Mst. Dalbir Kaur and Others

Vs

State of Punjab

Dalbir Singh

Vs

State of Punjab

Criminal Appeal Nos. 232 and 373 of 1975

(A.C. Gupta, Syed M. Fazal Ali JJ)

20.08.1976

JUDGMENT

FAZAL ALI, J. -

1. These two appeals by special leave are directed against the judgment of the Punjab and Haryana High Court dated March 10, 1975, upholding the convictions and sentences imposed on the appellants by the trial Court of Sessions Judge, Gurdaspur. The two appeals arise out of the same judgment and, therefore, will be dealt with by us by one common judgment. Criminal Appeal 232 of 1975 has been filed by Smt. Dalbir Kaur alias Bhiro, Puran Singh and Ajit Singh, while Criminal Appeal 373 of 1975 has been filed by Dalbir Singh. The Sessions Judge convicted all the appellants under Sections 302/34 I.P.C. and sentenced Dalbir Singh, Puran Singh and Ajit Singh to death and Dalbir Kaur to imprisonment for life. The convictions and sentences passed by the Sessions Judge were upheld by the High Court. The High Court refused to grant certificate for leave to appeal to Supreme Court and thereafter on an application made to this Court special leave was granted.

2. Two questions arise in these appeals :

> (1) Can this Court in a criminal appeal by special leave enter into a fresh review or reappraisement of the evidence and examine the question of credibility of witnesses where the two courts have concurrently found that the prosecution case against the appellants has been proved; and
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> (2) Is it open to the appellants, once special leave is granted, to argue on questions of fact at the hearing, or is he required to confine his arguments only to the points on which special leave could be granted.

Not that these points are not covered by authorities but in spite of a catena of decisions of this Court laying down the various principles from time to time over two decades and a half counsel for the parties have been insisting upon this Court to go into the questions of fact in order to examine whether the judgment of the High Court is correct. I would, therefore, like to review the decisions of this Court on the two points mentioned above so as to clarify the position and settle the

controversy once for all.

3. As to the principles on which special leave is granted by this Court, the same have been clearly and explicitly enunciated in a large number of decision of this Court. It has been pointed out that the Supreme Court is not an ordinary court of criminal appeal and does not interfere on pure questions of fact. It is only in very special cases where the court is satisfied that the High Court has committed an error of law or procedure as a result of which there has been a serious miscarriage of justice that the court would interfere with the concurrent findings of the High Court and the trial Court. It has also been pointed out by this Court more than once that it is not in the province of this Court to reappraise the evidence and to go into the question of credibility of the witnesses examined by the parties, particularly when the courts below have after considering the evidence, given their findings thereon. In other words, the assessment of the evidence by the High Court would be taken by this Court as final, unless it is vitiated by any error of law or procedure, by the principles of natural justice, by errors of record or misreading of evidence, non-consideration of glaring inconsistencies in the evidence which demolish the prosecution case or where the conclusion of the High Court is manifestly perverse and unsupportable and the like. As early as 1950 this Court in Pritam Singh v. State (1950 SCR 453 : AIR 1950 SC 169 : 51 Cri LJ 1270) speaking through Fazal Ali, J. (as he then was) observed as follows :

> The obvious reply to all these arguments advanced by the learned Counsel for the appellant, is that this Court is not an ordinary court of criminal appeal and will not, generally speaking, allow facts to be reopened, especially when two courts agree in their conclusion in regard to them and when the conclusions of fact which are challenged are dependent on the credibility of witnesses who have been believed by the trial Court which had the advantage of seeing them and hearing their evidence.

In arguing the appeal, Mr. Sethi proceeded on the assumption that once an appeal had been admitted by special leave, the entire case was at large and the appellant was free to contest all the findings of fact and raise every point which could be raised in the High Court or the trial Court. This assumption is, in our opinion, entirely unwarranted.

The rule laid down by the Privy Council is based on sound principle, and, in our opinion, only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave to appeal is asked for, and it would be illogical to adopt different standards at two different stages of the same case.

On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary power with which this Court is invested under it is to be exercised sparingly and in exceptional cases only, ...

Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.

Analysing this decision, two principles appear to have been clearly laid down by this Court :

> (1) that in appeals by special leave against the concurrent findings of the courts below, this Court would not go into the credibility of the evidence and would interfere only when exceptional and special circumstances exist which result in

> substantial and grave injustice having been done to the accused; and
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> (2) that even after special leave has been granted the appellant is not free to contest all the findings of fact, but his arguments would be limited only to those points, even at the final hearing, which could be urged at the stage when the special leave to appeal is asked for.

This case was followed by another Bench decision of this Court a little later in Mohinder Singh v. State (1950 SCR 821 : AIR 1953 SC 415) where this Court observed thus :

> This Court, as was pointed out in Pritam Singh v. State will not entertain a criminal appeal except in special and exceptional cases where it is manifest that by a disregard of the forms of legal process or by a violation of the principles of natural justice or otherwise substantial and grave injustice has been done.

In Hem Raj v. State of Ajmer (1954 SCR 1133 : AIR 1954 SC 462 : 1954 Cri LJ 1313), the same principle was reiterated by Mahajan, C.J., speaking for the Court, where it was observed thus :

> Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, this Court does not exercise its overriding powers under Article 136 (1) of the Constitution and the circumstance that because the appeal has been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which could be raised in the High Court. Even at the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for.

In Khacheru Singh v. State of Uttar Pradesh (AIR 1956 SC 546 : 1956 Cri LJ 950) it was pointed out that this Court does not interfere with the findings of fact arrived at by the courts below, unless something substantial has been shown to persuade this Court to go behind the finding of fact. Imam, J., who spoke for the Court observed as follows :

> In an appeal by way of special leave this Court usually does not interfere with the findings of fact arrived at by the courts below and nothing substantial has been shown to persuade us to go behind the findings of fact arrived at by them.

