Mohinder Singh vs State Of Punjab on 31 July, 1963

Equivalent citations: AIR1965SC79, 1965CRILJ112, AIR 1965 SUPREME COURT 79

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Bench: A.K. Sarkar, M. Hidayatullah, J.C. Shah

JUDGMENT

M. Hidayatullah, J.

1. This is an appeal by special leave against the judgment of the High Court of Punjab in Criminal Appeal No. 19 of 1961 and Murder Reference No. 4 of 1961 decided on February 17, 1961. The appellant Mohinder Singh has been convicted under Section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life. Originally, three others were tried with him but they were acquitted by the Court of Session. Mohinder Singh was sentenced by the Court of Session to death, but on appeal the High Court altered the sentence to one of rigorous imprisonment for life.

2. Mohinder Singh, who is a jat, had contracted illicit intimacy with one Mst. Puro a Mazhbi woman who was abandoned by her husband. He used to visit her at her house and this was resented by the other Mazhbis including some of her relations. These persons did not object to Mohinder Singh as such but only insisted that he should marry Mst. Puro and make the connection legal. This Mohinder Singh was unwilling to do, because he was of a higher status.

3. The case of the prosecution is that on April 12, 1960, in the evening, Mohinder Singh, riding a mare, was on his way to the locality of the Mazhbis and was accompanied by the other three original accused who have since been acquitted. On the precincts of the locality some Mazhbis (Dula Singh, Hazara Singh, Resham Singh, Inder Singh and Khushia) accosted him. Mohinder Singh challenged them to stop him and drawing a country-made pistol fired at Dula Singh who dropped down dead. He fired a second shot at the others, this time wounding Khushia, Inder Singh and Resham Singh. Mohinder Singh then fired a third shot and wounded two others Sulakhan Singh and Narain Singh who were not with the first party of the Mazhbis but were immediately behind them. Thereafter, Mohinder Singh and his companions ran away.

4. The incident took place at about 7 P. M. and a report was made to the police the next morning at 6 A.M. Mohinder Singh was arrested on, April 17, 1960 but his three companions were arrested a day earlier. On April 26, 1960, Mohinder Singh made a statement to the police as follows:

> "I having put my country made 12 bore pistol and two cartridges in a bag, have concealed in the Sitas, on the right side of Bakki road, at Bridge Raj Ba Thandewala and I can get the same recovered on pointing out."

This statement was made in the presence of Sham Singh and Kehar Singh and they duly proved it in court. As a result of this statement, the police recovered 1 feet below the surface of the ground a cotton bag which contained a .12 bore pistol and 2 twelve-bore cartridges one of which had misfired and bore the mark of the firing pin. At the site of the offence, the police had found three spent .12 bore cartridges. The pistol and the five cartridges, live and spent, were examined by Dr. B.R. Sharma a Ballistic expert. He deposed that the spent cartridges as also the cartridge which had misfired were from the same pistol and that pistol was the one found on the statement of Mohinder Singh.

5. In the Committal Court, the prosecution examined all the eye-witnesses whom we have already named and Sham Singh and Kehar Singh who were witnesses of the search. The prosecution also produced documents mentioned in Section 173 of the Criminal Procedure Code relative to the crime. Curiously enough, some of the eye-witnesses in the Committal Court in examination-in-chief deposed to the main occurrence as described by us above, but under cross-examination added that Mohinder Singh was not one of the assailants. Previously in the same statement, they had named him and also fully described the occurrence. The other eye-witnesses did not name him at all, stating that after receiving their injuries, they fell down unconscious and did not see anything. The latter were cross-examined by the prosecution on the basis of the statements made to the police; they denied that they had been won over by the accused. The learned Magistrate relying upon the evidence such as it was held that there was a prima facie case against the accused which ought to be tried by that Court of Session and committed them.

6. In the Court of Session, the eye-witnesses changed their version and deposed against the accused supporting the entire prosecution case. They were cross-examined by the accused with reference to their earlier statements in the committal court and they stated that they had deposed as they had done because of fear of the accused. The learned Sessions Judge of Ferozepore accepted the prosecution case against Mohinder Singh and convicting him under Section 302 of the Indian Penal Code sentenced him to death. He did not accept the prosecution case against the other accused and ordered their acquittal. The High Court agreed with the Sessions Judge but altered the sentences as already stated. The High Court having refused certificate, the present appeal was filed by special leave.

