SUPREME COURT OF INDIA

Balram Singh

Vs.

State of Punjab

Crl.A.No.1671 of 1996

(N. Santosh Hegde, Ashok Bhan and B.P. Singh JJ.)

07.05.2003

JUDGMENT

B.P. Singh, J.

1. In regard to an incident which took place on 5.5.1990 at about 8.30 p.m. in village Jangal, Police Station Pathankot, a complaint was lodged against 6 accused persons which was recorded by ASI Ram Dass and on completion of the said investigation, he filed a chargesheet only against Nachhattar Singh A-1, Prem Singh A-5 and Sukhdev Singh A-6. During the course of the trial, the learned Sessions Judge found sufficient material to proceed under Section 319 of Cr.P.C. against the other 3 accused, namely, Balram Singh A-2, Khushal Singh A-3 and Parhlad Singh A-4, and having included them in the array persons, he tried all the six for the offence punishable under Sections 307, 302, 326, 324, 148 read with Section 149 IPC.

2. In appeal before the High Court of Punjab and Haryana at Chandigarh, the High Court allowed the appeal of 3 of the accused persons, namely, A-4 and A-6, and confirmed the conviction and sentence imposed on the other 3 appellants i.e. A-1 to A-3.

3. Out of the 3 accused persons convicted by the High Court, A-1 has not preferred any appeal and only A-2 and A-3 are before us in this appeal.

4. The prosecution case, stated briefly, is that in view of some previous enmity arising out of the fact that Prem Singh A-5 had called the sons of deceased Kirpal Singh as `Bhangi' and drunkards, there was some altercation a few days earlier between the to groups belonging to A-1 and the deceased Kirpal Singh. It is pursuant to the abovesaid incident, on 5.5.1990 at about 8.30 p.m. when deceased Kirpal Singh and his daughter Smt. Raj Karni PW-1 were coming towards their house from their cattleshed in front of the house of Nachhater Singh (A-1), A-1 intercepted the deceased armed with an axe along with Balram Singh A-2 was holding a Takua, Khushal Singh A-3 armed with a Kirpan, Parhlad Singh A-4 armed with a dang, Prem Singh A-5 and Sukhdev Singh A-6 who were unarmed. It is the prosecution case that all these persons attacked the deceased and PW-1 during which attack A-1 gave a kulhari blow on the head of deceased Kirpal Singh, consequent to which the deceased fell

down still A-1 continued to inflict more blows on the fallen body of the deceased. At that time, when PW-1 raised an alarm hearing which Kashmir Singh PW-2 came to the spot and he was also attacked by A-2 with a Taqua and A-3 also gave blows with Kirpan on the back and abdomen of PW-2. The further blows given by A-2 fell on the left arm, right leg and left heel of PW-2. At that time, A-1 gave blows to Pw-1 on left arms and left hand. Thereafter PW-2 was dragged into the house of A-1 by accused persons. However, due to the intervention of the people who had by then gathered there, PW-2 was saved and the injured persons including the deceased were removed to the Civil Hospital, Gurdaspur in a car. It is further stated that on the way to the hospital, Kirpal Singh succumbed to his injuries. PWs. 1 and 2 were medically examined in Civil Hospital, Gurdaspur, and the doctor who examined PWs. 1 and 2 sent an intimation to the Police Gurdaspur at about 10.25 p.m. It has come in the prosecution evidence that the distance between the place of the incident and the hospital is about 17 kms. The Police at Gurdaspur Police Station who received the intimation, having come to know that the incident in question had taken place within the territorial jurisdiction of Sadar Police Station Pathankot sent intimation to the said Pathankot Police Station and Ram Dass, ASI of the Pathankot Police Station travelled to the hospital in Gurdaspur which is about 40 kms. away from the Pathankot Police Station and reached the hospital at about 9.15 a.m. on 6.5.1990 and he then recorded the statements of injured witnesses and registered an FIR and after investigation filed the charge sheet as against the named accused and the trial court as stated above in the course of trial included three more persons in the array of accused.

5. The prosecution in support of its case had examined PWs. 1 and 2 as eye-witnesses to the incident in question. It further examined Dr. Sudhir Kumar PW-3 who treated the said injured witnesses, Dr. Jatinder Kumar PW-5 who conducted the post mortem on the dead body of the deceased and Ram Dass. ASI, PW-4 who conducted the investigation as also other formal witnesses, the accused on their part had also examined defence witnesses to prove their case of right of private defence exercised by A-1 during which act of his, he had caused some injuries to the deceased, while other accused took the plea of total denial.