In Saravanabhavan v. State of Madras (AIR 1966 SC 1273 : 1966 Cri LJ 949), Hidayatullah, J., (as he then was) speaking for the majority crystallised and reiterated the principles already laid down by this Court on previous occasions and observed as follows :

> No doubt this Court has granted special leave to the appellants but the question is one of the principles which this Court will ordinarily follow in such an appeal. It has been ruled in many cases before that this Court will not reassess the evidence at large, particularly when it has been concurrently accepted by the High Court and the court or courts below. In other words this Court does not form a fresh opinion as to the innocence or the guilt of the accused. It accepts the appraisal of the evidence in the High Court and the court or courts below. Therefore, before this Court interferes something more must be shown, such as, that there has been in the trial a violation of the principles of natural justice or a deprivation of the rights of the accused or a

> misreading of vital evidence or an improper reception or rejection of evidence which, if discarded or received, would leave the conviction unsupportable, or that the court or courts have committed an error of law or of the forms of legal process or procedure by which justice itself has failed. We have, in approaching this case, borne this principles in mind. They are the principles for the exercise of jurisdiction in criminal cases, which this Court brings before itself by a grant of special leave.

The minority judgment in the same case by Wanchoo, J., (as he then was), so far as the question of interference by this Court was concerned, also took more or less the same view and observed as follows :

> Ordinarily, this Court does not go into the evidence when dealing with appeals under Article 136 of the Constitution particularly when there are concurrent findings. This does not mean that this Court will in no case interfere with a concurrent finding of fact in a criminal appeal; it only means that this Court will not so interfere in the absence of special circumstances. One such circumstance is where there is an error of law vitiating the finding as, for example, where the conviction is based on the testimony of an accomplice without first considering the question whether the accomplice is a reliable witness. Another circumstance is where the conclusion reached by the courts below is so patently opposed to well established principles of judicial approach, that it can be characterised as wholly unjustified or perverse.

The only difference between the two views was that while the majority view was that except for the principles mentioned above the Supreme Court could never interfere with the concurrent findings of fact in a criminal appeal, the minority view agreed with the principles but it held that in view of special circumstances as pointed out in the observations quoted above the Court could interfere. At any rate, according to both the views the ratio is that this Court would not normally interfere with the concurrent findings of fact, unless there are special circumstances justifying interference.

4. In Piara Singh v. State of Punjab ((1969) 1 SCC 379 : (1969) 3 SCR 236) this Court refused to interfere because it thought that the points involved related to pure appreciation of evidence and no error of law was at all committed and observed as follows : [SCC pp. 385-386, para 8]

> The High Court has examined in detail the argument of the appellant on this point and reached the conclusion that the statement of the approver with regard to the packing of the handgrenade should be accepted as true. The question involved is one of appreciation of evidence and not a question of law.

5. In Hargun Sunder Das Godeja v. State of Maharashtra ((1970) 1 SCC 724 : 1970 SCC (Cri) 284) it was reiterated that this Court does not normally proceed to review the evidence, unless there was some illegality or irregularity in the approach of procedure. In this connection, the Court observed as follows : [SCC p. 730 : SCC (CRI) p. 290, para 9]

> We may appropriately repeat what has often been pointed out by this Court that under Article 136 of the Constitution this Court does not normally proceed to review the evidence in criminal cases unless the trial is vitiated by some illegality or material irregularity of procedure or the trial is held in violation of rules of natural justice resulting in grave miscarriage of justice. This article reserves to this Court a special discretionary power to interfere in suitable cases when for special reasons it considers

> that interference is called for in the larger interests of justice.

6. In a recent decision of this Court in Guli Chand v. State of Rajasthan ((1974) 3 SCC 698 : 1974 SCC (Cri) 222) this Court observed as follows : [SCC pp. 703-704 : SCC (Cri) p. 228, para 16]

> It is difficult, after considering the totality of evidence, to hold that the concurrent findings of fact given by the courts below as regards the proof of guilt of each accused beyond reasonable doubt are really erroneous one may not agree with the assessment of the evidence of each witness individually either by the trial Court or by High Court. Yet, we do not think that this is a fit case for interference under Article 136 of the Constitution. Consequently, we uphold the convictions and sentences of the appellants and dismiss this appeal.

To the same effect is the decision of this Court in Kaur Sain v. State of Punjab ((1974) 3 SCC 649 : 1974 SCC (Cri) 179), where Chandrachud, J. speaking for the Court observed thus : [SCC pp. 650 - 651 : SCC (CRI) pp. 180-181, para 4]

It is not the practice of this Court to undertake a fresh appraisal of the evidence in such matters . . . . . If two views of the evidence were reasonably possible, we would not have substituted our conclusion for that of the High Court.

The case really lays down that where the appreciation of the evidence by the courts below is not erroneous even though this Court may be inclined to take a different view it would not be a fit case for interference.

7. Another important principle that has been enunciated by this Court is that even where the prosecution case consists of an admixture of truth and falsehood it is the duty of the Court to sift truth from falsehood, to separate the grain from the chaff instead of taking the easy course of rejecting the entire prosecution case in view of some discrepancy here or there. If, after applying these legal principles, the Court finds that truth and falsehood are so inextricably mixed together that it is not possible to sift truth from falsehood the Court would be justified in rejecting the prosecution case. In Abdul Gani v. State of Madhya Pradesh (AIR 1954 SC 31 : 1954 Cri LJ 323) this Court observed as follows :

> The learned Sessions Judge was undoubtedly in error when he said that it was impossible to find out from the state of the prosecution evidence with any mount of certainty who among the accused persons participated in the offence and that it would be a pure gamble to convict any of the accused. He made no effort to disengage the truth from the falsehood and to sift the grain from the chaff but took an easy course and after holding the evidence discrepant held that the whole case was untrue.

To the same effect is a later decision of this Court in Kanbi Nanji Virji v. State of Gujarat ((1970) 3 SCC 103 : 1970 SCC (Cri) 520) where this Court reiterated as follows : [SCC p. 105 : SCC (CRI) p. 523, para 7]

> It is true that oftentimes the courts have to separate the truth from falsehood. But where the two are so intermingled as to make it impossible to separate them, the evidence has to be rejected in its entirety.

