

Supreme Court of India

Bishan Dass vs State Of Punjab on 10 January, 1975

Equivalent citations: AIR 1975 SC 573, 1975 CriLJ 461, (1975) 3 SCC 700, 1975 (7) UJ 249 SC

Author: V K Iyer

Bench: R Sarkaria, V K Iyer

JUDGMENT V.R. Krishna Iyer, J.

1. The appellant, convicted of murder of Satya Devi, a youngwoman, and her child Surjit Kumar, by throwing a hand grenade into the house of Mohinder Pal P.W. 7, husband of the deceased lady, was sentenced to death by the Sessions Judge. On appeal, the conviction and sentence were confirmed by the High Court. Of course, he has also been convicted for offences under Sections 325 and 323 for causing injuries to Mohinder Pal aforesaid and a few other.

2. The substance of the prosecution case is that P.W. 7 was a grocer and cultivator The accused was a neighbouring cultivator and had a dispute over the boundary between the two fields with P.W. 7. A quarrel had arisen on this score between the two and this led to grudge borne by the accused against P.W. 7. It is further alleged, as motive for the offence, that the accused used to buy grocery from P.W. 7's shop on credit but that the former defaulted to pay and when pressed, picked, up a quarrel. These dual motives by themselves are not serious enough for the commission of a grave crime but who knows the psychics sensitiveness of individuals ? Both the courts below have held the motives true and we see no reason to disagree with them. Of course, merely because there is some grudge or pique proved, we cannot hold the accused guilty. That question has to be decided by the pressure of probabilities and direct evidence to the extent of proof beyond reasonable doubt.

3. Now to the actual incident. It is alleged that on August 21, 1971, P.W. 7, his wife and children and his aunt, PW. 8, were talking to each other from the courtyard of their house, seated on cots. There was a lamp burning, bung from a wall of the courtyard. As they were chatting, P.W. 7 turned to wards the lantern to light a cigarette and his eyes landed on the accused standing in the lane nearby. Immediately the latter threw a hand grenade into the courtyard and ran away The explosion which followed sprayed splinters which struck the persons present there. In consequence, two persons, the wife and child of P.W. 7, injured. The Sarpanch of the village P.W. 6, who are living close by, came to the scene, found two persons dead and a number of others with injuries. He proceeded to the Police Station for lodging a First Information Report but could not cross the river at night as it was in floods. The next day he lodged the First Information Report before the police at 2 p.m. Exb. PK. Investigation commenced and the accused was charge sheeted for various offences, the gravest of which was under Section 302, Indian Penal Code. The accused denied his guilt totally but produced no evidence in defence. Even so the prosecution has to prove its case satisfactorily, the silence of the being of no consequence in this context.

4. It has been held by the courts below that the death of the two per sons and the injuries to a number of others were caused by the hand grenade thrown by the accused. Shri O.P. Rana appearing as amicus curies has challenged the findings as totally untenable and built upon surmises and flimsy evidence. Indeed, his persuasive presentation initially induced some hesitancy in our minds but on a closer consideration of the evidence we are no inclined to disturb the holding by the

High Court and the Sessions Court that the accused was responsible for the murder and the other lesser offences

5. The trump card used by Shri Rana was that there was a fatal omission in the First Information, laid a day after the occurrence, to mention the name of the accused. On the other hand Exh. P.K., the First Information Report, mentions as the miscreant 'some unknown man' Had there can be no satisfactory explanation for this serious omission we might have been inclined to doubt the veracity of the prosecution. The point made by Shri Rana is that P.W. 7 claims to have been the assailant and should that the bomb was thrown by Bishan "Bishan, Tara Bera Gark Mainu Kaba'Kar Ditta Hai". It is plausibly submitted that if P.W. 7 had known the name of the assailant and P.W. 6 had visited his house after he should have been told about the accused and the name of the accused should have found a place in the Ex. PK But we have the evidence that P.W. 7 became unconscious after a time and regained consciousness only the next morning. This is stated to be a convenient device of evasion, according to Shri Rana We do not think so It is conceivable that the person seeing a horrible crime might instantly shout the name of the criminal but viewing the horror of his dear wife and child being struck dead, be shocked into unconsciousness, particularly when he too, was injured by the blast. According to the Medical officer (P.W. 2) one of the injuries of P.W. 7 was located on the right side of the chest & had to be kept under observation P.W. 6 testified that on reaching the scene after the explosion, he found P.W. 7 and the other injured persons lying unconscious. P.W. 6 therefore, could not elicit any information from P.Ws. 7 & 8, during his 10 minutes stay at the scenes P.Ws. 7 and 8 swore how they had been rendered unconscious. The courts below have believed them on this point and we see no reason to disagree.

6. P.W. 8 candidly admitted that although the name of the assailant was shouted by P.W. 7, she herself did not see the accused throwing the bomb. May be she did not but that does not contradict P.W. 7 having seen the accused in the light of the lantern We have substantial corroboration from P.W. 8's evidence of the version given by P.W. 7. The night was dark, true, but there was a light burning and the distance from where the hand grenade was thrown was a few yards only (between 35 and 45 feet). There is no inherent improbability in the versions of P.Ws. 7 and 8.

7. We have the evidence of P.W. 15 who identified the accused shortly after the occurrence running from near the scene : "When I was in the street the accused came running from the side of the house of Mohinder Pal. He struck against me. I enquired from him as to what had happened but the accused did not respond and ran away towards the field. I went to the house of Mohinder Pal. There I saw his wife and one son lying dead. Mohinder Pal and his two sons and Daya Wanti were lying injured When the accused struck against me there was a report of explosion just before that." This testimony is corroborative of the prosecution case. We have also the extra judicial confession spoken to by P.W. 16. a member of the Panchayat whom the accused approached, confessed to having thrown a hand grenade into the house of P.W. 7 killing two and pleading that he be produced before the police We see no reason to discredit P.W. 16 whose evidence has found acceptance by the Courts below.

8. Certainly better evidence on the ballistic aspects could have been produced by the prosecution but the materials on record analysed by the two courts carefully leave us in no doubt that the guilt of the

appellant has been brought home.

9. The question that now remains is one of sentence. We should have considered this matter more anxiously, although the discretion exercised by the courts below is not interfered with except for special reasons. But in the circumstances manifest here the appellant's crime is cruel and inhuman and the consequential deaths dastardly and pathetic. We are aware that the general trend in courts and among juristic as well as penal codes in this country and in other countries is towards abolition of Capital punishment. Indeed, we have had occasion to consider this matter in some detail in *Ediga Anuamma v. State of Andhra Pradesh*, where we have pointed out how the draft Bill before Parliament revising the Penal Code leans towards the more humane alternative of the two punishments prescribed for murder. However a bill is not law nor are we disposed to interfere with the punishment inflicted. It is entirely a matter for the clemency of the Governor or the President, if appropriately move to commute or not to commute.

10. We dismiss the appeal.