

Supreme Court of India

State Of Haryana vs Inderaj And Another on 30 March, 1993

Equivalent citations: AIR 1994 SC 115, 1993 CriLJ 3909

Bench: K J Reddy, G Ray

JUDGMENT

1. These two appeals are filed by the State against acquittal. There are two respondents, Rameshwar (A-1) and Inderaj (A-2). They were tried for offence punishable Under Section 302 read with Section 34, I.P.C. by the trial Court. The trial Court convicted and sentenced each of them to undergo imprisonment for life. On appeal the High Court acquitted them. Hence the present appeals.

2. The two accused, deceased (Sukmander Singh) and the principal witnesses PWs 3 and 4 belong to village Lakhuwana within the limits of Dabwali Police Station. There was an enmity between the accused and his associates on one hand and the deceased and his relations on the other. It may not be necessary for the purpose of this case to give the details of the earlier incidents. Suffice it to say that there was a bitter enmity. On 26-1-1982 at about 12 noon the deceased was going to the house of Pandit Gurbachan, another resident of the village, for taking the jack for his tractor. When the deceased was passing through the Gali in front of the house of one Lal Chand Mistri both the accused came from the opposite direction. Rameshwar was armed with a kulhari and Inderaj was not armed. They stopped the deceased saying that they would teach him a lesson and his party faction. Saying so, Inderaj caught hold of the deceased and Rameshwar inflicted two blows on the back side of the neck which started bleeding. Naib Singh, PW 3 who was following the deceased raised a hue and cry. Just then Gurmail Singh, PW 4 also reached the place. When the deceased fell down Rameshwar inflicted some more injuries and thereafter left the scene of occurrence. The deceased was found dead. PW 3 kept somebody to keep watch on the dead body and went to the police station and is alleged to have given the FIR at 1.45 p.m. which was recorded by the Assistant Sub-Inspector Man Chand, PW 8. He registered the crime and reached the scene of occurrence, held the inquest and also examined PWs 3 and 4 and other witnesses. The dead body was sent for post-mortem examination. The doctor, PW 1 who conducted the post-mortem, found three incised wounds on the back and on the left pinna. He also found lacerated wound on the left occipital region. On internal examination he found spinal cord was cut and he opined that death was due to shock and haemorrhage as a result of these injuries which were sufficient in the ordinary course of nature to cause death. The accused were arrested and it is alleged that at the instance of Rameshwar, A-I Kulhari was recovered. After completion of the investigation, the charge-sheet was laid.

3. The accused pleaded not guilty and stated that they were falsely implicated because of the faction. They examined the local Sarpanch, DW 1 (Ram Rikh). He deposed that on 26-1-82 at about 10.30 a.m. he came to the place of the occurrence since his house was very close and found the dead body lying at a distance of 5/7 paces from his house. Then he identified and sent a word through the Chowkidar to Naib Singh, PW 3 who is the uncle of the deceased. The trial Court accepted the evidence of PWs 3 and 4, the two eye-witnesses, holding that they were the natural witnesses. Their presence cannot be doubted and their evidence is corroborated by the medical as well as circumstantial evidence. The trial Court rejected the evidence of DW 1.

4. In the appeal the High Court held that the version given by the two witnesses namely that when Inderaj A-2 caught hold of the deceased and Rameshwar A-1 dealt blows with kulhari appears to be highly doubtful because the distance between the necks of the deceased and Inderaj would be so short that in such a situation it would have been impossible for Rameshwar to inflict blows in that manner and there was every danger of Inderaj also receiving the fatal injury in the process. The other reason given by the High Court is that the evidence of DW 1 shows that the occurrence took place at 10.30 a.m. and the two witnesses were not present at the scene of the occurrence and a word was sent through the Chowkidar to Naib Singh and then only he came to the scene. The High Court also held that certain admissions made by PW4 (Gurmail Singh) in the cross-examination indicate that he would not have been present at the scene of the occurrence. He must have been in a school. It may be mentioned here that PW 4 was a student of Xth Class but that being a Republic Day there were cultural functions and sports. The function started at 9.30 a.m. and went on till 1.30 p.m. The High Court also pointed out that the nature of the weapon used is also in doubt inasmuch as in the earlier version it was mentioned as Gandasa and now it is mentioned as Kulhari. The Sessions Court no doubt explained the same. This discrepancy is not material.

5. The High Court disagreed with the reasons given by the trial Court and for the reasons mentioned above acquitted the accused. The two accused filed two separate appeals and a common judgment was delivered. That is how there are two appeals by the State against the acquittal before us.

6. Ms. Nisha Bagchi, learned Counsel for the State of Haryana has taken us meticulously through the evidence of the two eye witnesses PWs 3 and 4, the F.I.R. and the medical evidence. She submits that it is not a case of false implication and merely because the two witnesses are interested their presence cannot be rejected outright and there are no discrepancies which affect their credibility. The learned Counsel also submits that within a short time F.I.R. was given and the version given therein is corroborated by the medical evidence and that there are no inconsistencies between the earlier version and the present depositions of the two eye-witnesses.

7. These appeals are against the acquittal and since the High Court has reversed the findings of the trial Court, to satisfy our selves, we have gone through the evidence of the two eye-witnesses carefully. Their evidence shows that they are interested witnesses. Therefore, their evidence requires to be scrutinised carefully. So far as PW4 is concerned he admitted in the cross-examination that he went to the school at 9 a.m. and he made further admissions to the effect that being a Republic Day there was a function in the school and there were certain items like Flag Hoisting Ceremony, speeches, sports and prize distribution. The witness being a student aged 18 years is expected to know the time taken in respect of the each event that took place. If we add up the timings then as pointed out by the defence counsel the whole function must be over after 1.15 p.m. in which case the presence of this witness at the place of the occurrence becomes highly doubtful. The witness also admitted that he had to cover a distance of three miles from the school to reach the place of occurrence. In the cross-examination, he admitted that he is an interested witness. Then coming to the evidence of PW 3, no doubt, he gave the F.I.R. at about 1.40 p.m. but again the doubt would be whether the occurrence took place at 12 noon or earlier. In any event his conduct appears to be unnatural. He deposed that the deceased who is no other than his nephew, was going in the Gali and he followed him 10-15 paces behind him but the way he has described his presence at the scene of

the occurrence there is some doubt regarding his presence. In this context, it becomes important to note that the place of occurrence is within a short distance and there are number of houses in the vicinity but none of the residence has been examined at least to show that this witness was present immediately after the occurrence and the prosecution has not adduced any evidence to that effect. The evidence of local Sarpanch DW 1 (Ram Rikh) is that his house was very close to the place of occurrence and there is nothing in cross-examination which warrants rejection of his evidence. DW 1 has stated that at about 10.30 a.m. he came out and saw the dead body. Being the resident of the house which is very close to the place of occurrence, his version cannot be rejected. If his version is to be accepted then the presence of PW 3 just at the time of occurrence becomes doubtful. The prosecution has not examined any other person from the locality. PW 3 being highly interested witness, has also made certain improvements regarding the nature of the weapon used and since the whole case rests on his sole testimony without any corroboration, we think it is highly unsafe to convict the respondents in the appeals against acquittal. For these reasons these appeals are dismissed.