Recently also in Dharam Das v. State of U. P. ((1973) 2 SCC 216 : 1973 SCC (Cri) 765) this Court commented on this aspect of the matter thus : [SCC p. 220 : SCC (CRI) p. 769, para 9]

In our view, the trial Court approached the case ignoring the basic principle that unless the exaggeration and falsehood in the evidence are on points destructive of the substance of the prosecution story, it is the Court's duty to sift the evidence, separating truth from falsehood, and come to its conclusion about the guilt or innocence of the persons accused of the offence. Exaggeration or falsehood on points which do not touch the core of the prosecution story are not to be given undue importance, provided, of course, there is trustworthy evidence supporting the real substance and core of the prosecution case.

8. Thus the principles governing interference by this Court in a criminal appeal by special leave may be summarised as follows :

> (1) that this Court would not interfere with the concurrent finding of fact based on pure appreciation of evidence even if it were to take a different view on the evidence;
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> (2) that the Court will not normally enter into a reappraisement or review of the evidence, unless the assessment of the High Court is vitiated by an error of law or procedure or is based on error of record, misreading of evidence or is inconsistent with the evidence, for instance, where the ocular evidence is totally inconsistent with the medical evidence and so on;
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> (3) that the Court would not enter into credibility of the evidence with a view to substitute its own opinion for that of the High Court;
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> (4) that the Court would interfere where the High Court has arrived at a finding of fact in disregard of a judicial process, principles of natural justice or a fair hearing or has acted in violation of a mandatory provision of law or procedure resulting in serious prejudice or injustice to the accused;
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> (5) this Court might also interfere where on the proved facts wrong inferences of law have been drawn or where the conclusions of the High Court are manifestly perverse and based on no evidence.

It is very difficult to lay down a rule of universal application, but the principles mentioned above and those adumbrated in the authorities of this Court cited supra provide sufficient guidelines for this Court to decide criminal appeals by special leave. Thus in a criminal appeal by special leave, this Court at the hearing examines the evidence and the judgment of the High Court with the limited purpose of determining whether or not the High Court has followed the principles enunciated above. Where the Court finds that the High Court has committed no violation of the various principles laid down by this Court and has made a correct approach and has not ignored or overlooked striking features in the evidence which demolish the prosecution case, the findings of fact arrived at by the High Court on an appreciation of the evidence in the circumstances of the case would not be disturbed.

9. Much time, energy and expense could be saved if the principles enunciated above are strictly adhered to by counsel for the parties and they confine their arguments within the four corners of those principles and they cooperate in this sound and subtle judicial method without transgressing the limits imposed by the decisions of this Court on its power to interfere with the concurrent

findings of fact. In the instant case both the courts below have, after full and complete appreciation of the evidence, accepted the prosecution case and have held that the guilt against all the appellants has been proved beyond reasonable doubt. This should have been sufficient to dispose of this appeal. But as Mr. Frank Anthony learned Counsel for the appellants has argued the case at very great length and seemed to have prepared the case with great thoroughness and from corner to corner, we would like to deal with some of the important arguments advanced by him after giving a brief narration of the main features of the prosecution case.

10. This is really a most unfortunate case of patricide where a son along with his companions appears to have murdered his own father and brother over a petty partition dispute relating to few killas of land. The murder committed by the appellants, if proved, is both gruesome, brutal and unprovoked. The deceased Ajaib Singh appears to have partitioned his properties between his two sons, namely, Dalbir Singh - who is one of the appellants - and Amir Singh one of the sons who was killed. Ajaib Singh owned 18 killas of land which was divided in three shares, two shares being allotted to Dalbir Singh and Amir Singh and one share was kept by the deceased Ajaib Singh for himself. After the partition Dalbir Singh separated and lived in a separate portion of the house, while both the deceased Ajaib Singh and Amir Singh lived jointly in two rooms the verandah being common. Ajab Singh was having joint mess and cultivation with his son Amir Singh. Dalbir Singh was married to Smt. Dalbir Kaur alias Bhiro who is also one of the appellants. Amir Singh was married to Smt. Jaswant Kaur. As Jaswant Kaur had given birth to a child she had called her mother Smt. Shiv Kaur to look after her and the child. According to the prosecution Dalbir Singh left for his father-in-law's village Santupura a day prior to the occurrence, while his wife Bhiro along with her children followed him in the morning of the day of occurrence. It is alleged that on the nigh intervening July 30 and 31, 1973 at about 1 a.m. Jaswant Kaur and her husband Amir Singh were lying on their cots in the verandah and Shiv Kaur was also sleeping in front of the verandah while Ajaib Singh was lying on a cot near the buffalo in the courtyard. As the newly born child of Jaswant Kaur was not well both Jaswant Kaur and her mother Shiv Kaur were awake to nurse him. At that time electric bulb was burning in the courtyard because an electric connection had been recently taken from a neighbour in view of the illness of the child of Jaswant Kaur. Nearabout 1 a.m. Jaswant Kaur and Shiv Kaur heard the noise of footsteps and they saw Dalbir Singh, Ajit Singh and Puran Singh armed with Kirpans while Dalbir Kaur alias Bhiro armed with a datar standing by the side of the cot of Ajaib Singh. Dalbir Singh had an altercation with his father Ajaib Singh and expressed his dissatisfaction over the partition of the lands and asked his father and brother to get ready to meet the consequences and to call anybody for help if they liked. Thereupon Dalbir Singh gave a kirpan blow on the left jaw of Ajaib Singh and Bhiro gave a datar blow on his right shoulder, while Ajit Singh and Puran Singh gave kirpan blows on his chest. After this gruesome operation was over, the accused proceeded to the cot of Amir Singh who was caught hold of by Dalbir Singh and Puran Singh and Ajit Singh is alleged to have given a kirpan blow on his right leg while Smt. Bhiro gave a datar blow on his left shoulder. Dalbir Singh and Puran Singh then dragged Amir Singh and put him over the body of Ajaib Singh and thereafter all the appellants caused further injuries to Amir Singh and Ajaib Singh with their respective weapons on different parts of their bodies as a result of which they succumbed to the injuries. Jaswant Kaur and Shiv Kaur raised alarm but they were threatened to keep quiet as a result of which these two helpless ladies shut themselves up in one of the rooms. Sometime in the early morning the accused who had stayed on in their part of the house left the village and went away. Jaswant Kaur narrated the incident to Mukhtar Singh and Mohinder Singh and ultimately left with Mohinder Singh and lodged the first information report at police station Sadar Batala at 9 a.m. Thereafter the Investigating Officer proceeded to the spot, prepared an inquest report, sent bodies of the two deceased for post-mortem examination and

