Gurmej Singh and Others

Vs

State of Punjab

Criminal Appeal No. 778 of 1979

(A. M. Ahmadi, Smt. M. S. Fathima Beevi, V. Ramaswami – II JJ)

16.07.1991

JUDGMENT

A. M. AHMADI, J. -

1. Harnam Singh, Sarpanch of Village Naushera, was murdered on the night between June 6 and 7, 1976 while he was sleeping at his tubewell to guard the wheat bags stacked in his field. PW 1 Dr Malhotra who conducted the autopsy at about 4.15 p.m. on June 7, 1976 found four injuries on the person of the deceased, namely, (i) a lacerated penetrating circular wound, 1/4" in diameter, with black margins inverted on right middle back, 3" from mid-line and 9" from iliac crest, (ii) a vertical bruise 6" x 1/2" on the front of right forearm running downward and outwards, (iii) bruises in the area of 5" x 1" on the front and inner aspect of right upper arm above the elbow joint, running forwards, outwards and downwards and (iv) an abrasion 5" x 1" on he right side of the chest, 5" from mid-line and 3" from the clavicle running downward and inward. On opening the first wound it was found that the 8th and 9th ribs were fractured posteriorly; the diaphragm and superior surface on the left lobe of the liver were lacerated; the heart was lacerated into pieces and the third, fourth, fifth, sixth and seventh ribs of the left side were broken anteriorly. The exit wound was 8" x 4" on the left upper chest just above the nipple. Death was on account of shock and haemorrhage resulting from the bullet injury. This Injury No. 1 was stated to be sufficient in the ordinary course of nature to cause death. The other injuries were possible by a hard and blunt weapon and were simple in nature. Death was instantaneous. Both the courts below, therefore, rightly concluded that death was homicidal.

2. The prosecution case, briefly stated, was that the appellants and the deceased who were neighbours in the village had quarreled over the passage of sullage water a few months before the incident. The appellants had diverted their sullage water towards the house of the deceased and the latter had protested and frustrated their effort. On account of this obstruction the sullage water collected in a pool near the house of the appellants which infuriated them. On account of this incident as well as past election rivalries the relations between the appellants and the deceased were so soured that on the night of the incident the three appellants went armed with weapons to the tubewell of the deceased where the latter was sleeping to guard his wheat stacked in bags. Gurmej Singh was armed with a rifle, Gian Singh was armed with gandasa and Bur Singh carried a dang. The prosecution alleged that Gurmej Singh had concealed the rifle in the chadar wrapped around him and on reaching the place where the deceased was sleeping on a cot he threw off the chadar and shot the deceased at point-blank range. The incident was witnessed by three persons, PW 2 Swaran Singh, nephew of the deceased, PW 3 Fauja Singh, a close relative of the deceased and one Narain Singh (not examined) who too were sleeping in the field. Actually Narain Singh was sleeping near the deceased whereas PWs 2 and 3 were sleeping at a distance of approximately 10/15 karams

therefrom. The prosecution did not examine Narain Singh on the plea that he was won over. The evidence of PWs 2 and 3 shows that they got up on hearing some movement in the field and they saw the three appellants near the cot of the deceased. They were able to identify them because of the existence of an electric light at the tubewell. According to them on reaching near the cot of the deceased Gurmej Singh fired a shot from close range at the deceased who was still sleeping in his cot. Thereafter Gian Singh struck a gandasa blow on the chest of the deceased followed by a dang blow on the right arm by Bur Singh. Gurmej Singh is stated to have warned others not to get up unless they wanted to be killed. On account of this warning PWs 2 and 3 did not run to the rescue of the deceased for fear of being killed. After making sure that their victim was dead, the appellants fled away. PW 2 Swaran Singh then went to the house of his father PW 4 Waryam Singh and narrated the incident. PW 2 accompanied by Gurdas Singh, Lambardar, then went to the police station at about 8.30 a.m. on June 7, 1976 and lodged the first information report. PW 8 Sub-Inspector Kartar Chand Singh then reached the place of occurrence, held an inquest on the dead body of the deceased, lifted the blood-stained earth from the place of occurrence and then recorded the statements of PW 3 Fauja Singh, Narain Singh and others. Gian Singh and Bur Singh were arrested on July 2, 1976 while Gurmej Singh was arrested on July 7, 1976. It appears that two more persons, namely, Sucha Singh and Santokh Singh (original accused 1 and 4, respectively) were also shown as arrested for the commission of this crime on July 2, 1976 although their names were not disclosed in the first information report. The allegation of the prosecution witnesses PWs 2, 3 and 4 is that these two persons were falsely involved as PW 8 Sub-Inspector Kartar Chand Singh wanted to save his skin as he was found to have illegally and wrongly detained them at the police station. We will deal with this aspect later but suffice it to say that both the courts below have come to the conclusion that they were falsely involved in the commission of this crime by fabricating statements of PWs 2 and 3 under Section 161 of Criminal Procedure Code ('the Code' for short). In view of this conclusion reached by both the courts, the said two persons were acquitted. No appeal was preferred challenging their acquittal. The trial court convicted Gurmej Singh under Section 302 IPC and the other two under Section 302/34 IPC and sentenced all the three to imprisonment for life and also imposed token fines. Against their conviction the present three appellants filed an appeal which was dismissed by a Division Bench of the High Court on June 21, 1979. It is against this finding of guilt recorded by both the courts below that the present three appellants have preferred this appeal by special leave.

