Supreme Court of India
Harapal Singh vs Devinder Sing & ... on 9 July, 1997
Author: Thomas
Bench: M. K. Mukherjee, K. T. Thomas

PETITIONER:
HARAPAL SINGH

Vs.

RESPONDENT:
DEVINDER SING & ANOTHERWITHCRIMINAL APEAL NO. 549 OF 1988HAR

DATE OF JUDGMENT: 09/07/1997

BENCH:
M. K. MUKHERJEE, K. T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T THOMAS, J.

This case reflects the bizarre offshoot of unholy campus politicisation culminating in the premature end of Jasbir Singh a student who reached final year in M. A (Economics). The venue of the murderous onslaught as the precinct of Nar Hari Hostel attached to Kurukshetra university in Haryana and the time was lunch recess on 23- 10-1986. Jasbir Singh was stabbed to death while his fellow student Sumer singh received grievous hurt. Twelve persons including some student leaders of the rival wing were sent up for trial before the Designated Court of Kurukshetra as the charge included Section 6 of the Terrorist and Disruptive Activities(Prevention) Act, 1987 (for short "the TADA') But all of them were acquitted by the trial Judge and these appeals have been filed under Section 19 of the TADA.

The backdrop disquieting from the angle of campus discipline, was the college students' union election on the lines of political party loyalties of the students. Himat (9th accused) was a candidate for presidentship of the students union and he was opposed by Jasbir Singh, being head of the rival students wing owing allegiance to another political party. Himat won the election, but its fallout was the acrimonious tension which persisted for long between two rival student wings in the campus. Skirmishes erupted as a daily occurrence between them and police had to register criminal cases

against offending students. On the previous day of occurrence in this case the victorious group made all efforts to get their budget proposals approved by the general body but such efforts were thwarted by the stiff resistance offered by jasbir Singh and his followers. This became the immediate cause for the aggravated hostility between the group led by Himat and the rival group led by Jasbir singh.

What happened during the occurrence in this case, according to the prosecution version, was this, At about 1,30 p.m. Jasbir Singh and Harpal Singh (PW-3) who was studying in the first semester of M.A.(English)- and Randeep Rana (who was the Secretary of the students Union to which Jasbir Singh belonged were standing outside the canteen of Nar Hari hostel. Suddenly Himat (A-9) caught hold of Jasbir Singh and then Satparkash (A-6) slapped a knife blow on the left chest of Jasbir singh which was followed by Satbir Singh (A-1) inflicting another knife blow on the left side of his chest. When Sumer Singh (PW-6) intervened, presumably to rescue his colleague, he was prevented from nearing the victim by Jeevan Singh (A-8) and Sandhip Singh (A-10). But right at a that time Devinder Singh (A-5) gave a stab injury on Sumer Singh on his front costal margin. The other assailants also attacked the deceased with iron rods, clubs, and hockey sticks etc. Jasbir Singh breathed his last very soon. but Sumer Singh did not die as he was operated upon emergently at the post Graduate Institute of Medical Education, Chandigarh which saved his life.

The case was registered on the strength of the statement furnished by Harpal singh (PW-3). Sumer Singh, the injured, was examined as PW-6 and no other eye witness was examined. The trial court pointed out certain anomalies in the evidence of Harpal Singh and declined to believe that he had witnessed the occurrence. What remained was the evidence of Sumer Singh. Since he was one the injured in the occurrence and was loyal to the opposite students wing, the trial judge found his evidence insufficient for establishing the guilt against the accused. Accordingly, he acquitted all the accused.

while hearing the appeals, learned counsel for the accused reminded us of the oft repeated caution that acquittals should not lightly e disturbed in appeals. We have bestowed our consideration on the facts of these appeals keeping the aforesaid rule of caution.