7. Mr. Gopal Singh has raised seven points and claims that the conviction of Mohinder Singh cannot be sustained. He first attacks the order of commitment which he says was not based on any evidence and therefore deserved to be quashed. Apart from the fact that under Section 215 of the Code of Criminal Procedure the order of commitment once made becomes final and can only be quashed by the High Court on a point of law, we are satisfied) on looking into the record of the case that there was evidence on which the order of commitment could be passed. Under Chapter XVIII of the Code, the Magistrate is entitled) not only to look into the evidence before him) but also into documents which are referred to in Section 173 of the Code. The statements before the police clearly showed a prima facie case as did also the examination-in-chief of some of the witnesses before the committal

Court. All that had happened was, that the witnesses, for reasons which they gave later, deposed either partly or wholly in favour of the accused. The, Magistrate was entitled to rely upon the version in the examination-in-chief and the other documents and reach his conclusion that there was a prima facie case. Though we have referred to the evidence in view of the extraordinary circumstances existing in this case, we are satisfied that the stage at which the order of commitment can be quashed has passed in this case and no question of law could be raised. We accordingly reject the first contention.

8. The remaining points of Mr. Gopal Singh except one deal with matters of evidence. Mr. Gopal Singh attempted to argue that the first information report was belated, that the time mentioned 6 A.M. was incorrect because Hazara Singh (P. W. 1) stated that he had made the report at 10 A. M., that the evidence was discrepant and contradicted itself from stage to stage and that as it came from, highly interested persons if could not be believed. All these are matters of appreciation of evidence and it is not the practice of this court in a, criminal appeal On special leave to examine at large the evidence in the case unless there are circumstances which make, it feel that there has been a miscarriage of justice. It must be remembered that this court is not a court of appeal in criminal matters except on a certificate by the High Court or in the exceptional case described in Article 134 of the Constitution. In the present case, we have not found any circumstance which would induce us to look into the evidence which appears to us to be cogent though at some stage the witnesses appear to have thrown a sop to the accused, whether out of greed or out of fright, it is difficult to say. The witnesses have sufficiently explained the reason for their conduct and it appeals to us in view of the fact that they, belong to a lower status and the accused or people of his party had over-awed them. Their recollection of how the accused had pulled out the pistol and shot at them would make them act as they did till the order of commitment was made when they regained their courage to state the unvarnished truth without fear.

9. The evidence of the eye-witnesses is further fortified by the discovery on the statement of the accused of the pistol and the two cartridges in the cloth bag described by him and the identity of the weapon in relation to the empty cartridges found at the scene of the occurrence and which were responsible for the death of Dula Singh and the injuries to others. The pistol was found buried underground and none but the person who placed it there could have known about the hiding place. As Mr. Gopal Singh himself contends, it was near a path which was little used and it is unlikely that any person but the one who placed the bag would have known of its existence. Mr. Gopal Singh contends that the hiding place was within one mile of the police station house and 13 miles from Mohinder Singh's village and three miles from the scene of occurrence and that it was unlikely that Mohinder Singh would have chosen this spot rather than one nearer home. These are matters of appreciation of evidence and the High Court and the Court of Session have accepted the evidence about Mohinder Singh's statement and the discovery and we do not see any reason to differ from them even if we thought it necessary to re-examine the evidence.

10. Mr. Gopal Singh then contends that the discovery of the pistol as well as the statements leading to it cannot be relied upon in view of the acquittal of Mohinder Singh in a companion case started under Section 19(1)(f) of the Arms Act. In support of his contention, he relies upon the observations of Lord MacDermott in Sambasivam v. Public Prosecutor, Federation of Malaya, 1950 AC 458 at p.

419 applied by this Court in Pritam Singh v. State of Punjab, . It is necessary therefore to say something about these two cases.

