

Supreme Court of India

Jagtar Singh vs State Of Punjab on 7 January, 1993

Equivalent citations: 1993 AIR 2448, 1994 SCC Supl. (1) 65

Author: P Sawant

Bench: Sawant, P.B.

PETITIONER:

JAGTAR SINGH

Vs.

RESPONDENT:

STATE OF PUNJAB

DATE OF JUDGMENT 07/01/1993

BENCH:

SAWANT, P.B.

BENCH:

SAWANT, P.B.

MOHAN, S. (J)

CITATION:

1993 AIR 2448

1994 SCC Supl. (1) 65

JT 1993 Supl. 518

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Originally, there were four accused charged for the murder of the victim Kulwant Singh. The present appellant was one of the four accused. He was charged for the offence under Section 302, Indian Penal Code (the 'IPC') as well as under Section 307 read with Section 34, IPC. The rest three accused were charged for the offence under Section 302 read with Section 34 as well as under Section 307 read with Section 34, IPC. Since the victim was only Kulwant Singh for whose death the accused were charged under Section 302, IPC we have not understood the charge framed by the learned Sessions Judge under Section 307, IPC also in connection with the same murder. Nor have we followed the conviction of the present appellant under Section 307 read with Section 34 in addition to his conviction under Section 302 of IPC. It further appears that the High Court has not noticed this anomaly in the convictions and sentences both under Section 302 and Section 307 read with Section 34, of the present appellant.

2. The facts are in a narrow compass and the finding recorded by both the courts below can hardly be challenged, namely, that it was the appellant who had inflicted the three fatal injuries on the chest of the victim, as a result of which the victim met with his death. We are, therefore, not inclined to interfere with the said finding of fact and the conviction of the appellant under Section 302, IPC.

3. Mr Sushil Kumar, learned counsel appearing as amicus curiae for the appellant, however, contended that on the date of the incident, i.e. August 31, 1976, the appellant was below 16 years, his date of birth being May 4, 1961, as per the school leaving certificate. This certificate was produced in this Court at the time of seeking special leave and the enlargement of the accused on bail. There is no dispute that this certificate states that the appellant- Jagtar Singh was admitted into the school in question on September 26, 1975 and he left the school while he was reading in the 8th standard. However, mysteriously, the certificate does not mention the name of the school from which the transfer certificate was obtained and on the basis of which certificate the appellant was admitted to the school. It is not disputed that the date of birth which is given in the certificate produced in this Court is based on the date mentioned in the transfer certificate. Since the name of the school from which the transfer certificate is obtained itself is absent from this certificate, no reliance can be placed on the said certificate. This is apart from the fact that there are certain further facts which have come on the record in this connection.

4. It appears that the point with regard to the minority of the appellant was raised at the outset of the trial. Dr Uppal (PW 1), who had conducted the postmortem examination of the deceased's body, had examined the accused with reference to his age before entering the witness box. In the witness box, he was examined-in-chief with reference to the age of the accused where he deposed that the accused was between 18 and 20 years of age. He has also given his reasons for this opinion of his. It does not appear that he was cross-examined on the said point on behalf of the defence. Thereafter, the accused in his statement under Section 313 of Criminal Procedure Code took the defence that at the time of the incident, he was 15 years of age. The learned Sessions Judge negatived the said contention and going by the opinion of the doctor held that the accused was of 18 to 20 years of age. It may also be mentioned in this connection that at that stage no school leaving certificate or birth certificate was produced and the matter rested entirely on the statement of the accused under Section 313, CrPC on the one hand and the expert evidence of the doctor (PW 1) who as stated earlier, was not even cross-examined on the said point; on the other.

5. It appears that at the second stage, the point was raised before the High Court and a school leaving certificate showing the date of birth of the accused as October 15, 1961 was produced before the High Court, and on that basis the application for bail was made and the High Court released the accused on bail on the said footing. The release of the accused on bail was objected to on behalf of the complainant who filed an application for cancellation of the bail. The complainant produced the accused's birth certificate which showed the birth date as October 9, 1957. The High Court by its order dated August 31, 1977 cancelled the bail granted to the appellant referring to the evidence of the doctor before the Sessions Court, to the statement of the appellant under Section 313 of the CrPC and the finding recorded by the learned Sessions Judge on the point. The High Court also referred to the certificate produced by the complainant and ultimately held that the appellant was certainly not below the age of 16 years as contended by him.

6. It appears that at the third stage when this appeal was admitted in this Court, another certificate to which we have already made a reference was produced wherein, as is stated earlier, the name of the school from which the transfer certificate was obtained is absent.

7. In this state of affairs with regard to the age of the accused on the date of the incident, we are satisfied that neither the Sessions Court nor the High Court was wrong in holding that the appellant was not below the age of 16 years on the date of the incident. We may in this connection refer to the fact that his birth certificate has been scrupulously kept away from the court by the appellant. We, therefore, see no substance in the contention that the appellant was below the age of 16 years on the date of the incident.

8. In the circumstances of the case, we confirm the conviction and the sentence of the accused under Section 302 IPC. We, however, set aside his sentence and conviction under Section 307 read with Section 34 IPC. Subject to the above modification, the appeal is dismissed.

9. The bail bond of the accused will stand cancelled. The accused to be taken into custody forthwith. Mr Sushil Kumar, learned counsel, does not claim any fees. Hence his fees are not fixed.