6. Herein, it may be noted that Nachhattar Singh A-1 and Prem Singh A-5 are direct brothers. Balram Singh A-2 and Khushal Singh A-3 are direct brothers. A-4 is the son-in-law of A-3 and A-6 is the brother-in-law of A-1 and A-5. It has also come in evidence that A-2 and A-3 are also inter se related with the other accused.

7. Learned Sessions Judge, as stated above, accepting the prosecution case in toto, convicted all the accused persons before him, of offences as stated above and in appeal, the High Court had accepted the prosecution case only in regard to accused A-1 and A-3 while it gave it benefit of doubt in regard to A-4 and A-6 and acquitted them of all charges. Nachhattar Singh A-1 has not preferred any appeal against his conviction and sentence which has become final. It is only Balram Singh A-2 and Khushal Singh A-3 who have preferred this appeal. State has not preferred any appeal against the acquittal of A-4 to A-6.

8. Mr. Mahabir Singh, learned counsel for the appellants, very seriously contended that there has been considerable delay in filing the FIR. This was because of the fact that the

complainant with the help of the police wanted to include all the relatives of A-1, therefore, after considerable deliberations, names of all other accused persons were also included in the complaint therefore even though the Police came to know of the incident in question on the mid-night between 5th and 6th May, 1990, a copy of the FIR with special report as contemplated under Section 157 Cr.P.C. reached the jurisdictional Magistrate only at about 0305 hrs on 6.5.1990. He also contended that the motive alleged by the prosecution could be hardly any reason to commit the murder. Learned counsel also contended that it is because of this manipulation that the prosecution has not been able to examine any independent witness though admittedly they were present at the time of the incident. He also contended that there is contradiction on material facts in the evidence of PWs. 1 and 2 who are the only eye-witnesses in this case. Learned counsel further contended that the High Court has seriously erred invoking Section 34 IPC to convict the appellants who according to learned counsel, had absolutely no role to play in this fight that is even assuming that they were really present at the time of the incident. He supported this argument of his by contending that though originally it was only Section 149 IPC which was invoked against all the accused persons, the High Court having acquitted 3 of the accused erroneously invoked Section 34 to convict these appellants because the prosecution could not prove any over act against the appellants.

9. On the contrary, Mr. B.R. Jad, learned counsel for the respondent, supported the judgment of the High Court.

> "We have heard learned counsel for the parties and perused the records. It is true that there is some delay in the FIR reaching the jurisdictional Magistrate. In our opinion, the prosecution has given satisfactory explanation for this delay. The incident in question took place at about 8.30 p.m. on 5.5.1990 which must have gone on for some time before the injured could be transported to the hospital at Gurdaspur which is about 17 kms. away from the place of the incident. From the evidence of Dr. Sudhir Kumar, PW-3, it is clear that these injured persons and the deceased were brought to the hospital at about 10.25 p.m. and on coming to know of the medico-legal aspect of the case, he had intimated the Police Station at Gurdaspur of the incident but the said Police having come to know that the incident had occurred within the jurisdiction of Police Station Sadar Pathankot, informed the said Police of this medico-legal case which Police Station is situated at about 40 kms. from the place of the incident and taking into consideration said distance and the law and order situation then obtaining in Punjab, during the relevant period, we do not find anything unusual in the SHO of P.S. Sadar Pathankot, namely, Ram Dass, ASI, PW-4, reaching the hospital around 9 a.m. on 6.5.1990. It has come in evidence that after recording the statement and making arrangements for the post mortem of the dead body of the deceased, the FIR recorded was sent to the jurisdictional Magistrate which reached him around 0305 hrs. on 6.5.1990. After considering the argument of learned counsel in regard to this delay in sending the FIR to the jurisdictional Magistrate, we notice that in reality there is no delay in preparing the FIR but there was some delay in transmitting the said information to the jurisdictional Magistrate. Having been satisfied with the fat that the FIR in question was registered in the morning of 6.5.1990, we do not think that the delay thereafter in communicating it to the jurisdictional Magistrate on the

facts of this case, has really given any room to doubt that the said document (FIR) was created after much deliberations. At any rate, while considering the complaint of the appellants in regard to the delay in the FIR reaching the jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the jurisdictional Magistrate by itself would not in any manner weaken the prosecution case."

