Judge is perverse and based mainly on surmises and conjectures without any attempt to appreciate the evidence in a proper and scientific manner. We are also satisfied that this is not a case where two views, on the evidence, could be reasonably possible. We, therefore, find no merit in these appeals. We uphold the

convictions and sentences imposed by the High Court and dismiss the appeals.