

State Of Haryana vs Pradeep Kumar & Ors. on 10 December, 1998

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Bench: G.T. Nanavati, V.N. Khare

ORDER

Nanavati, J.

1. These two appeals arise out of a common judgment and order passed by the High Court of Punjab and Haryana in Criminal Appeal Nos. 73 DB, 91-DB and 104-DB of 1990. The State has filed these appeals as the High Court allowed the appeals filed by Pradeep Kumar Choudhary, Ram Nath and Siriyans Kumar Jain, set aside their conviction and acquitted them of all the charges. Petition for special leave was filed not only against these three respondents but also against Gurvinder Singh and Krishan Kumar Jakhar as their conviction under Section 120B has been set aside while maintaining the conviction under other Sections including 302 read with 149 IPC. This Court granted leave to file appeal against Pradeep Kumar, Ram Nath and Siriyans Kumar Jain. So these appeals are now confined to these respondents only.

2. The case of the prosecution was that on 13.10.1997 election for the post of President of the Municipal Committee of Hansi was to take place. Krishan Kumar Khandelwal who belonged to Congress (I) was one of the main contestants and majority of the municipal committee members were supporting him. Respondent Pradeep Kumar who was a sitting MLA belonged to the opposite party. He did not want Krishan Kumar Khandelwal the deceased, to be the President. To avoid the municipal commissioners supporting him to be influenced or pressurised by the other group, the deceased had taken Ganga Dhar, Prem Kumar and some other Municipal Commissioners with him

to Delhi, two days before the date of election. He along with those persons returned to Hansi at night on 12.10.87. They all went to the factory of the deceased. After taking dinner at about 11 p.m. the deceased, his brother Satpal, Ganga Dhar, Prem Kumar, Ramesh Narula and Radhey Sham slept in the 'Gaddiwala' room of the office building situated in the factory. Ajay Sharma, Rajinder Thakur and some other persons slept in the adjoining room. Sometime between 3.30 and 3.45 a.m. Krishan Kumar Jakhar and Siriyans Kumar Jain armed with guns. Gurvinder Singh armed with a hockey stick and Ram Nath Bhumla came to the factory, and entered the Gaddiwala room where the deceased had slept along with others. Ram Nath took away the gun of Satpal which was lying near his pillow and raised a 'Lalkara' that Krishan Kumar Khandelwal be made 'President' implying that he should be killed. Krishan Kumar Jakhar then placed the barrel of his gun on the neck of the deceased and fired a shot. It caused an injury on his neck and he immediately died because of that injury. Ganga Dhar when he tried to go near the deceased was given a hokey blow by Gurvinder Singh on his left thigh. All the assailants then ran away from that place. It was also the prosecution case that Pradeep Kumar and about 30 to 40 persons belonging to his group had also come along with those four assailants and were present near the gate at that time. They had come in different vehicles and some of them were armed with weapons. The dead body of Krishan Kumar was then taken in the Maruti van in which they had come from Delhi to the Civil Hospital at Hansi. Thereafter, Sanjay Kumar and Bajrang Dass went in that van to the house of the deceased to inform his father about the incident. While returning when they were near Barsi Gate some persons belonging to Pradeep Kumar Choudhary stopped the van. Sanjay Kumar and Bajrang Dass got down and ran away from that place. The driver Ratan Singh was beaten and then taken to the bungalow of Pradeep Kumar Choudhary. There he was again given some slaps and then confined till night when he was rescued by the Police. With these allegations, 10 accused including the five named above were tried for the offences punishable under Sections 120B, 148, 302, 452, 392 and 323 all read with 149 IPC and Section 27 of the Arms Act in the Court of Sessions Judge, Hissar.

3. In order to prove its case the prosecution had examined three eye witnesses - Satpal PW-10, Sanjay Sharma PW-13 and Radhey Sham PW-20 and also the driver Rattan Singh PW-22. Other supporting evidence was also led. The trial court accepted the evidence of the three eye-witnesses and driver Rattan Singh. It also relied upon the discovery of gun belonging to Satpal by Ram Nath. It held that Pradeep Kumar was the main conspirator and the offences were committed by others in pursuance of that conspiracy. It also held that Krishna Kumar Jakhar had killed the deceased and Gurvinder Singh had injured Ganga Dhar by a hockey stick blow. On the basis of these findings all those five were convicted accordingly.

