

Babu Singh

Vs

State of Punjab

Criminal Appeal No. 590 of 1983

(Faizanuddin, G.B. Pattanaik JJ)

24.04.1996

JUDGEMENT

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PATNAIK, J. :-

1. Appellant Babu Singh along with his younger brother Sadhu Singh stood charged under Section 302 read with Section 120-B, I. P. C. for hatching a conspiracy at Calcutta to kill their younger brother Jagrup Singh and killing said Jagrup Singh in their own house in village Tiranji Khera in Punjab on 6-11-1981. The learned Additional Sessions Judge on discussion of the evidence on record came to hold that the prosecution has utterly failed to establish the charge under Section 120 B of the Indian Penal Code. Accordingly co-accused Sadhu Singh was acquitted. But on the evidence of PW 14 who was the servant of the deceased and who had come from Calcutta with him as well as other corroborating evidence convicted the appellant under Section 302, I. P. C. and sentenced him to imprisonment for life. On appeal being carried by the accused appellant the High Court of Punjab and Haryana maintained the conviction and sentence of the appellant in Criminal Appeal No. 748-DB of 1982. Hence the present appeal.

2. The prosecution case as unfolded in the F. I. R. lodged by Bant Singh, PW 5 father of appellant is that the deceased as well as two accused persons were doing their business at Calcutta and there was some dispute amongst them. In December, 1981 deceased Jagrup Singh and appellant Babu Singh had come from Calcutta on 6-12-1981 when Jagrup Singh was sleeping after taking his meal and father Bant Singh was in the courtyard, appellant Babu Singh picked up a Takua and entered into the room where Jagrup Singh was sleeping and dealt two to three blows on the head of Jagrup Singh. Bant Singh then raised an alarm which attracted his wife Ram Kaur (PW 6) and daughter-in-law Gurmeet Kaur to the scene of occurrence. The appellant, however, left the place of occurrence after inflicting blows on Jagrup Singh and Jagrup Singh succumbed to the injuries at the spot. Bant Singh then informed the Sarpanch, Gurubux Singh, PW 16 Who came to the place of occurrence and thereafter Bant Singh left for the Police Station along with Sarpanch and lodged a report at 11.15 p.m. which was recorded by the Assistant Sub-Inspector of Police, PW 18 and was treated as the First Information Report, Exhibit P-G/1. The said PW 18 immediately went to the spot, and recorded the statements of some of the prosecution witnesses. The investigation of the case was taken over from him by the Sub-Inspector of Police, PW 24 on 8-12-1981 who also recorded the statements of several prosecution witnesses and then ultimately arrested appellant Babu Singh on 22-12-1981. On completion of investigation he submitted the charge sheet and on being committed by the learned Additional Chief Judicial Magistrate, Sangrur, the accused persons were tried by the learned Additional Sessions Judge, Sangrur in Sessions Trial No. 20 of 1982. Though prosecution

examined as many as 24 witnesses in support of the prosecution case, PWs 5, 6 and 14 were supposed to be eye witnesses to the occurrence. PW 16 is the Sarpanch of the Village Panchayat. Gurbux Singh, PW 16 accompanied Bant Singh to the Police Station for lodging of F. I. R. PW 23 was a member of Punjab Vidhan Sabha to whom Jai Narayan, PW 14 had told at 8.30 p.m. on the date of occurrence about the murder of Jagrup Singh and requested him to inform the family members of the deceased at Calcutta on telephone and he accordingly had rang up and told the same to Karan Singh, PW 8, PWs 18 and 24 are the two investigating officers. PW 1 is the doctor who had conducted the autopsy on the dead body of Jagrup Singh. PWs 7 and 22 are the eye witnesses to an alleged conspiracy between Babu Singh and Sadhu Singh at Calcutta to do away with the deceased Jagrup Singh. The other prosecution witnesses are the formal witnesses. The learned Additional Sessions Judge on discussion of evidence of PWs 7 and 22 came to hold that they are not reliable witnesses and therefore he concluded that the charge under Section 120 B of the Indian Penal Code has not been established by the prosecution. Accordingly, accused Sadhu Singh who was only charged under Sections 302/120B I. P. C. was acquitted. But so far as appellant Babu Singh is concerned the learned Additional Sessions Judge relied upon the evidence of PW 14, and PW 16 and PW 8 and came to hold that the charge of murder against appellant Babu Singh has been proved beyond reasonable doubt. He accordingly convicted him under Section 302, I. P. C and sentenced him to imprisonment for life. On appeal, the High Court re-appreciated the evidence and affirmed the conviction and sentence of the appellant. Hence the present appeal.

3. Mr. Sushil Kumar, the learned Senior counsel appearing for the appellant raised the following contentions in assailing the conviction of the appellants :

1. The prosecution case being one of conspiracy between the two brothers at Calcutta to do away with the deceased Jagrup Singh and in furtherance of the same conspiracy Babu Singh appellant having said to have assaulted the deceased by means of Takua and charge of conspiracy having been not established by the prosecution evidence, the charge of murder against appellant also must fail.

