

Lakhwinder Singh

Vs

State of Punjab

Criminal Appeal No. 96 of 1980

(K. Jayachandra Reddy, G. N. Ray JJ)

15.09.1992

JUDGEMENT

G. N. RAY, J.:-

1. This Criminal Appeal is directed against the Judgment dated October 12, 1979 passed by the Division Bench of the High Court of Punjab and Haryana in Criminal Appeal No. 174 of 1978, affirming the conviction of the appellant, Lakhwinder Singh, under Section 302, Indian Penal Code and sentence of life imprisonment passed by the learned Sessions Judge, Amritsar, in Sessions Trial No. 3 of 1978. The prosecution case is that on September 2, 1977 at about 7 p.m. the appellant, Lakhwinder Singh and the co-accused, Baldev Singh, respectively armed with gandasi and kirpan attacked the deceased, Gurcharan Singh and inflicted injuries with kirpan and gandasi on the person of the said Gurcharan Singh as a result of which the said Gurcharan Singh died on the spot. Such act of murderous assault was noticed by P.W. 1, Jagir Singh and P.W. 2, Achhar Singh, who were present near the place of occurrence while they had been going to make payment due to one Hari Singh on account of purchase of some trees from the said Hari Singh by Jagir Singh. After the said witnesses had seen the murderous assault committed on Gurcharan Singh, Achhar Singh kept guarding the dead body and Jagir Singh went to the village and informed the father and brothers of the deceased about the details of the murder and thereafter he tried to contact Sarpanch and Chowkidar in the village but none of them was available. Thereafter he went to the house of Sajjan Singh, Member Panchayat, but he was also not available in house and on being informed that the said Sajjan Singh was present in a garden at a distance of one mile from the village, Jagir Singh went to the said garden and informed Sajjan Singh and thereafter he went to the Police Station which was about 10 miles from the village and lodged the First Information Report at about 3.00 a.m. in the morning. After that the inquest of the dead body was made and the accused persons, namely, Lakhwinder Singh and Baldev Singh were arrested. It is the case of the prosecution that on being interrogated, the accused, Lakhwinder Singh disclosed that he had kept the gandasi concealed in the paddy field of the co-accused, Baldev Singh. Such statement was recorded by the Police and thumb impression of Lakhwinder Singh was taken on the statement. Thereafter Lakhwinder Singh led the police party to the pointed place and the gandasi was recovered from the paddy field at the instance of Lakhwinder Singh. Such gandasi was stained with blood and was sent for chemical examination by the Police. Post mortem was held on the dead body of P.W. 3, Dr. P. S. Virk, noted 14 injuries all ante mortem in nature, and all such injuries were, according to the doctor, were caused by a sharp-edged weapon like kirpan or gandasi and in the opinion of the doctor, the death was due to shock and haemorrhage, as a result of injuries Nos. 4, 6, 9 and 11 and such injuries both individually and collectively were sufficient to cause death in the ordinary course of nature.

According to the doctor, the death was instantaneous after the injuries. Both the accused persons, in the statement recorded under Section 313, Criminal Procedure Code, denied the allegations made against them and pleaded innocence and false implication. The accused, Baldev Singh, did not produce any evidence in defence but Lakhwinder Singh tendered in evidence certified copies of Judgments Exs. DA, DB and DC and thereafter closed his case for evidence.

2. The learned Sessions Judge inter alia came to the finding that the explanation of delay in lodging F.I.R. given by the prosecution was not satisfactory and the F.I.R. having been lodged after about eight hours of the occurrence must be held to be belated. The learned Sessions Judge, however, accepted the motive imputed by the prosecution for the said crime namely giving up the job by the deceased in Lakhwinder's concern before the contract period and non-payment of outstanding wages to the deceased despite demands. The learned Sessions Judge, however, held that motive was not an essential ingredient of the offence. Referring to the discrepancies in the evidence of two eye-witnesses, namely, Jagir Singh (PW 1) and Achhar Singh (PW 2), the learned Sessions Judge had come to the finding that in view of some discrepancies in the deposition indicated by him in the Judgment, complicity of the co-accused, Baldev Singh, could not be established beyond all reasonable doubts. In that view of the matter, he acquitted Baldev Singh but the learned Sessions Judge inter alia came to the finding that the appellant, Lakhwinder Singh, had committed the murder of Gurcharan Singh and his complicity was clearly established from the evidences of the eye-witnesses P. W. 1 and P. W. 2 and there was no inconsistency in that regard. The learned Sessions Judge also held that the recovery of the blood-stained gandasī at the instance of Lakhwinder Singh and blood stain found on the turban of Lakhwinder Singh also corroborated the testimony of eye-witnesses. In that view of the matter, the learned Sessions Judge convicted the appellant, Lakhwinder Singh, under Section 302, Indian Penal Code and sentenced him to undergo imprisonment for life.

