

SUPREME COURT OF INDIA

State of Punjab

Vs.

Hardan Singh

Crl.A.No.234 of 1996

(S. N. Variava and H. K. Sema, JJ.)

19.09.2003

JUDGEMENT

SEMA, J.:-

1. Four accused-Hardam Singh, Jagjit Singh, Resham Singh and Gurdip Singh were convicted by the Additional Sessions Judge, Bhatinda in Sessions Case No. 22/RT No. 5 of 1985 by judgment dated 29-5-1986. By the aforesaid judgment, accused-Hardam Singh, Jagjit Singh and Resham Singh were convicted under S. 302 read with S. 34, Indian Penal Code and sentenced to undergo life imprisonment and to pay a fine of Rs. 1500/- each, or, in default of payment of fine, to suffer further RI for six months each. Accused-Gurdip Singh was convicted under S. 302 read with S. 109, I.P.C. and sentenced to undergo the sentence, as aforesaid as in the case of other three accused. Accused 1-3 are sanguinary brothers. Accused-Gurdip Singh was a Sarpanch of Joian Village. Aggrieved by the aforesaid convictions accused-Hardam Singh, Jagjit Singh and Resham Singh filed Criminal Appeal No. 374-DB of 1986 and accused-Gurdip Singh filed Criminal Appeal No. 378-DB of 1986. The High Court, by its judgment and order dated 28-5-1987 set aside the conviction and sentence recorded by the learned trial Judge. Accused-Gurdip Singh died in the interregnum. Hence, this appeal is filed only against the three accused.

2. Briefly stated the story as unfolded by the prosecution is that :

P.W. 1 Billu Singh and his father deceased-Hari Singh are from village Alampur Madran and on 28-11-1984 had gone to Ferozepur to attend a case in which they were challaned under Ss. 307/34, I.P.C. for murderous assault on Jagjit Singh and his wife. It is stated that after appearing before the Special Judge, Ferozepur on 28-11-1984, P.W. 1 Billu Singh and his deceased-father Hari Singh started from Ferozepur by train for Mansa and reached Mansa at about mid-night. It is also stated that they were to appear there in a case on 29-11-1984 under S. 145, Cr. P.C. pending in the Court of Executive Magistrate, Mansa in which Hari Singh and accused-Hardam Singh and Jagjit Singh were parties. After attending the Court on 29-11-1984, they started for the village Alampur Madran at about 3 p.m. on their bicycles, which were parked by them at Mansa while going to Ferozepur. It is further stated that the deceased-Hari Singh's bicycle was followed by Billu Singh and at about 4 p.m. when they reached near Bus Adda of village Joian, at the tri-junction of the roads, from where a road to village Akkanwali bifurcates, accused-Hardam Singh armed with a Gandasa; Resham Singh armed with a Gendhali and Jagjit Singh armed with a Takwa emerged from the Bus Adda shouting that Hari Singh (Ramdasia) was not to be left alive and was to be taught a lesson for raising a dispute with them for land and for murderous assault. Deceased- Hari Singh immediately threw his bicycle and ran towards the house nearby to save himself. The accused over-powered Hari Singh, threw him on the ground and started giving him blows with their weapons causing several injuries. P.W. 1 after seeing the incident, fearing that the accused would also chase him, hurriedly left the place on his bicycle and went towards village Akkanwali and via Budhiada reached Police Station Boha, where he narrated the incident to S.I. Jagjit Singh stating that accused-Hardam Singh, Jagjit Singh and Resham Singh had committed the murder of the deceased in conspiracy and under the instigation of accused-Gurdip Singh Sarpanch of the village. The prosecution story further disclosed that when P.W. 1 and deceased-Hari Singh were in jail in connection with a case under Ss. 307/34, I.P.C. for murderous assault on accused-Jagjit Singh, accused-Gurdip Singh got a thumb impression of Hari Singh and an agreement of sale for his land for Rs. 7,000/- promising to help them in the case and he got them released on bail. But when Hari Singh and his wife asked for Rs. 7,000/- from Gurdip Singh, he insulted them and got the bail bond cancelled for which Hari Singh made a complaint against Gurdip Singh to the authorities and also got the complaint published in the newspaper. It is alleged that it is because of this, Gurdip Singh conspired with other accused and committed murder of Hari Singh. On the basis of the complaint, F.I.R. (Ex. P-A) was lodged at 6.30 p.m. In the course of investigation, I.O. prepared an inquest report. Post-mortem was conducted by P.W. 6, Dr. I. B. Aggarwal. On conclusion of the trial, learned trial Judge, after considering the evidence on record and documents, found the accused guilty and recorded conviction, as noticed above.