2. The sole star witness Jai Narinan, PW 14 though claims to be an eye witness to the occurrence but was actually not present at the time of occurrence and has been subsequently brought in which is apparent from the fact that his name did not find place to be a witness, to the occurrence either in the F. I. R. or in the statement made at the time of inquest and as such no reliance should be placed on the testimony of PW 14.

3. It is difficult to believe that prosecution case that while the deceased and accused persons were staying at Calcutta, the accused came all the way to the village in Punjab to commit murder of his brother the deceased and the entire story appears to be improbable.

4. The very fact that PW 14 though is said to be a witness to the occurrence and yet was not examined on 6-12-1981 when PW 18 rushed to the spot of occurrence and in fact was examined by PW 24 on 8-12-1981, no reliance should be placed on his testimony.

4. On examining the evidence on record which were placed before us we do not find any substance in any of the submissions made by the learned counsel for the appellant. At the outset it may be stated that the father PW 5 and mother PW 6 did not support the prosecution during trial and

therefore the learned Sessions Judge had permitted the prosecution to confront their statements made to the police during investigation in accordance with Section 154 the Evidence Act. We would now examine the acceptability of the contentions raised by Mr. Sushil Kumar appearing for the appellant.

5. It is undoubtedly true that though the prosecution case as unfolded in the First Information Report had not made any case of conspiracy to murder but after investigation while filing charge sheet a case of conspiracy had been made out and accordingly the two accused stood charged and were tried under Section 120-B I. P. C. The evidence on that score being of PWs 7 and 22, the learned Sessions Judge fully discussed the same and held them to be unreliable. Consequently, it was held that the prosecution failed to establish the charge of conspiracy. But merely because the charge of conspiracy failed, the prosecution case so far as the actual assault being given by appellant Babu Singh cannot be ipso facto thrown away. We find no substance in the argument of Mr. Sushil Kumar that the entire prosecution case must fail once charge of conspiracy is not established. Accordingly, the first contention raised on behalf of the learned counsel for the appellant must be rejected.

6. The 2nd and 4th contentions are in fact interlinked, relating to the acceptability of the evidence of PW 14. But before examining the evidence of said PW 14 it would be appropriate to deal with the 3rd contention namely the probability of the prosecution case. According to the learned counsel for the appellant, since all the brothers were doing business at Calcutta and they wanted to do away with the deceased Jagrup Singh, there would be no occasion for coming all the way to the village home of Punjab and commit murder in their own house which they could have otherwise done in the city of Calcutta. That there was dispute amongst the brothers on account of business, they are carrying, has been well proved by the prosecution. Merely because the accused persons could have committed the murder of the brother at Calcutta does not improbabilise the prosecution case that in fact the deceased brother and other brother also came to Punjab to commit the murder. It is difficult to visualise what operated in the mind of the accused and why he chose to come to Punjab to commit the murder of the brother. In this view of the matter the prosecution case has to be adjudged on the basis of the evidence laid and not by entering into an arena of conjecture. We accordingly do not find any substance in the 3rd contention raised by the learned counsel for the appellant.

7. Coming now to the 2nd and 4th contentions, it depends upon the assessment of evidence of PW 14 the sole eye witness to the occurrence. As has been stated earlier the two other witnesses who had been examined by the prosecution are the father and mother of the accused and who did not support the prosecution during trial, as a result of which they were cross-examined by the prosecution and their earlier statements have been confronted. So far as PW 14 is concerned one of the arguments advanced by the learned counsel for the appellant is the fact that his name did not find place in the F. I. R. as a witness to the occurrence. F. I. R. can be used only for the purpose of corroborating or contradicting the maker thereof. That apart, the F. I. R. was lodged by the father who has stated to have seen the ghastly occurrence, one son killed the other and at that juncture if he did not mention the name of Jai Narayan to be a witness to the occurrence, the evidence of Jai Narayan cannot be doubted on that score. It is well settled that if the witness is found to be independent and reliable and is believed to be present during the occurrence then his evidence cannot be rejected on the sole ground that his name had not been mentioned in the F. I. R. Non-mention of name of a witness may be an honest omission, inadvertent mistake or may be due to various other conceivable reasons. It has been held by this court in the case of *Nirpal Singh v. State of Haryana*. (1977) 2 SCC 131 : (AIR 1977 SC 1066), that the name of the witness examined on trial not having been given in the F. I. R. though may be some relevance but by itself would not entail rejection of his evidence. On examining the first Information Report we find that no mention