3. No appeal was preferred by the State against acquittal of Baldev Singh. The appellant, Lakhwinder Singh, however, preferred an appeal against his conviction and sentence in the High Court of Punjab and Haryana in Criminal Appeal No. 174 of 1978. The High Court inter alia came to the finding that in the facts of the case there was no inordinate delay in lodging the F.I.R. in the Police Station which was at a distance of 10 miles and admittedly, the copy of the F.I.R. was received by the Taluka Magistrate, by 9.00 a.m. next morning. The High Court was also of the view that there was no sufficient reason to disbelieve the motive imputed by the prosecution. The High Court was also of the view that considering the discrepancies of the eye-witnesses so far as the complicity of Baldev Singh was concerned, the learned Sessions Judge had rightly given a verdict of acquittal on the score of benefit of doubt of the said accused but the case against the appellant, Lakhwinder Singh, having been clearly established, the High Court was of the view that there was no reason to interfere with the conviction and sentence imposed against the appellant. The appeal preferred by the appellant, Lakhwinder Singh, was therefore, dismissed by the High Court.

4. After the special leave petition made by the appellant was admitted by this Court, an application of bail, though rejected earlier, was allowed on March 11, 1982 and the bail to the satisfaction of the learned Sessions Judge, Amritsar, was granted and we have been informed that the appellant has been enlarged on bail.

5. Mr. Kohli, learned counsel appearing for the accused/appellant, has very strenuously contended that the testimony of two eye-witnesses Jagir Singh (PW1) and Achhar Singh (PW2) should not be accepted. He has submitted that the said eye-witnesses were chance witnesses and one of them is also related to the deceased. He has also contended that it was most unlikely that both the said

persons would reach the place of occurrence at the same time while they had been following little different paths, namely, one was going through the drain or nalah and another was going by the side of the drain or nalah and by crossing the bridge of the nalah he reached the spot. The learned counsel has submitted that unless there was strange coincidence, both the said witnesses were not expected to reach the place of occurrence almost simultaneously so that they would have an occasion to witness the offence being committed by the accused persons. Mr. Kohli has contended that taking into consideration that the said eye-witnesses were chance witnesses and it was not ordinarily possible for them to reach the place of occurrence in the manner stated by witnesses unless a strange coincidence had taken place and also taking into consideration of the fact that the deceased was related to the eye-witnesses and 90 S. C. Lakhwinder Singh v. State of Punjab A. I. R. they were inimical to the accused persons in view of previous disputes which had been amply demonstrated by the documents exhibited on behalf of the accused Lakhwinder Singh and there had been inordinate delay in making the F.I.R. in the Police Station the veracity of depositions of the said eye-witnesses raises considerable doubt and the same should not be accepted for establishing a grave charge of murder. Mr. Kohli has submitted that admittedly, after about eight hours, the F.I.R. was lodged in the Police Station. Such time is ordinarily sufficient to cook up stories so that the evidence proposed to be adduced on behalf of the prosecution fit in with the injuries inflicted on the deceased. Mr. Kohli has also contended that admittedly there are discrepancies in the evidences of the two eye-witnesses and the learned Sessions Judge, therefore, did not accept the prosecution case so far as the co-accused, Baldev Singh is concerned. Both the eye-witnesses had categorically stated that it was Baldev Singh who first inflicted injury with kirpan and thereafter the said Baldev Singh also inflicted multiple injuries when the deceased fell down after being hit by the appellant, Lakhwinder Singh with a gandasi. If such evidence is not accepted by the learned Sessions Judge for good reasons and the said co-accused, Baldev Singh, is acquitted, the very basis of the credibility of eye-witnesses is shaken and no reliance should be placed on the evidences of the eye-witnesses particularly in the backdrop of various other factors indicated hereinbefore. Mr. Kohli has contended that the alleged recovery of the gandasi at the instance of the accused should not weigh with the Court. The appellant/ accused, Lakhwinder Singh, was under the police custody and the alleged recovery of the weapon can be easily manoeuvred by the police. He has also contended that although motive cannot be a clinching factor for deciding the complicity of the accused but the absence of motive certainly raises a reasonable doubt about the case sought to be made out by the prosecution. He has submitted that the presence of the chance witnesses who are the only eye-witnesses of the occurrence has been sought to be explained by the prosecution by alleging that the said witnesses were going to one Hari Singh for making payment to the said Hari Singh but Hari Singh was not examined by the prosecution to establish the case of the prosecution that he had come for realisation of the dues from the eye-witnesses, Jagir Singh, and as Jagir Singh was not found in his house on the request left by the said Hari Singh, Jagir Singh had been going to the village of Hari Singh for making payment to him. Mr. Kohli has contended that since normally the presence of the said eye-witnesses was not expected at that hour at the place of occurrence, the prosecution ought to have established beyond all reasonable doubt that there was an occasion for the eye-witnesses to be present at the place of occurrence and as a matter of fact, they were present and witnessed the occurrence. He has, therefore, submitted that the prosecution has failed to establish the complicity of the appellant beyond all reasonable doubt and like the co-accused, the appellant should also be acquitted of the charge of murder and his conviction and sentence should be set aside by this Court.

