

(1995) 02 SC CK 0005

In the Supreme Court Of India

Case No : Criminal Appeal No. 715 of 1989 with Cri. Appeals No's. of 1995
(arising out of Spl. Leave Petition (Cri.) No's. 965 of 1989 and 193 of 1990)

Anup Singh and others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 217, 330, 34, 348

Citation : AIR 1995 SC 1941 : (1995) CriLJ 3223

Hon'ble Judges : Sujata V. Manohar, J; M. M. Punchhi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The three appellants who have filed separate appeals were tried before a learned Magistrate for offences punishable under Sections 217, 330 and 348/34, I.P.C., on the broad allegations that one Bhagwan Singh was confined by them in their police post from 30-8-1975 to 12-9-1975 and during this while he was caused various hurts in order to detect a crime of theft reported at the police station by one Prem Singh, having taken place in his village Shilla, of which the detainee was a suspect.

3. Anup Singh, appellant at the relevant time was the Assistant Sub-Inspector, in charge of the Police Post Kasumpti, close to Shimla. The other two appellants Sucha Singh and Raghubir Singh were constables attached at the said police post and were under the control of Anup Singh, ASI. The learned Magistrate convicted all the three appellants of the charges and instead of sentencing them ordered their release on probation u/s 360, Cr.P.C. Respective appeals were filed by the appellants before the Court of Session. The Court of Session differed from the view of the trial Court in releasing the appellants on probation. The order of release was recalled and Raghubir Singh and Sucha Singh were variously

sentenced under various counts of their conviction. Anup Singh, appellant, was, however, acquitted of the charge. The Court of Session took the view that since there was no positive evidence of Anup Singh, appellant, having taken any part either towards confining Bhagwan Singh or to have been privy to the beating caused to him, it was difficult on such findings to spell out the complicity of Anup Singh in the crime.

4. Raghbir Singh and Sucha Singh, appellants took the matter further in revision before the High Court. On the other hand, the State challenged the order of acquittal of Anup Singh. These matters, as was expected, were heard together. The High Court confirmed the orders of conviction and sentence in so far as Sucha Singh and Raghbir Singh were concerned. Sequel to it upset the acquittal of Anup Singh and sentenced the appellant to imprisonment identical with those as imposed on Sucha Singh and Raghbir Singh. Sucha Singh has died during pendency of his appeal in this Court and as such, his appeal stands abated. The remaining two appeals would stand disposed of by this order.

5. After the wrongful confinement continuing up till 12-9-1975, Bhagwan Singh's dead body was found on 17-9-1975 at a place within the territorial jurisdiction of another police station. The recovery of the dead body led to the investigation which, ultimately, led to the appellants being accused of the crime. In so far as participation of Sucha Singh and Raghbir Singh is concerned, there was positive evidence that they were the Constables who had been deputed to arrest Bhagwan Singh under verbal orders of Anup Singh, and that in furtherance thereof, they had taken Bhagwan Singh into custody from Bishop Cotton School, Shimla. It is they who had taken him to police post, Kasumpti where under supposed oral directions of Anup Singh, appellant, they took the detainee to Prem Singh's village in order to investigate the crime of theft whereat in the presence of the villagers P.Ws. these two appellants viz., Sucha Singh and Raghbir Singh caused extensive stick injuries on Bhagwan Singh. Evidence has also been led to show that on 6-9-1975, Bhagwan Singh was seen lying within the Police Station as also on 12-9-1975, on the second occasion. The prosecution evidence in this regard has been believed by the Courts below. The complicity of Sucha Singh and Raghbir Singh in the commission of the crime thus stands proved beyond doubt. Their convictions and sentence would, thus, require no interference. It is otherwise to be noticed that they have undergone the imprisonment imposed on them by the Courts below.

6. In so far as Anup Singh, appellant is concerned, the main argument advanced by Mr. Shah, learned senior counsel, appearing for him is to the effect that he does not figure anywhere physically in the prosecution case and his convictions have been recorded barely on inferences. The argument prima facie, appears attractive, but on closer scrutiny does not stand the test of reasonableness. It is undefined that Anup Singh was the in charge of the Police Post and while so, the in charge of the lock-up. Thus being the in charge, he was supposed to have come to the Police Post at one time or the other during 24 hours of the day.

Leaving apart his civil or departmental liability to be accountable for all what happens in the Police Post, he cannot escape to say that the criminal deeds committed by his Constable should confine to the Constable alone, when those deeds were committed and are deemed to have committed with his tacit consent and connivance. It is not necessary that he should have physically been present all the time when the confinement of Bhagwan Singh was continued between 30-8-1975 to 12-9-1975 and beaten in this interval. There is no evidence that Kasumpti Police Post had a large building or that the police had lot of business to transact from which it could be urged that the detention of Bhagwan Singh may have escaped the notice of Anup Singh, ASI. Thus we are more than satisfied about the complicity of Anup Singh in the crime, convicted as he is with the aid of Section 34, I.P.C. for the offence charged. We thus see no reason to upset his convictions. Equally, we cannot distinguish his case on the question of sentence also when his co-accused who have similarly been convicted and have undergone the sentence imposed on them. His appeal thus fails. Such a Singh, as said before, has since died during the pendency of his appeal. His appeal is dismissed as abated. Raghubir Singh's appeal is dismissed on merit. The appeal of Anup Singh too gets dismissed on merit. Ordered accordingly.