conducted the usual investigations. It is further alleged that in the course of the investigation all the appellants made certain statements on the basis of which recoveries of the kripans and the datar were made from the accused concerned. The police after usual investigation submitted charge-sheets as a result of which the appellants were committed to the court of session and ultimately convicted and sentenced as indicated above. The Sessions Judge made a reference to the High Court for confirmation of the sentence imposed on all the appellants and appeals were also filed by all the accused and the High Court after considering the entire evidence agreed with the view taken by the Sessions Judge confirmed the sentences and dismissed the appeals.

11. The defence pleaded innocence and Ajit Singh particularly pleaded alibi and stated that he had never gone to the village Marrar Kalan where the occurrence had taken place. It might be mentioned here that the appellant Puran Singh was full brother of Bhiro while Ajit Singh was her cousin. The central evidence against the appellants consists of the statements of P W 3 Jaswant Kaur and P W 4 Shiv Kaur who have given a complete narrative of the prosecution case as indicated above. These two eyewitnesses have been described as interested witnesses by Counsel for the appellants but we do not subscribe to this view. There can be no doubt that having regard to the fact that the incident took place at midnight inside the house of Ajaib Singh, the only natural witnesses who could be present to see the assault would be Jaswant Kaur and her mother Shiv Kaur. No outsider can be expected to have come at that time because the attack by the appellants was sudden. Moreover a close relative who is a very natural witness cannot be regarded as an interested witness. The term "interested" postulates that the person concerned must have some direct interest in seeing that the accused person is somehow or the other convicted either because he had some animus with the accused or for some other reason. Such is not the case here. In the instant case there is absolutely no evidence to indicated that either Jaswant Kaur or Shiv Kaur bore any animus against the accused. This Court had an occasion to decide as to whether a relative could be treated as an interested witness. In Dalip Singh v. State of Punjab (1954 SCR 145 : AIR 1953 SC 364 : 1953 Cri LJ 1465) this Court expressed its surprise over the impression which prevailed in the minds of the members of the bar that relatives were not independent witnesses and in order to dispel the same the qualities of independent witnesses were clearly elucidated. In this connection, Vivian Bose, J. speaking for the Court observed as follows :

> We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal case and one which another Bench of this Court endeavoured to dispel in Rameshwar v. State of Rajasthan (1952 SCR 377, 390 : AIR 1952 SC 54 : 1952 Cri LJ 547). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of Counsel.

A witness is normally to be considered independent unless he or she spring from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

A Similar view was taken in a later decision of this Court in Masalti v. State of U. P. ((1964) 8 SCR 132 : AIR 1965 SC 202 : (1965) 1 Cri LJ 226) where this Court observed as follows :

> But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses . . . . . The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice.

In Guli Chand's case (supra) it was pointed out that normally close relatives of the deceased would not be considered to be interested witnesses who would falsely mention the names of other persons as responsible for causing injuries to the deceased. Thus in this case also the Court held that the witnesses concerned even though relatives could not be considered to be interested or partisan. This Court observed at p. 702 thus :

> It has been held by this Court that the mere fact that a witness is a relation of a victim is not sufficient to discard his testimony.

To the same effect are the observations by this Court in State of Punjab v. Jagir Singh ((1974) 3 SCC 277 : 1973 SCC (Cri) 886).

12. For these reasons, therefore, I am unable to reject the evidence of P Ws 3 and 4 merely on the ground that they were relatives of the deceased. I have myself carefully gone through the entire evidence of these two witnesses and I find that shorn of a few embellishments here and there their testimony has a ring of truth, a colour of consistency and a sense of straightforwardness as a result of which their evidence inspires great confidence. They have given a graphic description of what they had seen. In these circumstances, therefore, I do not see any reason to discard the assessment of the courts below regarding these two witnesses. I will, however, deal with the general comments made by Counsel for the appellants regarding the entire case a little later. Thus once the evidence of these two witnesses is believed, the prosecution case stands proved, apart from anything else. It will, however, appear that the prosecution had led circumstantial evidence to support the intrinsic evidence given by these witnesses. One of the reasons for the presence of PW 4 Shiv Kaur in the house and the electric installation was that Jaswant Kaur had recently given birth to a child. This fact is clearly proved from the birth register Ext. PO, which has been proved by PW 10, which clearly shows that a son was born to Amir Singh who is also known as Bhagta Singh on July 11, 1973. The entry has been made on July 14, 1973. This extract from the birth register has been proved by PW 10 Sohan Singh chowkidar of the village who maintains birth and death register and testifies on oath that he had himself seen the child of Jaswant Kaur. These two pieces of evidence therefore prove conclusively that the evidence of the two witnesses was absolutely true in the sense that Smt. Jaswant Kaur had given birth to a child she had called Shiv Kaur a few days before her delivery. The occurrence took place a little more than two weeks after the birth of the child. Similarly the witnesses (PWs 3 and 4) have categorically stated that at the time when the accused entered the house an electric bulb was burning because the child was not well. That there was electricity fitting in the house and a bulb in the courtyard is established from the sketch map of the place prepared by PW 5 Bal Kishan who has been examined to prove the sketches prepared by him which shows the electric fitting and the bulb. This is further corroborated by the evidence of PW 6 Mohindar Singh photographer who had prepared the photograph Ext. PH which also proves the electric fittings. In these circumstances the testimony of these two witnesses on these two essential points is fully corroborated by the other evidence.