3. We have heard Mr. H. M. Singh, learned counsel for the appellant and Mr. Neeraj Kumar Jain, learned counsel for the respondents at length.

4. The High Court has upset the conviction recorded by the trial Court on various grounds. We may,

at this stage, point out that the grounds which weighed with the High Court are contrary to the evidence adduced and proved by the prosecution and legally untenable, which we shall be discussing presently. The High Court held :

(A) The presence of Billu Singh and deceased-Hari Singh in the Court at Ferozepur on 28-11-1984 and then at Mansa on 29-11-1984 is not proved inasmuch as the prosecution has not produced any record of judicial proceedings showing the appearance of Billu Singh and Hari Singh nor any official of the Court has been examined to prove this fact.

5. This finding, in our view, is clearly fallacious. It is in the statement of P.W. 1 that he and his deceased-father travelled from Ferozepur to Mansa by train after attending the Court at Ferozepur on 28-11-1984. Ex. P-2 and P-5 are the train tickets. Ex. P-2 was with P.W. 1 Billu Singh and Ex. P-5 was found by the doctor from the person of Hari Singh, deceased at the time of post-mortem examination. Learned trial Court found that a faint punching was visible on those tickets. These facts are the conclusive proof that P.W. 1 and Hari Singh did actually travel from Ferozepur to Mansa by train. This apart, P.W. 5 Brij Bhan, who was a Reader Naib Tehsildar examined by the prosecution, testified that a case under S. 145, Cr. P.C. was fixed on 29-11-1984 in which only the presence of the advocates was recorded and the presence of the parties was not recorded. It is matter of common practice that on a date, the case is fixed for hearing, the presence of the counsel is recorded in the order sheet and not of the parties. P.W. 2 Smt. Gurdev Kaur, mother of P.W. 1 also stated that P.W. 1 was not a party in S. 145, Cr. P.C. proceedings but he used to go with his father. This would go to show that the presence of P.W. 1 and his father before the Court on 29-11-1984 at Mansa is clearly established. The High Court also found fault with the presence of P.W. 1 in the Court on 29-11-1984 as this witness could not give the full description of his lawyer and did not remember his name but knew him only as one Mr. Sharma. It is in the evidence on record that Billu Singh is an illiterate and is not expected to know the full description of the name of the counsel. Even in ordinary circumstances, a lawyer is always addressed by his surname or short name. It is also curious to note that the statement of P.W. 1 that he along with his father attended the Court at Ferozepur on 28-11-1984 and at Mansa on 29-11-1984 has not been controverted in cross-examination, not even a suggestion was put to him. Therefore, this finding of the High Court is too tenuous ground to reject the prosecution case, which otherwise is well established by convincing evidence.

(B) The High Court rejected the prosecution story on the ground that Billu Singh had not stated that any effort was made by the accused to assault him, although the relations with him were also highly inimical. The High Court was of the view that if Billu Singh had been present with the deceased an effort to assault Billu Singh also might have been made. The High Court also found that the place where Hari Singh is shown to have been assaulted is contiguous to the house of Surjit Singh and fields of Maghar Singh and Bus Adda of village Joian is also nearby. But Billu Singh had not approached any of the persons nearby. He also did not go directly to the police station, which is at a distance of four miles but went in a circuitous route to village Akkanwali and then to Budhlada and then to Boha where the police station is located and, therefore, his conduct in not approaching anyone at either of those places is suspicious.

6. Before we advert further, we may at this stage point out that by now it is well settled principle of law that there is no set rule of natural reaction. Everyone reacts in his own special way and in what way the witness should react cannot be predicted. In *Rana Pratap and others v. State of Haryana* (1983) 3 SCC 327, in paragraph 6 it was pointed out as under : AIR 1983 SC 680 : 1983 Cri LJ 1272, para 6

"Yet another reason given by the learned Sessions Judge to doubt the presence of the witnesses was that their conduct in not going to the rescue of the deceased when he was in the clutches of the assailants was unnatural. We must say that the comment is most unreal. Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."