3. Mr Frank Anthony, counsel for the appellants, submitted that there were three eye-witnesses to the incident even according to the prosecution case and out of them Narain Singh was nearest to the deceased when the incident occurred on that dark night in the field. This Narain Singh alone was an independent witness and yet the prosecution did not examine him on the specious plea that he was won over. The other two eye-witnesses, PWs 2 and 3, are admittedly close relatives of the deceased and out of them the presence of PW 3 is extremely doubtful being a resident of a nearby village. At any rate he can be termed as a chance witness and in all probability he came to the field from his village after learning about the incident. Besides, since the incident occurred on a dark night and the evidence that the electric light at the tubewell was on at that hour is extremely doubtful, it is difficult to believe that PWs 2 and 3 saw the actual incident from a distance of 10/15 karams and were able to identify the assailants. Said counsel, the conduct of both these eye-witnesses is not normal since they did not raise an alarm even though they depose to have woken up on hearing some movement in the field. They could have cautioned the deceased and Narain Singh about the entry of third parties in the field since they were there precisely for that purpose. They have tried to explain their unnatural conduct on the plea that the appellant Gurmej Singh had raised a 'lalkara' that anyone trying to come near the deceased would be killed. But this 'lalkara' was after the event and

not before, while the conduct of the eye-witnesses before the incident is unnatural if they had actually got up on hearing some movement of third parties in the field. Else it must be accepted that they got up on hearing the gun fire and before they could go near the deceased, the assailants had fled away. In this situation the evidence of Narain Singh assumes importance as he was most competent to unfold the true version regarding the incident, being just by the side of the deceased at the time of the incident. The failure to call him to the witness stand was, counsel submitted, unfair to the defence as it deprived the defence of the opportunity to elicit the true version regarding the offence. Lastly he submitted that the prosecution has not placed any material on record nor has it stated any reason in its written report in support of its conclusion that he had been won over. In any event, it is hazardous to base a conviction on the highly interested testimony of PWs 2 and 3, particularly when the motive alleged by the prosecution for implicating the appellants is very weak. Besides the evidence of PWs 2 and 3 suffers from several infirmities.

4. Counsel for the State submitted that this Court should not disturb the concurrent findings of fact recorded by the two courts and the reliance placed by them of the two eye-witnesses whose evidence is corroborated by PW 4. He pointed out that both the courts below had recorded a positive finding that the electric light was on at the tubewell which provided sufficient light to enable PWs 2 and 3 to identify the assailants even from a distance of 10/15 karams. The assailants were not strangers to PWs 2 and 3 and, therefore, their evidence on the question of identify cannot be doubted. The prosecution had stated the reason for not examining Narain Singh and if the defence had any doubt in that behalf it could have requested the court to examine the said witness as a court witness rather than keeping silent and then raising a belated grievance. In short he supported the line of reasoning adopted by the two courts below.

5. It must be conceded at the outset that the prosecution case hinges on the credibility of PWs 2 and 3. PW 2 is the nephew of the deceased, PW 3 is the maternal cousin of PW 2 and was closely related to the deceased as the latter's daughter Piari was his younger brother's wife. PW 3 is a resident of a neighbouring village lying at a distance of three miles from the village of the deceased. Ordinarily, therefore, PW 3 would not be expected to be present at the scene of occurrence but according to him he had gone to see PW 2 and after having his meals both he and PW 2 had gone to the tubewell of the deceased. PW 3 claims that he woke up at about 3 a.m. as he was to return to his village when he saw the three persons and identified them as the appellants. He does not speak of any 'lalkara' or to have got up on hearing footsteps as deposed by PW 2 but he too did not raise any alarm or try to caution the deceased and Narain Singh who were sleeping 10/15 karams away. After the incident he went to the village to inform his younger brother's wife about the death of her father and returned with her to the village by which time the police had arrived. In these circumstances the question is whether absolute reliance can be placed on PWs 2 and 3 regarding the involvement of the appellants ?