13. Mr. Anthony however submitted that the prosecution has not examined the best evidence, namely, Mohinder Singh from whom the electric connection was borrowed. This was a very minor matter and the evidence led by the prosecution clearly proved the fact that there was electric installation and the bulb actually burning at the time of occurrence and non-examination of Mohinder Singh would not outweigh the evidence given by the eyewitnesses corroborated as it is by the evidence of PWs 5 and 6 and the documents Exts. PN and PM.

14. The prosecution has further led the evidence of recovery of the weapons from all the appellants at their instance which are Exts. PQ, PS, PT and PU. The weapons recovered were bloodstained and they were recovered at the instance of the appellants. Both the courts below have accepted this evidence and this was sought to be repelled by learned Counsel for the appellants on the ground that no independent witness as such has been examined to prove the recoveries. It would appear that so far as Ext. PQ the recovery of kirpan from Pooran Singh is concerned it has been proved by Darshan Singh brother of Jaswant Kaur. We find that Jaswant Kaur was not an interested witness because she was the wife of one of the deceased. Her brother Darshan Singh's testimony does not suffer from any infirmity and he must be considered to be an independent witness because he bears no animus what so ever against any of the appellants. Darshan Singh was examined as a witness as PW 11 and was examined at great length but no suggestion was given to him that he had any enmity against the accused. The only thing that was suggested to him was that he was deposing falsely because of his relationship - a ground which cannot be entertained.

15. As regard the recoveries of the weapons at the instance of Dalbir Kaur, Dalbir Singh and Ajit Singh, it is true that they have been attested by the police officers and some independent persons as search witnesses. The police officers have been examined to prove the search but the other witnesses have not been examined. That by itself does not introduce any serious infirmity in the evidence furnished by the recoveries which at best is only a corroborative piece of evidence. We shall, however, take up the case of Ext. PU the recovery of kirpan from Ajit Singh a little later.

16. The learned Counsel for the appellants relied on a decision of this Court in Nachhettar Singh v. State of Punjab ((1976) 1 SCC 750 : 1976 SCC (Cri) 182) where Bhagwati, J. speaking for the Court observed as follows : [SCC p. 756 : SCC (CRI) p. 189, para 16]

> It is because of the serious infirmities in the main version of the occurrence that the story of arrest, recovery of firearms and cartridges from the person of the appellants and the findings of the empties at the place of occurrence assumed importance . . . . . The recovery in the circumstances of this case ought to have been proved by examining the witnesses who had witnessed the recovery.

In the first place that case is clearly distinguishable because the recoveries in that case suffered from various other infirmities which led the court to reject that evidence. Again what the court observed was that the recovery should be proved by examining witnesses who had witnessed the recovery. In the instant case the witnesses were no doubt examined to prove the recoveries and both the courts below have accepted their evidence. This is not a case where no witnesses for recoveries were examined at all so that the evidence of recovery could be thrown out on that ground alone. In these circumstances, therefore, the case cited by the learned Counsel for the appellants does not appear to be of any assistance to him and therefore we overrule the contention of the learned Counsel on this scope.

17. It was further urged that there does not appear to be any motive for murder of the two deceased

persons by the appellants who happened to be the son of one of the deceased and brother of another. It was submitted that in case of patricide the prosecution must prove strong and compelling motive before the murder can be accepted. The learned Sessions Judge has accepted the evidence of motive, the fact that the appellant Dalbir Singh was wholly dissatisfied with the partition of properties and particularly because his father Ajaib Singh used to give the produce of the land to his brother Amir Singh. The Sessions Judge on the question of motive found as follows :

> This was the main bone of contention between Ajaib Singh and Dalbir Singh accused. Dalbir Singh accused wanted to have three more killas of land from Ajaib Singh but the latter refused to part with his land. Although as discussed above, the circumstances of the case do point out that the accused had a motive to commit the crime, yet even if it is assumed for the sake of argument that the prosecution has not been able to prove by good evidence that the accused had any impelling motive to commit the crime, it would not render any help to them.

The High Court also confirmed this finding and held that even if the motive was not proved, if the evidence of the eyewitnesses Jaswant Kaur and Shiv Kaur is accepted the question of motive pales into insignificance and becomes absolutely academic. We would, however, hasten to add that this is no doubt the correct proposition of law, but in the instant case we should remember that lust of land is a very sensitive matter. We have known a very large number of cases resulting in serious disputes culminating in murders over small land disputes. Various persons react differently in similar circumstances and we cannot, therefore, exclude the possibility of the appellant Dalbir Singh having reacted very sharply against what he considered to be an inequitable distribution of the property. This would undoubtedly provide an adequate motive for the murder which is demonstrated by the fact that the two deceased persons were actually murdered by Dalbir Singh and his party. In these circumstances we are satisfied that the finding of the courts below on this point is absolutely correct.

18. I shall now deal with two important points which were vehemently pressed by Mr. Anthony learned Counsel for the appellants. In the first place it was contended that the entire prosecution case should be thrown out because of non-examination of four material witnesses in this case. It was submitted that even according to the evidence of Jaswant Kaur her neighbours Mohinder Singh and Daya Singh had also witnessed the occurrence. Jaswant Kaur stated this fact at p. 46 of paper book II but she also added that even though they were watching the occurrence they did nothing to help the deceased nor did they raise any alarm. The Counsel further submitted that these two witnesses were interrogated by the police and yet they have not been examined to prove and corroborate the evidence of the eyewitnesses. This omission is undoubtedly there and we have to see as to what is its effect on the truth of the prosecution case. In the same token it was also contended that two other witnesses, namely, Mukhtiar Singh and Mohinder Singh who immediately came to the house and to whom the eyewitnesses narrated the occurrence have also not been examined. Particular comment was made regarding the non-examination of Mohinder Singh who had in fact accompanied the informant to the police station. It was argued by Mr. Anthony that in view of this deliberate omission to examine material witnesses a reflection is cast on the fairness of the trial so as to vitiate the conviction of the appellants. Strong reliance was placed by Counsel for the appellants on the decision of this Court in Habeeb Mohammad v. State of Hyderabad (1954 SCR 475 : AIR 1954 SC 51 : 1954 Cri LJ 338). In that case what had happened was that the only witness examined to prove the firing by the accused was a police jamadar where as a very senior police officer who is said to be present at the time when the accused gave orders for firing was not produced and what was more was that no explanation for the omission to examine this witness was given. In view of these circumstances and the other infirmities appearing in that case generally, this Court held that such an

omission to produce a material witness was sufficient to throw doubt on the prosecution case. In this connection this Court observed thus :

> In this situation it seems to us that Biabani who was a top-ranking police officer present at the scene was a material witness in the case and it was the bounden duty of the prosecution to examine him, particularly when no allegation was made that if produced, he would not speak the truth . . . . In our opinion, not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to Section 114 of the Indian Evidence Act, but the circumstance of his being withheld from the court casts a serious reflection on the fairness of the trial.

