

Baldev Singh

Vs

State of Punjab

Criminal Appeal No. 2 of 1979

(S. R. Pandian, K. Jayachandra Reddy JJ)

18.09.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. -

1. The above appeal is preferred by the appellant Baldev Singh challenging the correctness of the judgment in Criminal Appeal No. 711 of 1975 by the High Court of Punjab and Haryana at Chandigarh. The facts of the case briefly stated are as follows :

On January 14, 1975 at about 9.30 p.m. the deceased Baldev Singh and Amar Nath, PW 10 left their poultry farm in a truck driven by the deceased to their respective homes. When they were about to enter a lane, they found a jeep bearing Registration No. DLK 6698 having been parked obstructing the way. The appellant and one Jagtar Singh (who was co-accused and since acquitted) was standing near the jeep. The deceased and PW 10 requested the appellant and another to move their jeep aside so that their truck could pass through, but the appellant and his co-accused instead of moving the jeep got hold of PW 10 and gave him some slaps and fist blows. When the deceased intervened, the appellant whipped out a pistol. Apprehending imminent danger to his life, the deceased attempted to run away but the appellant fired two shots from his pistol simultaneously which hit on the back of the deceased. The deceased fell down. Thereafter, the appellant and his co-accused made good their escape by driving their jeep. PW 7, an advocate who was residing nearby, mistaking the shots as having been fired by some robbers fired some shots with his gun in the open air in order to create a scare. In the meantime PW 1, the brother of the deceased on hearing the two gunshots followed by two more shots rushed to the scene and found his brother Baldev Singh lying injured. The injured Baldev Singh told his brother as to what had happened. PWs 9 and 10 removed the injured to the Civil Hospital, Muktsar where the Medical Officer, PW 1 examined the injured and noted two gunshot injuries. PW 17, the Assistant Sub-Inspector of Police on receipt of an intimation Ex. P.B. from the Medical Officer reached the hospital and took a statement Ex. P.O. from PW 10 as the injured was not in a fit condition to make any statement. On the basis of Ex. P.O. a case was registered against the appellant and his co-accused under Section 307 IPC.

2. PW 17 visited the scene and searched for the appellant but he was absconding. PW 17 deputed a constable on the spot from where he seized a fired cartridge and a live cartridge in presence of witnesses. Then at about 11 a.m. on the next day, PW 17 after getting opinion of the Medical Officer about the fitness of the injured to make a statement recorded the statement of the injured under Section 161 of the Code of Criminal Procedure which is Ex. P.G. On January 15, 1975 at about 5 p.m. PW 17 arrested the appellant and seized the pistol Ex.P. 5.

3. The Director, Forensic Science Laboratory to whom the fired cartridge and the pistol were

forwarded gave his opinion on examination of these two material objects stating that the fired cartridge (Ex.C. 1) was the one fired through the 9 mm pistol Ex.P. 5. His report is Ex.P.OO. As the condition of the injured had deteriorated, he was referred to CMC Hospital, Ludhiana for further treatment. The deceased, however, succumbed to his injuries on January 19, 1975. PW 17 on getting the information about the death of the deceased altered the cases as one of the murder, and then proceeded to the hospital where he held the inquest over the dead body. PW 12, the Medical Officer attached to Ludhiana Hospital conducted autopsy on the dead body of the deceased and found two gunshot injuries as noted in the post-mortem certificate Ex. P.Y. After completing the investigation, the charge-sheet was laid. The appellant and his co-accused took the plea of denial when examined under Section 313 of the Code of Criminal Procedure. The trial court for the reasons mentioned in its judgment convicted the appellant, but however, acquitted the co-accused. The High Court, on appeal, has confirmed the judgment of the trial court. Hence the present appeal.

4. The prosecution to substantiate the charge levelled against the appellant rests its case on the following pieces of evidence :

- (1) The ocular testimony of PW 10 who is said to have been present at the scene in the company of the deceased.
- (2) The oral dying declaration said to have been made by the deceased to his brother, PW 9 at the scene.
- (3) The dying declaration Ex. P.G. which was recorded by PW 17 in the course of investigation at the hospital at 11 a.m. on January 15, 1975.
- (4) The seizure of a fired cartridge Ex.C. 1 from the place of occurrence and the pistol Ex.P. 5 from the appellant at the time of his arrest.
- (5) The opinion of the Director of Forensic Science Laboratory opinion that Ex.C. 1 was the one which was fired through Ex.P. 5.