6. Mr Frank Anthony, the learned counsel for the appellants, firstly submitted that the incident occurred on a dark night in an open field at about 3 a.m. when as shown by the defence through the evidence of two independent witnesses DW 1 and DW 2 the electricity had tripped and, therefore, the prosecution witnesses could not have seen the assailants from a distance of about 10/15 karams. He, therefore, submitted that the claim of the prosecution witnesses that they had identified the assailants on account of the presence of electric light at the tubewell is clearly belied by the evidence of DWs 1 and 2. DW 1 Kewal Krishan, Sub-Station Attendant, Punjab State Electricity Board, Gurdaspur, stated that on June 7, 1976 the electric current had broken down at about 2.35 a.m. and was not restored till 5.50 a.m. In support of this statement he produced certain entries from the register but on cross-examination he admitted that the log sheets were not available and it was

noticed that the register was not properly bound and the threads of the previous binding were broken and fresh binding was done raising a suspicion about the register having tempered with. DW 2 Inder Pal Singh, SDO, Suburban-Gurdaspur, merely reiterated what DW 1 had stated. The courts below suspected the correctness of the entry in the register. But that apart, the High Court was right in saying that the time of 3 a.m. was a mere estimate of eye-witnesses PWs 2 and 3 and neither of them had verified the time with any wrist watch so as to vouch for its accuracy. PW 2 has categorically stated that a 200 watt bulb was on at the time when the incident in question occurred. He does not depose to have checked the time with his wrist watch or with the wrist watch of PW 3. In fact PW 3 has deposed that he was not wearing a wrist watch at the time of the incident. Therefore, the estimate of time given by PWs 2 and 3 cannot be taken as accurate and it is quite possible that the incident occurred before the tripping of supply of electric energy took place. We are, therefore, not impressed by the contention of Mr Anthony that the evidence of DWs 1 and 2 belies the version of PWs 2 and 3 that they were able to identify the appellants because of existence of electric light at the tubewell. Besides, it must be remembered that the appellants were no strangers to these prosecution witnesses to make their identification by them difficult.

7. It was next submitted by Mr Anthony that Narain Singh, an independent witness, was deliberately dropped for feat that he would reveal the truth and expose the falsehood of PWs 2 and 3. He submitted, relying on the decision of this Court in Sahai Ram v. State of U.P. [(1973) 1 SCC 490 : 1973 SCC (Cri) 410 : AIR 1973 SC 618] that the prosecution should, in fairness, have produced this witness since he was one who would have unfolded the true version regarding the incident as he was in the vicinity of the deceased. The presence of blood at the scene of occurrence establishes, beyond any manner of doubt that the incident occurred at the place pointed out by PWs 2 and 3. It is true that Narain Singh was sleeping near the deceased when the latter was shot at. Narain Singh was indeed a witness to the occurrence and ordinarily we would have expected the prosecution to examine him. Dropping a witness on the specious plea that he was won over without laying the foundation therefor is generally to be frowned upon. Counsel for the appellants, therefore, submitted that an adverse inference should be drawn against the prosecution for its deliberate failure to examine Narain Singh. But it must be remembered that the investigating officer had recorded the further statement of Narain Singh under Section 161 of the Code for involving the two acquitted accused persons who were nowhere in the picture. Narain Singh was, therefore, not likely to support the prosecution version. The defence at no point of time questioned the prosecution statement that Narain Singh was won over. The courts below accepted the prosecution statement in this behalf. The judgment of both the courts reveal that no submission was made before them regarding the non-examination of this witness. If an objection was raised at the earliest point of time, the prosecution may have called him to the witness stand. His presence was not required to unfold the prosecution story. That had been done by PWs 2 and 3. Therefore, the non-examination of Narain Singh cannot reflect on the credibility of PWs 2 and 3.