The facts of that case are clearly distinguishable from the facts of the present case. To begin with, in that case, excepting the interested witness the police jamadar there was no other eyewitness to support the occurrence. Secondly, this Court clarified it observations that an adverse inference could be drawn only if no explanation for the non-examination was given or if no allegation was made that the witness if produced would not speak the truth. Thirdly, it appears that although an application was made to the trial Court for examination of the witness concerned under Section 540 of the Code of Criminal Procedure, the Court did not accede to this prayer. In the instant case the prosecution has given very reasonable explanation for not examining these witnesses and there is nothing to show that the accused filed any application before the trial Court or even before the High Court for examining these witnesses as the court witnesses nor did they choose to examine them as the defence witnesses. The Public Prosecutor in his statement before the Sessions Judge clearly stated thus at p. 57 of paper book II :

> I give up Inder Singh and Sadhu Singh PWs as the uncles of Dalbir Singh accused, Mohinder Singh as maternal uncle of Dalbir Singh, I also give up Mukhtar Singh, Nazir Masih, Pursan Masih, Chanan Singh and Rabinder Singh PWs as having been won over by the accused. They are not likely to speak the truth and they are present in court.

The reasons given by the Public Prosecutor are quite understandable, because the witnesses who had been given up either on the ground that they were relatives of the appellant Dalbir Singh or that they had been won over by the accused and were not likely to speak the truth. This statement of the Public Prosecutor which was recorded by the trial Court on June 3, 1974 clearly takes the case out of the ambit of the ratio of the decision in Habeeb Mohammad's case (supra).

19. Furthermore, in the instant case, there were two independent witnesses PWs 3 and 4 who had proved the actual occurrence and their evidence was fully corroborated by the medical evidence and the evidence of the recovery of the weapons at the instance of the appellants themselves. In these circumstances, therefore, the principles laid down in Habeeb Mohammad's case will not apply to this case at all. Furthermore in Habeeb Mohammad's case there was a serious violation of procedure because the trial Court refused to summon those witnesses who were cited by the defence which was by itself sufficient to vitiate the trial. It was in view of these circumstances that this Court was not prepared to convict the accused. In these circumstances, therefore, the case relied upon by the learned Counsel for the appellants has no application to the present case.

20. Reliance was also placed on a decision of this Court in Sahaj Ram v. State of U. P. ((1973) 1 SCC 490 : 1973 SCC (Cri) 410) where this Court observed as follows : [SCC p. 497 : SCC (CRI) p.

416 para 15]

> There is a clear finding of the sessions court to the effect that PWs 1 1 to 3 had a very strong motive to falsely implicate the four accused forming group II. In view of these circumstances, the High Court's consideration of the evidence of PWs 1 to 3 is faulty and erroneous. The conviction of the appellants by the High Court is based exclusively on the evidence of these witnesses giving great importance to Ext. Ka-8. We have already held that Ext. Ka-8 should not have been taken into account. Having due regard to the other circumstances referred to above, the evidence of PWs 1 to 3, even as regards the appellants, stands considerably discredited and no conviction can be based on such an evidence. This really is a case, in our opinion, where the courts have substantially disbelieved the substratum of the prosecution's case and have reconstructed a story of their own against the appellants.

It would appear that in that case there was no evidence of the eyewitnesses at all who were examined as court witnesses and who destroyed the prosecution case completely. Furthermore, the witnesses examined by the prosecution namely, PWs 1 to 3 were factional witnesses and the finding was that they had very strong motive to implicate the accused. Lastly in that case the F. I.R. on which the High Court relied was found to be inadmissible in evidence. It was in these circumstances that an adverse inference was drawn against the prosecution for non-examining some of the witnesses. That case also therefore has no application to the facts of the present case.

21. On the other hand in Narain v. State of Punjab (1959 Supp 1 SCR 724 : AIR 1959 SC 484 : 1959 Cri LJ 537) it was pointed out by this Court that if non-examination of material witnesses was deliberate and intentional then a serious reflection was cast on the prosecution and the Court observed as follows :

> We agree that if a material witness has been deliberately or unfairly kept back, then a serious reflection is cast on the propriety of the trial itself and the validity of the conviction resulting from it may be open to challenge.

In the instant case it has been seen that the Public Prosecutor has given a statement that the witness concerned were either relatives of the accused or that had been gained over by the accused and were, therefore, not likely to speak the truth. In view of this explanation it cannot be said that the witnesses were deliberately withheld or unfairly kept back and therefore no adverse inference could be drawn against the prosecution for non-examination of those witnesses.

22. To the same effect is the decision of this Court in Masalti's case (supra) which was also relied upon by Counsel for the appellants on this point. In that case the Court observed as follows :

> It is undoubtedly the duty of the prosecution to lay before the court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even if it is known that he has been won over or terrorised. In such a case, it is always open to the defence to examine such witnesses as their witnesses and the court can also call such witnesses in the box in the interest of justice under Section 540, Cr. P. C.