has been made as to who are the witnessed to the occurrence. That by itself cannot be the ground to discard the evidence of witness who stated to have witnessed the occurrence if intrinsically nothing has been brought out in the cross-examination to impeach his testimony. In the circumstances we are unable to persuade ourselves to agree with the submission of the learned counsel for the appellant that non-mention of the name of Jai Narayan in the F.I.R. is sufficient to impeach his veracity. Mr. Sushil Kumar also in this connection submitted that even while conducting inquest over the dead body of the deceased the statement recorded by the investigating officer does not also indicate the name of Jai Narayan. According to him the practice followed in Punjab is that while filling up column 12 the brief facts of the case are recorded and that is what also has been recorded in the present case and said statement does not indicate Jai Narayan to be a witness to the occurrence. On examining the inquest report we find that what has been stated to be the proved facts is the verbatim quoting of the F. I. R. by Bant Singh and since in the F. I. R. name of Jai Narayan or name of any witness had not been given to be eye witness to the occurrence, question of inclusion of his name in the inquest report does not arise. That apart, any statement so made to the investigating officer while conducting inquest would be hit by Section 162 of the Code of Criminal Procedure inasmuch as this would be a statement in the course of investigation. Such a statement therefore can only be utilised for contradicting the witness in the manner provided by Section 145 of the Evidence Act and for no other purpose. This being the position of law, non-mention of name of Jai Narayan in the so called inquest statement is hardly relevant impeaching the statement of Jai Narayan. Mr. Sushil Kumar then contended that the occurrence took place on 6-12-1981 and shortly after the occurrence the investigation officer PW 18 arrived at the scene of occurrence but Jai Narayan was examined only on 8-12-1981 and this delay in examination makes his statement vulnerable. On examining the evidence of PW 14 we find that when the Sarpanch PW 16 and Bant Singh PW 5 left for the Police Station to lodge the report, PW 14 went to the MLA, Baldev Singh Mann, PW 23 to request him to book a trunk call to Calcutta and to intimate the family of deceased Jagrup Singh. He further stated that on his request PW 23 contacted Karan Singh, PW 8, friend of Jagrup Singh and intimated about the death of Jagrup Singh to be conveyed to his family members. According to PW 14 after the telephone call to Calcutta matured, he went to the bus stand at Sangrur and then left for Patiala and from Patiala he went to the village main to meet Jagrup Singh wife's brother. He informed about the murder of Jagrup Singh to his brother-in-law at 3. p.m. and thereafter he came back to village Tiranji Khera on the next morning and the police interrogated him at about 11 a.m. This has been brought out in the cross-examination of this witness which offers sufficient explanation for the non-examination of PW 14 on 6-12-1981 and his examination on 8-12-1981. We, therefore, see no infirmity with the so-called delayed examination of PW 14 nor are we in a position to doubt his evidence on that score. PW 23 the local MLA had clearly indicated that on 6-12-1981 at about 8.30 p.m., Jai Narayan came to him and told about the murder to Jagrup Singh and requested him to intimate the fact to the family members of Jagrup Singh at Calcutta. Though he has been cross-examined but nothing has been elicited in the said cross-examination to impeach the testimony. His evidence unequivocally establishes the presence of Jai Narayan in the village on the fateful day and also corroborates the evidence of Jai Narayan as a contemporaneous statement made to PW 23 and it demolishes the main plank of the argument of Mr. Sushil Kumar and Jai Narayan was not at all present in the village and has been subsequently introduced. That apart, though Bant Singh the father of the accused appellant (PW 5) did not support the prosecution during trial and was accordingly cross-examined by the prosecution but his statement to PW 16, Sarpanch immediately after the occurrence to the effect that Babu Singh appellant killed Jagrup Singh has been testified by PW 16. PW 8 fully corroborates PW 23 to the effect that said Shri Man, told him on telephone that Babu Singh murdered Jagrup Singh. The comment of the learned counsel for the appellant so far as PW 8 is concerned is omission in his earlier statement to the police under Section 161 CrI. P. C.

about not telling that Jai Narayan the servant of Jagrup Singh was standing with him which he had stated in his evidence in Court. In our considered opinion the said omission cannot be held to be a material omission amounting to contradiction in relation to the substratum of the prosecution case so as to discard the evidence. We have carefully scrutinised the evidence of PW 14 who has given a detailed narration of facts as to how appellant Babu Singh caused injury to Jagrup Singh with Takua and the blows were being given on the head of the deceased. Though he has been cross-examined at great length but nothing has been elicited in the cross-examination to create any doubt about the veracity of PW 14. The said evidence of PW 14 is corroborated by the medical evidence of PW 1, the doctor who had conducted the post-mortem examination on the dead body of the deceased so far as the specific part of the body on which the Babu Singh assaulted, the weapon of assault Babu Singh used and the nature of injury thereby caused on the deceased.

8. The aforesaid premises we entirely agree with the conclusion of the learned Sessions Judge affirmed by the High Court that the prosecution established the charge of murder against appellant Babu Singh beyond reasonable doubt and the said conviction and sentence passed against him does not require any interference by this Court. This appeal is accordingly dismissed. The bail bond of the appellant stands cancelled and he is directed to surrender to receive the balance period of sentence if he fails to surrender appropriate steps may be taken for his apprehension. Appeal dismissed.