Post-mortem examination conducted on the body of Jasbir Singh revealed that out of 11 ante mortem injuries found by the doctor, one was a spindle shaped incised wound which pierced the sternum and cut the pericardium and perforated the left atrium. Besides that he had three other incised injuries on the chest though none of them was grievous enough to cause his death. However, the injury which pierced his heart would have ended his life.

The injury which the doctors found on Sumer Singh (PW-

6) was an incised wound on the costal margin which perforated his liver. Dr. Pradeep Kumar (PW-5) of the Post Graduate Institute of Medical Education, Chandigarh, performed a laparotomy and sutured the liver. PW-5 said in court that Sumer Singh would have died if the emergency operation was not performed in time.

It is therefore, fairly clear that both jasbir Singh and Sumer Singh sustained serious stab injuries. When Sumer Singh was examined as a witness to the occurrence, he stuck to the prosecution version set forth earlier. PW-3 Harpal Singh on whose statement the case was registered has also narrated the prosecution version with all vivid details.

There can be little doubt that PW-6 Sumer Singh had witnessed the occurrence. But the drawback of his evidence is that he belonged to the students wing which was admittedly rival to the accused students. Though that by itself is not enough to tarnish his testimony, it is a sound rule in appreciation of evidence that if the testimony of such a witness is to be used as the sole basis of conviction it should be of such a calibre as to be regarded as wholly reliable. The blemish attached to PW-6 as a partisan witness stands in the way of his evidence becoming wholly reliable and hence without adequate reassurance from other circumstances or materials it may not be safe to make the uncorroborated evidence of such a witness the sole basis for reversing the order of acquittal.

If the presence of Harpal Singh at the place of occurrence can be believed as a certainty his evidence would then become capable of corroborating the testimony of Sumer Singh. They, when put together, would for, a sturdy basis to make the prosecution version worthy of acceptance. so a scrutiny of the evidence of Harpal Singh is of crucial importance in this case.

Harpal Singh (PW-3), at the time he gave evidence, was a law graduate, though he was only a student of M.A.(English) when the occurrence took place. He was a resident of the hostel in the precincts of which the incident happened, as observed above. it is he who gave the first information statement to the police in which also he claimed to have seen the occurrence and in which he narrated the incident with all details. He was one of those who helped the injured persons to reach the hospital at the earliest point of time. Normally, these broad circumstances would ensure that he would ensure that he would certainly have seen the occurrence.

But the trial court which declined to place reliance on him noted some flaws in his testimony; One such flaw is the failure of the police to collect the clothes worn by Harpal Singh which were smeared with blood during the rescue operation. We are unable to appreciate the said approach. If the clothes worn by the injured or the victims were not recovered by the investigating team that perhaps would have provided a handle to the defence to attack the prosecution case. But no investigating agency would normally take the trouble to seize the clothes worn by witnesses at the time they saw the occurrence merely because their clothes too had collected stains of blood during any post event activities. At any rate the said omission on the part of the investigating agency is not a flaw of that type to invite the consequence of jettisoning his testimony.

Another reason which the trial judge highlighted against PW-3 (Harpal Singh) was the delay in recording first information statement. According to the trial court, as the occurrence happened at 1.30 p.m. and as the Sub- Inspector of police received intimation at 2.45 p.m. and that injured Sumer Singh was admitted in the Civil Hospital, Kurukshetra, the Sub-inspector should have rushed to the hospital and recorded the statement of Sumer Singh. The fact cannot be overloaded that Sumer Singh who was admitted in the Civil Hospital in a very serious condition was emergently shifted to the post-Graduate institute of Medical Education Chandigarh 3.50 p.m and that the

sub-Inspector who reached the civil Hospital had to collect the statement of Harpal Singh at 4.50 p.m. For Sumer Singh and his kith and kin as also for the doctors, the life of Sumer Singh was of prime value and that every effort should be taken to save it. The trial judge seems to have taken a pedantic view in this matter.