10. As noted above, learned counsel then contended that the motive alleged by the prosecution is very weak. This again would depend upon the evidence produced by the prosecution in regard to the actual incident. If the incident in question as projected by the prosecution is to be accepted then the presence or absence of a motive or strength of the said motive by itself also will not make the prosecution case weak. In this case the prosecution has pleaded that there was an altercation between the 2 families a few days before the incident, and it is because of the said altercation the incident on 5.5.1990 had occurred in which one person lost his life and 2 persons were seriously injured and if the evidence of said injured witnesses is to be accepted then the existence or nature of motive would hardly matter.

11. The appellants' contention that the prosecution has relied only on interested evidence of PWs. 1 and 2 and has not examined other independent witnesses who were present or for that matter the non-examination of another son of the deceased by name Jasbir Singh should give raise to an adverse inference, cannot also be accepted because so far as Jasbir Singh is concerned though there is some material on record to show that he was examined by a doctor on the night of the incident, there is no material to show that he was actually involved in this fight. his name is not mentioned in the FIR also, therefore if the prosecution has thought is not necessary to examine this witness, we do not think an adverse inference could be drawn on the basis of this non-examination of said Jasbir Singh. This view of ours also holds good in regard to the so-called other independent witnesses who were present at the time of the incident since in a family fend like this, it is rarely an independent witness, would come forward to give evidence.

12. Be that as it may, we will have to bear in mind these deficiencies pointed out by the learned counsel for the appellants, while considering the creditworthiness of PWs 1 and 2, and in this background we consider the evidence of PWs. 1 and 2, we notice that the defence has not been able to create nay doubt in their evidence at least so far as the involvement of A-1 and these appellants are concerned. Their evidence in this regard has been consistent and natural. They were injured witnesses and were victims of the assault. The defence has not been able to bring out any material contradiction in the evidence of PWs. 1 and 2. Though the learned counsel for the appellants contended that there is some contradiction in the evidence of PWs. 1 and 2 inter se, in fact he has not been able to point out any such material contradiction. The High Court acquitted the 3 accused persons not on the ground that evidence of PWs. 1 and 2 is false but on the ground that those accused persons who were unarmed, hence, were entitled to the benefit of doubt; whereas in the case of the appellants

and A-1, it accepted the evidence of PWs. 1 and 2 in regard to their overt acts in causing injuries to the deceased and these witnesses. Having independently considered the evidence of PWs 1 and 2, we are of the opinion that the evidence of PWs. 1 and 2 does not suffer from any such contradiction or omission which makes the said evidence unbelievable.

13. The argument of learned counsel that on facts of this case the High Court could not have invoked Section 34 to convict these appellants, seems to be based on the decisions of this Court is *Badruddin v. State of U.P.*[1] and *Ramashish Yadav and others v. State of Bihar*[2]. In those cases, on facts and noticing the nature of involvement of the accused conviction under Section 34 IPC was found to be improper, hence, set aside the said conviction, but in regard to the applicability of Section 34, it was held that all that the prosecution has to establish is that there was a prior concert or meeting of minds between is that there was a prior concert or meeting of minds between the accused persons and such prior concert or meeting of minds may be determined from the conduct of the offenders unfolding itself during the course of action and the declaration made by them just before mounting the attack. This Court in those cases also held that the common intention can also be developed at the spur of the moment but there must be pre-arrangement or pre-mediated concert. In the instant case it is the prosecution case that at the time of the incident case it is the prosecution case that at the time of the incident when deceased and PW-1 were walking towards their house the accused persons out of which A-1 and the appellants herein were armed with deadly weapons, with the help of acquitted accused persons, waylaid the deceased. The prosecution says that while A-1 attacked the deceased, PW-1 was prevented by the appellants herein from preventing the said attack on her father and when Pw-2 came to the spot and tried to help his father, he was also assaulted with a view to thwart his effort to protect his father. This itself goes to show that when these accused persons gathered in front of the house of A-1 and proceeded to assault the deceased, all of them had shared the common intention of causing death of the deceased. Though these appellants did not assault the accused, it is clear that the manner in which they were armed and the manner in which they prevented PWs. 2 and 3 form protecting their father by causing them grievous injuries also shows that this attack on PWs. 2 and 3 was aimed at ensuring that A-1 was done away with, and the deceased did not get sufficient protection, therefore, we are of the considered view that the High Court having acquitted the 3 of accused persons was justified in invoking Section 34 to uphold the conviction of the appellants herein.

14. For the reasons, stated above, this appeal fails and the same is dismissed.

[1] *1998(7) SCC 300*
[2] *1999(8) SCC 555*