6. The learned counsel for the State has, however, contended that the case of inordinate delay in lodging the F.I.R. as found by the learned Sessions Judge has not been accepted by the High Court

for good reasons. The distance of the Police Station was about 10 miles. If the F.I.R. had been lodged by 3.00 A.M. namely within eight hours by covering the distance of 10 miles at night, it cannot be contended that there had been any considerable delay. Moreover, even assuming that there was some delay in lodging F.I.R., such delay certainly does not become fatal for the prosecution case in view of preponderance of evidences adduced in the case. In the instant case, there are two eyewitnesses whose evidences about the complicity of the appellant in causing the murderous assault on the deceased have been consistent and such evidence have been accepted both by the learned Sessions Judge and by the High Court. The benefit of doubt has been given to the co-accused because of certain discrepancies about the complicity of the said co-accused but so far as the appellant is concerned, the evidences of both the eyewitnesses are quite consistent. He has submitted that the gandasi which was recovered at the instance of the accused contained blood stain and on the turban of the accused some blood stain was also found. The presence of blood stain on the gandasi and on the turban of the accused could not be explained by the accused. Such facts also give corroboration to the evidences of the eye-witnesses. The injuries inflicted on the deceased were caused by sharp cutting weapon and the doctor who held the post mortem examination categorically stated that such injuries were likely- to be caused by a gandasi. In the aforesaid circumstances, the concurrent finding of the guilt of the appellant both by the learned Sessions Judge and by the High Court should not be interfered with by this Court and the appeal should be dismissed.

7. After considering the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that the evidences of the two eye-witnesses, namely P. W. 1 and P.W. 2 so far as the complicity of the appellant, Lakhwinder Singh, is concerned, is quite consistent and the discrepancies as noted by the learned Sessions Judge did not in any way, warrant the finding that the evidences of the said eye-witnesses should be discarded so far as the appellant is concerned. It also appears to us that the High Court was justified in holding that in tile facts of the case there had not been any inordinate delay in lodging the F.I.R. As a matter of fact, such F.I.R. had been lodged at a distance of about 10 miles from the place of occurrence at night within eight hours and a copy of the F.I.R. was also received by Taluka Magistrate, the very next morning. The blood stain on the turban of the appellant and also, on the gandasi of the appellant could not be explained by the appellant. Such existence of blood stain on the said articles corroborates the testimony of the eye-witnesses. In our view, simply on the score that the deceased was related to the eye-witnesses or previously there were some disputes between the appellant and the eye witnesses, their testimonies do not deserve to be discarded because in our view, the testimony of the said eye-witnesses was otherwise convincing and the same also stood corroborated by other facts established by the prosecution.

8. In the aforesaid circumstances, the conviction of the appellant and sentence of the life imprisonment imposed by the learned Sessions Judge since upheld by the High Court do not appear to be improper or based on surmise and conjecture thereby warranting interference by this Court. The appeal, therefore, falls and is dismissed. The bail bond stands cancelled and the appellant is directed to serve out the sentence. Appeal dismissed.

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