5. It is seen from the judgment of the High Court that though PW 10 in his chief examination has supported the prosecution version in all its material particulars has given a complete go-by and struck a death knell to the prosecution in his cross-examination that due to darkness he could not identify the culprits. The High Court was inclined to place reliance on his evidence on the ground that this witness in his statement before the police, evidentially referring to the statement recorded under Section 161 of the Code of Criminal Procedure during the investigation as well as in the first information report Ex. P.O., has narrated all the relevant facts and had not whispered in those statements that he could not identify the appellant due to darkness. This reasoning of the High Court in our view is erroneous. Needless to stress that the statement recorded under Section 161 of the Code of Criminal Procedure shall not be used for any purpose except to contradict a witness in the manner prescribed in the proviso to Section 162(1) and that the first information report is not a substantial piece of evidence. The High Court has misled itself into relying upon these two statements and thereby has fallen into a serious error. It is pertinent to note in this connection that PW 7, an advocate who is a disinterested witness has testified to the fact that both PWs 9 and 10 met him after the incident, but they did not tell the name of the appellant.

6. Now we shall examine the evidence of PW 9 who has deposed that his brother gave him an oral declaration that he was shot by the appellant. The High Court after scrutinising the evidence of PW

9 has held thus :

"Gurdev Singh (PW 9) seems to have spoken lie on certain material points .... According to Gurdev Singh (PW 9) Baldev Singh deceased was in the beginning speaking, but when he reached the hospital he became unconscious and was not in a fit condition to make the statement and that on the way he told him the whole incident. This part of Gurdev Singh's statement also cannot be believed ... Hence the first dying declaration made before Gurdev Singh (PW 9) relied upon by the trial court is not believable. Admittedly, when Baldev Singh deceased reached the hospital he was not in a fit condition to make the statement according to the doctor. Hence no reliance can be placed on the testimony of Gurdev Singh (PW 9)."

7. We see no reason to deviate from the above view expressed by the High Court and hence reject the evidence of PW 9 as unworthy of any credence.

8. The next piece of evidence relied upon by the prosecution is the statement Ex. P.G. recorded by PW 17 during the investigation under Section 161 of the Code of Criminal Procedure. It is not the case of the prosecution that any attempt was made to record any dying declaration of the deceased by a Magistrate. PW 17 also did not record the statement treating it as a dying declaration but recorded the same under Section 161(3) of the Code of Criminal Procedure during the course of the investigation which statement after the death of the deceased is now admitted by virtue of Section 32(1) of the Evidence Act.

9. We, on careful examination of Ex. P.O. and Ex. P.G. keeping them in juxtaposition, are surprised and shocked to note that some portions of Ex. P.O. are verbatim reproduced in Ex. P.G. (the alleged dying declaration, recorded by PW 17). For example, the sentence in Ex. P.G. reading : "A jeep bearing No. DLK 6698 was found parked in the street. Baldev Singh s/o Darai Singh a police constable r/o Kharkian Wala and Jagtar Singh s/o Dal Singh r/o Marrar Walan, whom I know previously, were standing behind the jeep" is identical to the version in the first information report Ex. P.O. It is highly inconceivable that the injured who was unconscious throughout on the previous day had remembered even the registration number of the jeep and mentioned the same in his statement. The father's name of the appellant as given in this appeal is Gurbachan Singh whereas the deceased in Ex. P.G. is stated to have mentioned the name of the appellant's father as Darai Singh. The High Court though has noted this mistake has brushed aside the same observing that the "mere wrong description of the appellant's father does not in any manner make the statement suspicious". This mistake in our view has crept in Ex. P. G. because the same mistake is committed in Ex. P.O. also. In other words, what is stated in Ex. P.O. is reproduced in Ex. P.G. It creates a suspicion in our mind that Ex. P.G. might have been prepared only on the basis of Ex. P.O. We have carefully examined this document and come to an irresistible conclusion that this document Ex. P.G. can never be relied upon and no conviction can be recorded on that basis.

10. The only remaining evidence to be considered is the opinion of the Director of Forensic Science Laboratory. The High Court has disbelieved the evidence with regard to the recovery of the cartridges at the scene and further pointed out that Ex. P. 5 though seized on January 15, 1975, was sent to the Forensic Science Laboratory only on January 27, 1975. On the above basis, the appellate Court has found thus :

"All theses circumstances create doubt about the connection of this cartridge Ex. C. 1 with the crime".

11. We are in full agreement with the above finding of the High Court and hold that this piece of evidence is also liable to be discarded.

12. For all the reasons stated above, we are of the considered view that the evidence adduced is not worthy of acceptance and the prosecution has failed to satisfactorily establish the guilt of the accused.

13. In the result, we allow the appeal by setting aside the conviction and sentence recorded by the High Court and direct the appellant to be set at liberty. The appeal is allowed accordingly.

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