The trial court then harped upon the need for speedy despatch of the FIR to the magistrate. Since four hours' time had elapsed as between making the FIR and its reaching the hands of the magistrate, the trial judge felt that the FIR would have been completely cooked up and he observed that Harpal Singh would not have seen the occurrence. The said conclusion based on the above reasoning is apparently fragite. Trial court should not have adopted a renown approach regarding the delay in lodging the fir. Even if the residence of the Chief Judicial Magistrate was close by, the fact that the FIR was lodged with him within four hours is not ignorable. No doubt the ideal situation is that FIR is lodged with utmost speed and despatch but if the ideal is not adhered to in any case, the corollary is not castigation of the evidence of the maker of the FIR. In the present set up no police station can be expected to have only one case to look into. A little delay in lodging the FIR with the magistrate should not be viewed from an unrealistic angle.

Another reason advanced by the trial court against evidence of Harpal Singh is that when he was interrogated by the investigating Officer subsequently, he gave more details regarding the occurrence. Firstly, the said supplementary statement recorded by the Investigating officer could only have been used to contradict the witness in view of the interdict contained in Section 162 of the Code of Criminal Procedure, Secondly, that statement cannot be used for comparing it with the FIR. That apart, if the Investigating Officer elicited more details from the same person during any subsequent interrogation how could his evidence become suspect? It is not advisable to throw the evidence of the informant overboard merely because the investigating Officer succeeded in eliciting further details or even fuller details during subsequent interrogation.

We have noticed that the trial judge has omitted to refer to a very important item of evidence while dealing with the testimony of Harpal Singh. it is the evidence of Surinder Singh (PW-7) who was a research scholar in Kurukshetra University. The substance of what PW-7 said in court is this: when he was proceeding to Nar Hari hostel during lunch recess, he saw Harpal Singh and Randeep Rana helping the injured persons to get into a rickshaw and then PW-7 also helped them to reach the hospital soon. On the way to the hospital, Harpal Singh gave an account of the occurrence to PW-7.

The cross examiner did not challenge that part of the evidence of PW-7 that Harpal Singh gave a narration of the occurrence to PW-7 on their way to the hospital. There is thus reassurance regarding the fact that Harpal singh was a witness to the occurrence. There is absolutely no reason to doubt the testimony of PW-7 nor has the trial court castigated his testimony in any manner. PW-7, therefore, gives us the confidence to believe that Harpal Singh has witnessed the occurrence.

If so, what Harpal singh (PW-3) told the police in the First information Statement must be the fresh account of the true facts. if he has seen the occurrence, we see no reason of him to substitute some innocent persons as assailants.

The position now is this : The testimony of summer singh stands fully corroborated by the other eye witness pw- 3 Harpal singh.

Learned counsel for the accused in this context argued that non examination of Randeep Rana, who has seen the occurrence, has seriously impaired the core of the prosecution case. No doubt, it would have been desirable if Randeep Rana was also examined by the prosecution in court . But his non examination in this case did not cause any ripple affecting the case.

A public Prosecutor may give up witnesses during trial to avert proliferation of evidence which could save much time of the court unless examination of such a witness would achieve some material use. Randeep Rana, if examined would only have helped in duplication of the same category of evidence as the other two eye witnesses. The Public prosecutor, therefore, cannot be blamed for adopting the course of not examining him. If the accused thought that Randeep Rana's evidence would help the defence, it was open to the accused to examine him as a defence witness.