From the observations made by this Court it is quite clear that there is no duty on the prosecution to

examine witnesses who might have been gained over by the accused and even if those witnesses are not produced by the prosecution there is nothing to stop the accused from applying to the court for examining such witnesses under Section 540 of the Code of Criminal Procedure. No such application was ever made by the appellants either before the trial Court or the High Court but for the first time it was made in this Court and that to during the course of the arguments. This Court in its special jurisdiction does not entertain such applications, particularly because the accused had an opportunity to make a similar application before the courts below and they have not availed of the same. For these reasons, therefore, Criminal Miscellaneous Petition 1291 of 1976 filed by the appellants in this Court is rejected.

23. There is one peculiar feature in this case which is with regard to the eyewitnesses Mohinder Singh and Daya Singh who are alleged to have seen the occurrence. According to PW 3 they refused to give statements to the police as deposed to by the Investigating Officer PW 14 at p. 65 of paper book II.

In this connection PW 14 Sub-Inspector categorically stated as follows : (p. 66 of paper book II) :

> I wanted to record the statements of Mohinder Singh and Daya Singh under Section 161, Criminal Procedure Code on August 1, 1973 but they were not prepared to make Statements regarding this occurrence and to become witnesses.

What the witness really meant was that although he did interrogate the witnesses who must have given some statement, yet they were not at all prepared to be cited as witness for the purpose of giving evidence. I had sent for the case diary and all that we can say is that after perusing the same I do not think that the statement made by the witness can be said to be either wrong or in-correct. The witness does not bear any animus against the accused nor was any such suggestion made to him in cross-examination. I, therefore, do not see any reason to distrust the evidence of the Investigating Officer PW 14 on this point. If his evidence is accepted, then the prosecution has given an adequate explanation for not examining Mohinder Singh and Daya Singh, and therefore no adverse inference can be drawn against the prosecution.

24. It was then submitted that there was delay in the loading of the F.I.R. and also in its despatch to the magistrate. This argument is to be stated only to be rejected. The eyewitnesses have clearly stated that after the gruesome occurrence they were threatened by the accused as a result of which they had to shut themselves in the room and it was only in the morning when the accused had left the house that Jaswant Kaur accompanied by Mohinder Singh started for the police station at 6 a.m. and lodged the F.I.R. at the police station at 9 a.m. the police station being at a distance of six miles from village Marrar Kalan where the occurrence took place. In view of these facts it is not reasonable to expect the informant to have reached the police station earlier than 9 a.m. It was impossible to expect from the informant who was a woman to rush to the police station at night and take the risk of being killed by the accused who had stayed on in their part of the house even after the occurrence and had left the house only in the morning. It was, however, suggested that there was delay in the despatch of the F.I.R. to the magistrate. This matter has been clearly explained by the Sub-Inspector who after making the necessary entries arrived at the spot and sent constable Prem Chand PW 15 to take the F.I.R. to the magistrate. PW 15 Prem Chand has deposed that he had gone to the magistrate's court but as the magistrate was not in his seat he proceeded to Gurdaspur to give a copy of the F.I.R. to Superintendent of Police and after his return he delivered the F.I.R. to the magistrate at 3 p.m. Both the courts below have believed the evidence of PW 15 which is supported by the documents and the fact that the magistrate actually received the F.I.R. at 3 p.m. If the accused

wanted to contest this fact they should have examined the officers of the court of the magistrate to find out whether or not the magistrate was available in his seat in the morning as deposed to by Prem Chand. At any rate, this is a pure finding of fact which is arrived at on the basis of the evidence led by the prosecution and we are not prepared to reopen this finding in the present appeal by special leave in view of the decisions of this Court.

25. It was also argued that the evidence of PWs 3 and 4 should be disbelieved because they have given graphic description of the occurrence by detailing the nature of the injuries and the parts of the body where they were inflicted. Such a photgenic (sic) description smacks of the evidence being a tainted one according to the Counsel for the appellants. Reliance was placed on a decision of this Court in Shivaji Sahabrao Bobade v. State of Maharashtra ((1973) 2 SCC 793 : 1973 SCC (Cri) 1033) where this Court observed thus : [SCC p. 807 : SCC (CRI) p. 1047, para 18].

> Some attempt was made to show that the many injuries found on the person of the deceased an the manner of their infliction as deposed to by the eyewitnesses do not tally. There is no doubt that substantially the wounds and the weapons and the manner of causation run congruous. Photographic picturisation of blows and kicks and hits and strikes in an attack cannot be expected from witnesses who are not fabricated and little turns on indifferent incompatibilities. Efforts to harmonise humdrum details betray police tutoring not rugged truthfulness.

The observations made by this Court were made having regard to the peculiar facts of that case and cannot be taken to lay down a rule of universal application. In the instant case the witnesses watched the occurrence from a close distance in an electric light. The assault was so dastardly and gruesome that it must have made a definite and lasting impact on the memory of the witnesses that made them remember the assault with its grotesque details. Human memory is like a camera which takes snapshots of striking incidents and then transmits the same through word of mouth faithfully with absolute accuracy and precision. Moreover, it is not a question of giving photographic details at all, but the witnesses have merely described what they actually saw. It is manifest that in view of the electric bulb burning, the witnesses were bound to observe the weapons with which the accused were armed, the main parts of the body where the blows were given and the like. As the accused were fully known to the informant Jaswant Kaur, there is nothing unusual if she gave the names and parentage of all the accused persons in the F.I.R. In these circumstances, the comment of the learned Counsel for the appellants is without substance and must be overruled.

26. Lastly Mr. Frank Anthony submitted that the case of Ajit Singh deserves special consideration, particularly in view of the fact that one of the eyewitnesses Shiv Kaur has failed to identify him at the test identification parade. It was further submitted that if Ajit Singh is acquitted, then the whole case would fall to the ground, because if the witnesses could implicate one innocent person there is no guarantee that the others were not equally innocent. While I agree with the first part of the statement that there is some room for giving benefit of doubt to Ajit Singh, I do not agree with the other part of the argument that merely because Ajit Singh is given benefit of doubt, the others also should be acquitted. In Sat Kumar V. State of Haryana ((1974) 3 SCC 643 : 1974 SCC (Cri) 173) this Court observed thus : [SCC P. 647 : SCC (CRI) p. 177, para 7] :

> There is no rule of law that if the court acquits certain accused on evidence of a witness finding it to be open to some doubt with regard to them for definite reasons, any other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness, should

> also be acquitted. It will, however, call for a closer scrutiny of the evidence and the court must feel assured that it is safe to rely upon the witness for the conviction of the remaining accused.