4. They challenged their conviction before the High Court of Punjab and Haryana. The High Court allowed the appeal of Pradeep Kumar Choudhary and acquitted him because (1) his name was not disclosed as an accused till about 6.30 P.M. on that day even though the FIR was lodged at about 5.15 A.M., (2) none of the four employees of the deceased who were near the main gate was examined to prove presence of Pradeep Kumar near the gate at the time of the incident or soon thereafter, (3) the evidence of Rattan Singh the driver suffered from serious omissions and was improbable. (4) the evidence regarding seizure of the Maruti Van from the Kothi of Pradeep Kumar was contradictory and (5) there was no reliable evidence to show that Pradeep Kumar was personally interested in the election to be held on 13.10.87.

5. As regards the evidence of three eye witnesses with respect to the incident which took place inside the factory, the High Court held that:

"Notwithstanding however the flaws and infirmities in the investigation, as pointed out the testimony of the three eye witnesses, Sat Pal, Sanjay Sharma and Radhey Sham deserves due weight. Not only is it, as mentioned earlier, that neither of them had any reason to falsely depose against the appellants, but it will also be seen that all three of them have come-forth with a consistent account of the occurrence with no contradictions or discrepancies to create any doubt therein. The close connection of these three persons with Krishan Kumar deceased and the occasion provided by his candidature at the election that next morning was ample reason and justification for them to be with him that night, particularly, in the context of the circumstances that he had returned that night from Delhi with the Municipal Commissioner who were on his side and with many of them spending the night at the factory. For supporters of a candidate to be with him the night before the election is clearly no unusual occurrence."

The High Court also held that:

"Another note-worthy feature of the prosecution case is provided by the testimony of PW 17 S.S. Chandna, Incharge of the Crime Van who deposed to the recoveries made from the scene of the incident. These recoveries clearly fit in and are in accord with the version as deposed to by the three eye witnesses."

Taking note of the fact that all the four accused who had gone inside the factory were named in the first information report, it was held that:

"As regards the identity of the assailants, it will be recalled, that it was the consistent testimony of the three eye witnesses that the lights in the factory and also in the two rooms where they were sleeping, were on at the time of the incident and it is natural also that this should be so when there were so many persons in the factory that night to assemble together for the impending election the next morning. No doubt can thus be entertained with to these witnesses naming the four appellants as the persons present there in the incident and playing the role attributed to them."

Ultimately the High Court recorded the following finding:

"Having regard, therefore, to the evidence on record and the circumstances of the case, there can be no manner of doubt that the incident took place as described by the three eye witnesses."

It accordingly, confirmed the conviction of Krishan Kumar Jakhar and Gurwinder Singh. But as the High Court did not accept the evidence that there was the conspiracy between Pradeep Kumar and the other accused it acquitted Krishan Kumar and Gurwinder Singh of the charge under Section

120B IPC and confirmed their conviction for the other offences. Strangely having believed the eye witnesses and also having held that the incident did take place as deposed by the witnesses, the High Court acquitted Ram Nath Bhumla and Siriyans Kumar Jain. The reasons given by the High Court for acquitting them are quoted below:

"The question to consider now is with regard to the criminal liability to be fastened upon the appellants in the context of the part played by them in the incident. In so far as Krishan Kumar Jakhar is concerned, there can be no escape from holding him guilty for the murder of Krishan Kumar deceased as charged, in that, it was he who fired the fatal shot at the deceased. Constructively liable for this murder would also be the appellant Gurvinder Singh in view of the specific role ascribed to him namely of giving a hockey blow to Ganga Dhar when he sought to intervene to rescue the deceased.

The case of the two other appellants, namely: Siriyans Kumar Jain and Ram Nath Bhumla, however, stands on a different footing. The only role attributed to them is that of having raised a Lalkara. There is no evidence on record to show that they had come there with the pre-determined intention of causing death of Krishan Kumar deceased or that they shared any such common intention. Siriyans Kumar Jain is merely stated to have been with the other appellants at that time.

As regards Ram Nath Bhumla, it was no doubt said that he had taken away the gun of PW 10 Sat Pal which had been later on recovered at this instance on October 20, 1987, but the recovery of this gun is clearly put in doubt by the entry in the Malkhana Register showing its deposit there two days earlier, that is, on October 18, 1987. At any rate, there is no suggestion that this gun was in any manner used by him during the incident. The case of Siriyans Kumar Jain and Ram Nath Bhumla is thus distinguishable from that of Krishan Kumar Jakhar and Gurvinder Singh. In the circumstances they are both clearly entitled to the benefit of doubt."

6. The High Court thus allowed the appeals of Pradeep Kumar Choudhary, Ram Nath Bhumla and Siriyans Kumar Jain and set aside their conviction and sentences imposed on them. The High Court partly allowed the appeals of Krishan Kumar Jakhar and Gurvinder Singh in that their conviction under Section 120B was set aside but their conviction under other sections and sentences imposed upon them committing those offences was upheld.