In Darya Singh & others vs. State of Punjab. Air 1965 sc 328, a Bench of three Judges (Gajendragadkar, Wanchoo and Dasgupta, jj) has observed that in murder cases it is primarily for the prosecutor to decide which witness he should examine in order to unfold the prosecution story. " If a large number of persons have witnesses the incident it would be open to prosecutor to make a selection of those witnesses, but the selection must be made fairly and honestly and not with a view to suppress inconvenient from the witness box." The same view has been followed in a number of cases [vide Masalti vs. State of U.P. AIR 1965 SC 202, by a Bench of four Judges (Gajendragadkar, CJ, Wanchoo, Dasgupta and Raghubar Dayal, JJ); Gurmej Singh & others vs. State Punjab, AIR 1992 SC 214, by a bench of three Judges; Rai Saheb & others vs. State Of Haryana, 1994 SCC (Crl) 239; Rajbir vs. State of Haryana, 1996 SCC (Crl.) 178 Girish Yadav & others vs. state of M.P. 1976 SCC(Crl.) 552; Ram Sanjiwan Singh & others vs state of Bihar, 1996 SCC (Crl.) 701 Malkan Singh & others vs state of U.P 1995 SCC (Crl.) 893] No doubt Randeep Rana would have been a material witness. But merely because he was not examined by the prosecution a criminal court is no to lean to draw adverse inference that if he was examined he would have given a contrary version. The illustration (g) in section 114 of the Evidence Act is only a permissible inference and not necessary inference. Unless there are other circumstances also to facilitate the drawing of an adverse inference, it should not be a mechanical process to draw the adverse inference merely on the strength of non-examination of a witness even if it is a material witness. We do not see any justification, in this case, in drawing such an adverse inference due to non examination of randeep Rana. [vide state of Karnataka vs. Moin Patel, 1996 SCC (CRL.) 632] The aforesaid discussion leads to the following conclusions:

A-9 made a clarion call to his companions to attack jasbir Singh and thereupon A-9 and A-7 inflicted stab injuries on the chest of the deceased. A-5 has inflicted grievous hurt on the costal margin of Sumer Singh. A-1 and A-6 have acted conjointly with the common intention to murder Jasbir singh.

A-5 cannot be convicted of anything more than causing grievous hurt to PW-6. The exhortation made by A-9 would, no doubt, amount to facilitation of the crime. but we think that in the circumstances it was probable that he would not have intended causing more harm than grievous

hurt to jasbir Singh. In such a situation, we are not inclined to convict A-9 of the offence under Section 302 read with Section 34 of the IPC. but we unhesitatingly hold that he has committed the offence under Section 326 read with Section 34 of the IPC.

Before parting with the case, we feel strongly to add a few more words which are of contextual and topical importance. It is a malady in our country that political parties allure young students through their student wings. They do so because it is an easy method for enlisting support and participation of student population to their political programmes. Students, particularly in adolescent age, are easily swayable by political parties without much effort or cost as young and tender minds are susceptible to easy persuasiveness by party leaders. But the disturbing aspect is that most of the political leaders do not mind their student supporters developing hostility towards their fellow students belonging to rival political wings. What happened in this case perhaps was only the tip of the iceberg as campus rivalry has now deteriorated into a bane of the Country. The print media is now replete with reports of such calamitous instances in the campus atmosphere.

While at the top layer leaders belonging to different political parties dine together and socialise with each other without any personal acrimony as between themselves, it is a pity that they do not encourage that healthy attitude to percolate down to the grass root level. Tender mind gets galvanised on minor issues, frenzy flares up even on trivialities, young children and adolescents unaware of the disastrous consequences befalling their own future indulge in vandalism, mayhem and killing spree against their own fellow students.

We think that the time is now ripe for legislative interference to salvage the campus free of political activities. We leave it to the members of legislatures and leaders of the country to ponder over this with the seriousness it deserves and to bring forth necessary measures to plug it.

We therefore, allow these appeals and set aside the order of acquittal as against A-1, A-5, A-6 and A-9. We convict A-1 and A-6 under Section 302 read with Section 34 of the IPC and sentence each to imprisonment for life. We convict A-5 under Section 326 of the IPC and sentence him to rigorous imprisonment for five years. We also convict A-9 under Section 326 read with Section 34 of the IPC and sentence him to rigorous imprisonment for five years. The acquittal as for the remaining accused would stand undisturbed. Sessions judge is directed to take steps to put the above convicted persons in jail to undergo the sentence.