To the same effect is the earlier decision of this Court in Mohammed Moinuddin v. State of Maharashtra ((1971) 3 SCC 338 : 1971 SCC (Cri) 617) were it was observed : [SCC p. 343 : SCC (CRI) p. 622, para 18]

> Mr. Nuruddin Ahmed urged that the High Court on the very same evidence has chosen to give the benefit of doubt to accused No. 3 and, if so, the appellant also should be given the benefit of doubt. We are not inclined to accept this contention of the Counsel.

So far as Ajit Singh is concerned we have the single testimony of Jaswant Kaur, as it is difficult to rely on the evidence of Shiv Kaur, so far as Ajit Singh is concerned because she has failed to identify the appellant Ajit Singh at the test identification parade. Shiv Kaur who is undoubtedly a truthful witness has made no secret of the fact and has frankly admitted in her statement that she did not know Ajit Singh from before. In these circumstances, therefore, the evidence of Shiv Kaur cannot be relied upon for the purposes of identification so far as the appellant Ajit Singh is concerned. As regards Jaswant Kaur I see no reason to distrust her evidence at all, but in the circumstances the possibility of this witness making an honest mistake in identifying Ajit Singh cannot be safely excluded or ruled out. It may be mentioned here that the accused Ajit Singh at the time of surrendering gave an application which is Ext. D B at p. 42 of paper book Part II where he categorically prayed that he should be put at the test identification parade for identification by all the eyewitness who did not know him from before. In his statement under Section 342 of the Code of Criminal Procedure also Ajit Singh took the stand that he had never gone to the village Marrar Kalan before or after the occurrence and that is why he surrendered not at Batala but at Gurdaspur so that he might not be got identified by the police to the witnesses. The magistrate passed an order that the accused Ajit Singh should be identified at the test identification parade but unfortunately while Shiv Kaur was asked to identify the appellant Ajit Singh at the test identification parade, Jaswant Kaur has was not asked to identify him there. It is true that Jaswant Kaur has stated in her evidence that she knew the appellant Ajit Singh as being the cousin of Mst. Bhiro the wife of her husband's elder brother. He used to come to the house off and on. It is therefore, clear that Jaswant Kaur herself might have caught only a glimpse of the appellant Ajit Singh when he came to meet Mst. Bhiro who admittedly lived in a separate portion of the house and, therefore, the witness Jaswant Kaur could not have known the appellant Ajit Singh very well. At any rate, either Ajit Singh was known to the witness Jaswant Kaur or he was not known. In any case, in view of the stand taken by Ajit Singh the prosecution should, in all fairness, have put Jaswant Kaur also at the test identification parade to identify Ajit Singh. If Ajit Singh was not known to Jaswant Kaur as he said, then she would not have been able to identify him. If Ajit Singh was known to her, then also the prosecution was not to lose anything. In view of these circumstances, therefore, I feel it unsafe to rely on the single testimony of Jaswant Kaur, so far as the appellant Ajit Singh is concerned. This, however, does not mean that I am casting any reflection on the credibility or truthfulness of any of the eyewitnesses. The appellant Ajit Singh may have been one of the assailants but in view of the circumstances mentioned above, a reasonable doubt arises, regarding his participation, which must be given to him. If the evidence of Jaswant Kaur is excluded from consideration, so far as Ajit Singh is concerned, then the evidence of the recovery of kirpan from Ajit Singh by itself was not sufficient to connect him with the crime, particularly when there was not statement by Ajit Singh wherein he had confessed assaulting the deceased and then pointed out to the weapon as being the

weapon with which he had assaulted the deceased. In these circumstances, I am satisfied that the prosecution has not been able to prove its case against Ajit Singh beyond reasonable doubt and the High Court was wrong in convicting him.

27. So far as the other appellants, namely, Dalbir Kaur, Dalbir Singh, and Puran Singh are concerned. I fully agree with the judgement of the High Court that the case has been proved beyond doubt against those appellants and they have been rightly convicted. Both the courts below have applied their mind to the question of giving death sentences and have pointed out that this being the case of a most dastardly, cruel, gruesome and unprovoked murder of two innocent and helpless persons, while they were asleep, death sentence was the only sentence that could be given to them, particularly to Dalbir Singh and Puran Singh. The trial Court rightly gave life imprisonment to Dalbir Kaur alias Smt. Bhiro as she was a woman and appears to have played in the hands of her husband.

28. The result is that the appeal of Ajit Singh is allowed and the conviction and sentence imposed on him are hereby set aside. He is acquitted of the charges framed against him and is directed to be set at liberty immediately. The appeals of Dalbir Singh, Puran Singh and Dalbir Kaur alias Smt. Bhiro are hereby dismissed and the convictions and sentences imposed on them are affirmed.

Gupta, J. (concurring). -

I agree with my learned brother that the appeals of Dalbir Singh, Puran Singh and Smt. Dalbir Kaur alias Bhiro should be dismissed. The judgement of the High Court which affirms the order of conviction and the sentences passed on these appellants by the trial Court does not appear to suffer from any infirmity which can be said to have caused a failure of justice so far as the case of these appellants are concerned. I also agree that the appeal of Ajit Singh should be allowed for the reasons stated in the judgement of my learned brother.

30. The decisions of this Court referred to in the judgement of my learned brother lay down that his Court does not interfere with the findings of fact unless it is shown that "substantial and grave injustice has been done". But whether such injustice has been done in a given case depends on the circumstances of the case, and I do not think one could catalogue exhaustively all possible circumstances in which it can be said that there has been grave and substantial injustice done in any case. In the appeals before us the findings recorded by the trial Court and affirmed by the High Court do not disclose any such exceptional and special circumstances as would justify the claim made on behalf of the appellants whose appeals we propose to dismiss that there has been a failure of justice in these cases.

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