7. Mr. Gopal Subramaniam, learned senior counsel for the appellant-State submitted that the High Court having believed the presence of the three eye-witnesses regarding the place where and the manner in which the incident took place, committed a grave error in acquitting Ram Nath and Siriyans Kumar Jain. He submitted that the High Court failed to appreciate that the words uttered by the accused at the time of committing the offence clearly disclosed that the murder of the deceased was committed in pursuance of a conspiracy to eliminate him as a candidate for the post of 'President' of Hansi Municipal Committee. He further submitted that in view of the reliable evidence on record indicating that higher Police officials were trying to protect accused Pradeep Kumar and

his men as they all belonged to the ruling Congress Party ought not to have discarded the evidence regarding recovery of gun by Ram Nath and seizure of the Maruti van from the 'Kothi' of Pradeep Kumar merely because the entries found in the Malkhana register were inconsistent with what Police Inspector Nathu Ram had deposed. On the other hand, learned counsel for the respondent submitted that if in view of the inconsistent evidence, the High Court has thought it fit to acquit the respondents, it would not be proper for this Court to reverse their acquittal merely because on re-appreciation of evidence it is possible to take a different view.

8. So far as respondent Pradeep Kumar is concerned, even the trial court had not believed his presence near the gate of the factory at the time of commission of the offence or soon thereafter. The only other evidence against him is that of driver Rattan Singh and the Police Officers who had found him and his Maruti van inside the 'kothi' of Pradeep Kumar. It is true that Rattan Singh being a man from Delhi was not in any way connected with the deceased or his men and was thus an independent witness. His evidence further does not suffer from any serious infirmity. But at the same time it remains unexplained why he was detained in the kothi of respondent Pradeep Kumar till night. There was absolutely no reason for Pradeep Kumar to do so. He had neither seen the incident nor recognised the assailants. Even though his evidence raises a strong suspicion regarding the involvement of Pradeep Kumar in the incident which led to the murder of the deceased and though Pradeep Kumar does not appear to be innocent, we do not think it proper to reverse his acquittal when undisputably the prosecution evidence as regards presence of Ratan Singh and his Maruti van in the kothi of Pradeep Kumar is inconsistent. We are therefore of the view that the appeal against Pradeep Kumar will have to be dismissed.

9. We have extensively, quoted above the findings recorded by the High Court as regards the worth of the evidence of the three eye-witnesses. It becomes apparent therefrom that no convincing reasons have been given by the High Court for setting aside the conviction of Ram Nath Bhumla and Siriyans Kumar Jain. The High Court failed to appreciate that their presence along with Krishan Kumar Jakhar and Gurvinder Singh in the factory premises of the deceased at 3.30 a.m. in the morning could not have been for any purpose other than the one which was entertained by Krishan Kumar and Gurvinder Singh, as disclosed by what happened immediately after they entered the room in which the deceased and others were sleeping. Ram Nath and Siriyans Kumar Jain denied their presence at the scene of the offence when the murder took place. Even if the evidence regarding discovery of the gun belonging to Satpal by Ram Nath is not believed, the evidence that the gun of Satpal which was placed by the side of his pillow was removed from that place by Ram Nath is sufficient to show his participation and his intention in going to the factory of the deceased. The words uttered just before killing the deceased namely, that "He should be made the President" and the manner in which he was killed immediately thereafter, leave no manner of doubt that all those four accused had gone there with a view to eliminate him. This aspect having not been considered by the High Court, the finding recorded by it with respect to these two respondents stands vitiated and this non consideration has led to failure of justice. It is not a question of mere re-appreciation of evidence but determining the guilt of the accused on the basis of the findings recorded by the High Court. The High Court has not given due weight to all the aspects and the reasons given by the Trial Court in support of its findings. All the four of them had gone together to the place of the occurrence and had gone away also together. They had come armed with weapons

and with a definite purpose. Thus, there was no scope for entertaining any doubt regarding their involvement in commission of the crime and also as regards the said crime that the said crime having been committed by them in prosecution of common object of the unlawful assault consisting of them and other persons who had come along with them upto the factory. Though accused Nos. 6 to 10 who were alleged to have accompanied upto the factory gate have been acquitted because they could not be identified, it can safely be held that the four convicted accused were accompanied by other persons also.

10. We, therefore, dismiss the State appeal against respondent Pradeep Kumar but allow the same against respondent Nos. 2 and 3 namely, Ram Nath Bhumla and Siriyans Kumar Jain. Their acquittal is set aside and the order of conviction and sentence passed against them by the trial court, except for the offence under Section 120B is restored. Respondent Nos. 2 and 3 are directed to surrender to custody in order to serve out the remaining part of their sentence.