

JAI SINGH

v.

SARWAN SINGH & OTHERS

November 14, 1983

[Y.V. CHANDRACHUD, C.J. AND E.S. VENKATARAMIAH, J.]

Criminal Proceedings—Appeal against conviction—Accused cannot be acquitted without considering evidence on record.

The respondents were convicted and sentenced for committing murder and other offences. The deceased and the respondents, who respectively belonged to the Rajput and the Harijan factions of the village, had a dispute over a piece of land which had been decided in favour of the Rajputs by a final order of the High Court in second appeal. When the respondents' appeal against conviction in the criminal case came up for hearing, the High Court took the view that 'the matter could be settled by a compromise' and invited the Harijans and Rajput panchayats of the village to appear before it and, ultimately, called for the papers of the second appeal decided earlier and passed an order to the effect that, as agreed between the parties, the claim of the Harijans for four *kanals* of land was allowed. Finding that some of the affected parties were not served, the High Court directed that if any unserved party had a grievance, it could apply for review of the judgment. After re-disposing of the second appeal relating to the dispute over land in the manner stated above, the High Court took up the criminal appeal for hearing and, without considering the evidence before it, delivered a short judgment acquitting the respondents.

Remanding the appeal,

HELD : It is impossible to appreciate how the High Court could dispose of the criminal appeal in this extraordinary fashion. It is obvious that the High Court had made up its mind to acquit the accused without considering the evidence before it. Finding that the offence of murder cannot be compounded, the High Court took the facile course of acquitting the accused who, by a considered judgment, were convicted by the trial Court. [814 C-D]

The judgment of the High Court shows how important it is for the judges to observe the norms laid down by law for dispensing justice. 'Justice under the tree' or 'panchayat justice' have advantages of their own, but they cannot be confused with justice according to the Chancellor's foot. [812 F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 562 of 1983.

A From the Judgment and Order dated the 29th July, 1982 of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No. 78-DB/80.

Prem Malhotra for the Appellant.

B *R.K. Garg* and *D.K. Garg* for the respondents.

The Judgment of the Court was delivered by

C CHANDRACHUD, C. J. Thirteen persons were sentenced to life imprisonment by the learned Additional Sessions Judge, Ambala, under section 302 read with section 149 of the Penal Code. For other offences connected with the main offence of murder, they were sentenced to lesser concurrent terms of imprisonment. The charge against the accused is that they committed the murder of one Dhian Singh and caused injuries to six others on June 6, 1980.

D The accused are Harijans while the deceased Dhian Singh belonged to the Rajput faction of the village of Sultanpur. There were disputes between the two groups over a piece of land. The Harijans filed a suit to establish their title to that land but they lost that suit, having taken it upto the High Court in Second Appeal Proceedings under section 145 of the Code of Criminal Procedure were instituted against the two factions, which also the Rajputs won.

E The judgment which the High Court of Punjab and Haryana declared in this case shows how important it is for Judges to observe the norms laid down by law for dispensing justice. 'Justice under the tree' or the 'Panchayat justice' have advantages of their own, but they cannot be confused with justice according to the Chancellor's foot. If anything, the strange procedure adopted by the High Court in this case has only succeeded in giving a bad name to a useful innovation which, if tried cautiously and with circumspection, will take away at least a frivolous chunk of litigation which clogs the wheels of justice in Courts of law.

F G H When the appeal filed by the accused came up for hearing before the High Court, it took the view that "the matter could be settled by a compromise". It invited the Harijan Panchayat and the Rajput Panchayat of the village of Sultanpur to appear before it. On May 28, 1982 the two Panchayats

agreed that the Harijans should be allotted four kanals out of the disputed land. The High Court accordingly directed that the Revenue authorities should go to the spot, demarcate that land and report back to it along with the plans. The report submitted by the Revenue authorities showed, according to the High Court, that its order was not understood correctly. The High Court then entered into a dialogue with Shri Bhasin, District Attorney, Haryana, who informed it that he had discussed the matter with the S.D.O. (Civil), Kalka, and that the said Officer was of the view that the land could be demarcated so that four kanals could be allotted therefrom to the Harijans.

While hearing the criminal appeal against the order of conviction for murder and the other offences, the High Court called for the papers of Second Appeal No. 742 of 1978, which was disposed of in 1980 by a final order in favour of the Rajputs. All the effected parties were not before the High Court as they possibly could not be, since what was before the High Court was the criminal appeal and not the Second Appeal. The High Court, finding that some of the affected parties were not served, directed that if any unserved party had a grievance, it could approach it for review of its judgment.

The High Court thereafter recorded the statements of the two learned counsel, Shri F.C. Aggarwal and Shri C.D. Dewan who appeared for the parties. Shri Aggarwal stated that he agreed that four kanals from the land should be allotted to the Harijans. Shri Dewan made a statement that he agreed with what Shri Aggarwal had stated. The High Court then had Second Appeal No. 742 of 1978 called out and passed an order to the effect that as agreed between the parties, the claim of the Harijans for four kanals of the land was allowed.

Having thus re-disposed of the Second Appeal, the High Court took up the criminal appeal for hearing. The entire judgment of the High Court runs thus :

“We do not wish to give a detailed judgment in this case. It suffices to mention that there is abundant evidence on record to indicate that actual possession of the land falling under the Asthan of Sidh Baba, the well and the adjoining houses was of the accused. It looks

A more probable that when some force being used to dispossess them, they protested and when their protests were unavailing violence was used resulting in the death of Dhian Singh, deceased.

B In the circumstances, we give the benefit of doubt to the accused persons, and acquit them of all the charges. We do hope that in future the parties will live together amicably. With these observations, the appeal is allowed."

C With respect, it is impossible to appreciate how the High Court could dispose of the criminal appeal in this extraordinary fashion. It is obvious that the High Court had made up its mind to acquit the accused without considering the evidence before it. Finding that the offence of murder cannot be compounded, the High Court took the facile course of acquitting the accused who, by a considered judgment, were convicted by the learned Additional Sessions Judge. It is less than just to allow the judgment of the High Court to stand. D Shri R.K. Garg, who appeared on behalf of the accused, found it impossible to support the judgment of the High Court.

E Accordingly, we set aside the judgment of the High Court dated July 29, 1982 and remand the appeal to it for disposal in accordance with law. We also set aside the order passed on that date by the High Court in Second Appeal No. 742 of 1978. The earlier judgment of the High Court in that appeal will be restored. We hope that the High Court will be able to take up the criminal appeal for hearing at an early date. F If the evidence warrants the acquittal of the accused, they will be entitled to be acquitted. We express no opinion on the merits of that matter.

H.L.C.

Appeal Remanded.