8. Counsel for the appellants next submitted that according to the prosecution appellant Gian Sing was armed with a gandasi and he is alleged to have given a blow therewith on the chest of the deceased. Ordinarily a gandasi blow would cause an incised wound whereas the deceased had an abrasion 5" x 1" on the chest caused by a hard and blunt substance. According to counsel normally when a witness deposes to the use of a particular weapon there is no warrant for supposing that the blunt side of the weapon was used by the assailant. In support of this contention counsel invited our attention to two decisions, namely, Hallu v. State of M.P. [(1974) 4 SCC 300 : 1974 SCC (Cri) 462 : AIR 1974 SC 1936] and Nachhattar Singh v. State of Punjab [(1976) 1 SCC 750 : 1976 SCC (Cri) 182 : AIR 1976 SC 951]. In his submission, therefore, the injury found on the chest could not be attributed to Gian Singh who is stated to have used the gandasi. We see no merit in this contention

for the simple reason that the prosecution witnesses have categorically stated that Gian Singh used the blunt side of the gandasi. If the prosecution witnesses were silent in this behalf the submission of counsel would have carried weight. But where the prosecution witnesses categorically state that the blunt side of the weapon was used there is no room for believing that the sharp side of the weapon which would be normally used had in fact been used. The observations in the aforesaid two judgments do not lay down to the contrary. In fact in the first mentioned case it is clearly stated that if the prosecution witness have clarified the position, their evidence would prevail and not the normal inference. Counsel, however, made a grievance that the prosecution had not tried to elicit the opinion of PW 1 Dr Malhotra on the question whether such an abrasion was possible by a gandasi blow. According to him, as held by this Court in Kartarey v. State of U.P. [(1976) 1 SCC 172 : 1975 SCC (Cri) 803 : AIR 1976 SC 76] and Ishwar Singh v. State of U.P. [(1976) 4 SCC 355 : 1976 SCC (Cri) 629 : AIR 1976 SC 2423] it was the duty of the prosecution to elicit the opinion of the medical man in this behalf. PW 1 clearly stated in the course of his examination-in-chief that injuries Nos. 2, 3 and 4 were caused by a blunt weapon. It is true that he was not specifically asked if the chest injury could have been caused by the blunt side of the gandasi. It cannot be gainsaid that the prosecution must endeavour to elicit the opinion of the medical man whether a particular injury is possible by the weapon with which it is alleged to have been caused by showing the weapon to the witness. In fact the Presiding Officer should himself have elicited the opinion. However, in this case it should not make much difference because the evidence of PWs 2 and 3 is acceptable and is corroborated by the first information report as well as PW 4. If the medical witness had also so opined it would have lent further corroboration. But the omission to elicit his opinion cannot render the direct testimony of PWs 2 and 3 doubtful or weak. We, therefore, do not see any merit in this submission. In fact if we turn to the cross-examination of PW 1 we find that the defence case was that these three injuries were caused by the rubbing of the body against a hard surface, a version which has to be stated to be rejected.

9. It was next contended that PWs 2 and 3 being close relatives of the deceased could not be relied upon particularly because their version regarding the incident is not corroborated by independent evidence and it is extremely doubtful if they could have identified the assailants from a distance of about 10/15 karams. We have already dealt with the latter part of this submission. We have no hesitation in agreeing with the two courts below that they could have identified the assailants who were no strangers to them from that distance of 10/15 karams since the electric light at the tubewell was switched on. Once the evidence of the prosecution witnesses regarding existence of light is accepted, there is no difficulty in accepting their evidence regarding identification. The presence of PW 2 at the tubewell cannot be doubted as it was he who went to PW 4 in the early hours and then travelled a distance of about 12 km. to the police station where he lodged his complaint. Since PW 3 was visiting PW 2 it was natural for him to accompany the latter to the field. Both the courts have accepted their evidence and we see no reason to discard the same on the specious ground that they are interested witnesses. Their evidence has been subjected to close scrutiny but nothing adverse is found to doubt their credibility.

10. The next submission of counsel for the appellants is that the evidence regarding motive is weak and, therefore, it is not possible to believe that the appellants would kill the deceased on account of a minor quarrel regarding the passage of sullage water which had taken place a few months back. In this connection he invited our attention to the decisions of this Court in A.N. Rao v. Public Prosecution, A.P. [(1975) 4 SCC 106 : 1975 SCC (Cri) 357 : AIR 1975 SC 1387] and State of U.P. v. Hari Prasad [(1974) 3 SCC 673 : 1974 SCC (Cri) 203 : AIR 1974 SC 1740]. This submission cuts both ways. If the evidence regarding motive is not sufficiently strong as argued by the counsel for the appellants, it is difficult to believe that PWs 2 and 3 would go out of their way to falsely involve

the appellants. But it must be realised that there were election disputes and the deceased had successfully contested the election against Dalbeer Singh who was the candidate of Gian Singh, Bur Singh and others. This old enmity coupled with the incident regarding the passage of sullage water in regard to which proceedings under Section 107/151 of the Code were pending is the motive alleged by the prosecution and we do not think it is so weak that it would not prompt the appellants to kill their rival. The decisions on which counsel placed reliance can, therefore, have no application in the special facts and circumstances of the present case.