11. The case of the Judicial Committee was on appeal from the Supreme Court of the Federation of Malaya. The accused an that case was prosecuted under the Emergency (Criminal Trials) Regulations, 1948 of the Federated Malaya States. There were two charges against him, (a) carrying a firearm and (b) possessing ammunition. He was acquitted on the second charge and on appeal a re-trial was ordered on the first charge. At the second trial a statement made by him to the police inspector admitting possession of both the firearm and the ammunition was sought to be used. In other words, the alleged statement was an admission by him of the guilt in respect of both the offences he was originally charged with. The Assessors were not informed at the second trial of the acquittal on the second charge in the first trial though there were warnings to them, in view of the law, about the use of admission. The Privy Council held that the acquittal on the second charge in the earlier trial involved a verdict of which the correctness ought to have been accepted in the second trial and that the statement was not admissible because it was impossible to sever the statement about the ammunition from that about the firearm. The conviction and sentence were set aside. Lord MacDermott stated the effect of acquittal as follows:

> "The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying, that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim "Res judicata pro veritate accpitur" is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial. And the appellant was no less entitled to rely on his acquittal in so far as it might be relevant in his defence. That it was not conclusive of his innocence on the firearm charge is plain, but it undoubtedly reduced in some degree the weight of the case against him, for at the first trial the facts proved in support of one charge were clearly relevant to the other having regard to the circumstances in which the ammunition and revolver were found and the fact that they fitted each other."

12. These observations, as already stated, were considered and applied by this Court in Pritam Singh's case, and it is necessary to refer to a few facts of that case. There, two persons (Chanan Singh Orara and Sardul Singh) were shot dead by four persons -- Pritam Singh Fatehpuri, Gurdial Singh, Pritam Singh Lohara and Kartar Singh. Of these, Pritam Singh Lohara made a statement to the police leading to the recovery of a revolver. He was convicted under Section 302 of the Indian Penal Code in the Sessions Trial out of which the appeal to this Court arose, but was acquitted in another trial under Section 19(1)(f) of the Arms Act. The High Court in the appeal from the conviction for murder held that in view of the acquittal, the evidence of the discovery and the statements leading to it could not be looked into and this Court agreed with that conclusion relying upon the dictum of Lord Mae-Dermott.

13. Mr. Gopal Singh contends that on a parity of reasoning, the observations of the Privy Council apply also to the present case and the evidence with regard, to the finding, of the pistol and the statement leading to it should be excluded from consideration. He contends that the appeal before us is a 'proceeding' subsequent to the acquittal which took place on May 3, 1962 and the verdict of acquittal must be respected in view of its wide effect as stated by Lord MacDermott. In our opinion, the two cited cases do not help the appellant in the present case. That before the Privy Council, involved a re-trial on one of the charges without disturbing the acquittal on the other charge. The evidence on which reliance was placed in support of the charge at the second trial was so intertwined with the charge on which the acquittal had taken place that the verdict of acquittal affected its admissibility. If that verdict was treated as binding and conclusive in the subsequent trial, the admission contained in the statement of the accused could not be used, and if not so used left no alternative but the setting aside of the conviction. In the case of this court, the acquittal on the charge under the Arms Act could also be given effect to, because that acquittal was made before the conviction of the accused on the charge of murder. We do not consider that these two cases control the present, because the acquittal in the firearms case was recorded long after the conclusion of the trial in the Court of Session and the dismissal of the appeal by the High Court. That acquittal was recorded because the two search witnesses -- Sham Singh and Kehar Singh resiled from their earlier statements and the learned Magistrate did not think it necessary to wait for the evidence of the police officer who investigated the murder. From what has happened in this case, it is easy to see that these witnesses who had stood firm before were won over in the interval and deposed contrary to their earlier versions and documents signed by them. The acquittal itself on a parity of reasoning could not be granted by the Magistrate in view of the verdict of conviction by the Sessions Court in the earlier trial without recording evidence fully.

14. In our opinion, we should not take the later acquittal into account. We are hearing an appeal on special leave which merely involves the examination of the judgment of the High Court with a view to finding out whether it was legally correct or not. The verdict of acquittal in the circumstances we have described makes this case stand far apart from the two cases relied upon and they cannot serve as precedents. We accordingly reject this contention.

15. No other point worthy of mention was argued in this appeal and we are satisfied that it is without substance. We accordingly dismiss it.