11. Counsel for the appellants then submitted that the evidence of PWs 2 and 3 which is corroborated by the evidence of PW 4 to whom the incident was narrated by PW 2 cannot be believed in view of the contradictions brought on record from their statements recorded under Section 161 of the Code. As stated earlier both the courts have come to the conclusion that these statements are a fabrication. Both the courts below have given cogent reasons for reaching this conclusion. In particular the High Court has after examining the record of the habeas corpus petition shown beyond any manner of doubt that PW 8 had intentionally prepared false statements of all these eye-witnesses for falsely involving Sucha Singh and Santokh Singh since they were wrongly and illegally detained by him in the police station, a fact which was noticed by the court's Warrant Officer who had visited the police station on July 2, 1976 at about 5.15 p.m. He was initially told that no such person or persons had been detained in the police station. The Warrant Officer, however, searched the police station and noticed the presence of these two and other persons. It, therefore, became necessary for PW 8 to explain their presence in the police station since it was alleged in the habeas corpus petition filed on June 30, 1976 that they were illegally detained. The court had appointed the Warrant Officer to verify this allegation. PW 8 had, therefore, to cover up the illegal detention of these two persons. So he substituted statements purported to have been made by PWs 2 and 3 under Section 161 of the Code involving the said two persons in the commission of the crime although their names did not figure in the first information report. The courts below, therefore, rightly came to the conclusion that the contradictions brought on record on the basis of these statements cannot shake the credibility of the two eye-witnesses to the occurrence. It must be realise that immediately after two of the appellants were arrested on July 2, 1976, PW 2, Swaran Singh had gone to the police station and had informed PW 8 that the said two persons, namely, Sucha Singh and Santokh Singh were wrongly detained. PW 2 lost no time and followed it up by filling an affidavit in the trial court on July 3, 1976 alleging that the investigating agency was trying to favour Gurmej Singh and had for that purpose fabricated his statement as also the statements of other witnesses under Section 161 of the Code. In this evidence before the court also PW 2 stated that he had informed he police officials that Sucha Singh and Santokh Singh were in no way concerned with the crime and had been wrongly named by the police to bail out Gurmej Singh. It is also difficult to believe that PW 2 would give a total go-by to his immediate version in the first information report while making his statement under Section 161 of the Code. We are, therefore, of the opinion that both the courts were right in coming to the conclusion that the contradictions brought on record from such statements of PWs 2 and 3 can have no evidentiary value. Counsel, however submitted that the inference drawn by the two courts below is falsified by the fact that DSP Oujla had verified the investigation papers on June 10, 1976 and had given a direction that Gurmej Singh should be shown in column No. 2. There is, however, nothing on record to show that Oujla had countersigned these two statements which are used for contradicting the two eye-witnesses. Therefore, the mere fact that Oujla had verified the investigation record on June 10, 1976 cannot come to the rescue of the appellants. There is, therefore, no substance in the criticism levelled by the learned counsel for the appellants that the prosecution had shifted its case at the trial from the one narrated to the police in the course of investigation.

12. The prosecution version is that immediately after the incident PW 2 went to the residence of his father PW 4 and informed him about the incident. This conduct of PW 2 is quite natural. The evidence of PW 2 stands corroborated by the evidence of PW 4. PW 2 thereafter hired a tempo and left for the police station and promptly lodged the first information report. It must be realised that PW 2 had no time for manipulation as he had reached the police station, which was at a distance of of 12 km. before 8.30 a.m. He would not have named the assailants if he had not seen them. There was no reason for him to falsely implicate the appellants since he bore no grudge against them; it was just the reverse. A copy of this report had reached the concerned Magistrate by about 11.15 a.m. This first information report also lends corroboration to his testimony. The medical evidence tendered by PW 1 also corroborates the version of PWs 2 and 3. We, therefore, do not see any infirmity in the approach of the two courts below in convicting the appellants.

13. For the above reasons we see no merit in this appeal and dismiss the same. The appellants who are on bail will surrender to their bail forthwith.

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