7. This Court in *Bachittar Singh and another v. State of Punjab* (2002) 8 SCC 125, on human behaviour, held as under: AIR 2002 SC 3473 : 2002 AIR SCW 4061, para 12

"Human behaviour vary from man to man. Different people behave and react differently in different situations. Human behaviour depends upon the facts and circumstances of each given case. How a man would behave in a particular situation, can never be predicted. In the given circumstances, the behaviour of Joginder Singh P.W. 3 sleeping on the roof of the house of Sukhwant Singh, after seeing the accused armed with weapons and hearing of firing, jumping from the roof and running towards his village Mastewala to inform his father and family members instead of loitering around in the village Dholewala and informing somebody risking his life, is quite natural. One should not forget that the incident had happened at 1.00 a.m. and that at that odd time, nobody would be readily available to be informed without loss of time. In the process, the life of the witness would be at great risk."

8. In the present case the village Joian, where the incident had taken place, is the village of Gurdip Singh, the Sarpanch. The allegation is that the murder had been hatched under instigation and conspiracy of accused-Gurdip Singh. It is a matter of common knowledge that a Sarpanch of the village wields enough power and influence. In such a situation Billu Singh going to the village Joian and approaching anybody in the said village would be risking his own life. His immediate reaction, therefore, would be to avoid approaching anybody in the said village/adjoining village to lodge a report without loss of time. We think that was the correct approach taken by P.W. 1 in the facts and circumstances of this case. On this ground, the otherwise creditworthy and reliable testimony of P.W. 1 Billu Singh could not be impeached.

9. Billu Singh stated that his father was ahead of him on a bicycle followed by him on his bicycle. The assault on his father had taken place at a distance of about 10 to 12 karams. He immediately ran away with his bicycle towards Akkanwali village after seeing the incident. Therefore, Billu Singh was not within the striking distance of the assailants. There was no opportunity for the assailants to have made an effort to assault Billu Singh. This would be no ground to throw away the prosecution case. It must be remembered that the assailants were on foot and Billu Singh had run away on a bicycle.

(C) The High Court was of the view that Billu Singh being the solitary eye-witness is highly inimical witness and in the absence of any corroboration it will not be safe to base conviction on such uncorroborated testimony.

10. This finding of the High Court, in our view, is fallacious and highly untenable. Ordinarily near relation of deceased would not depose falsely against innocent persons so as to allow the real culprit to escape unpunished, rather the witness would always try to secure conviction of the real culprit and there is no reason as to why he should depose falsely. In the instant case, the testimony of PW-1 is corroborated by the evidence of PW-2, PW-5 and his ocular evidence is corroborated by the medical evidence, which we shall be discussing presently. The testimony of PW-1 is also corroborated by Exts. P-2 and P-5. Even otherwise, we have gone through the entire testimony of PW-1 and we find that he is quite a natural witness and his testimony is creditworthy and convincing, on which alone the conviction could safely be based.

(D) The High Court also found that there was an unexplained delay in lodging the FIR inasmuch as the incident had taken place at 4 p.m. and the FIR had been lodged at 6.30 p.m. when the police station is only four miles away from the place of incident.

11. In the facts and circumstances of the case, we do not see any delay, much less unexplained delay, in lodging the FIR. As already noticed, the place of incident is Joian village, the village of Gurdip Singh-Sarpanch. We have already noted that it is quite natural that Billu Singh would not approach anybody in the Joian village or any other adjoining village risking his life. We have already noticed that PW-1 went to the police station through village Akkanwali and Budhlada to reach Boha, where the police station is located. It is under these circumstances that there could be no delay if the FIR was lodged at 6.30 p.m. for the incident which took place at 4 p.m.

(E) The last ground, on basis of which the High Court has set aside the conviction, is that the ocular evidence of PW-1 with regard to the injuries on the body of the deceased is not corroborated by the medical evidence. In other words, according to the High Court, there are discrepancies between the ocular evidence and the medical evidence.

12. PW-6-Dr. I.B. Aggarwal, Medical Officer, Civil Hospital, Mansa conducted the post-mortem examination on 30-11-1984 and found the following injuries :

1. "An incised wound 11 cms. x 5 cms. present on the front of neck. The wound was 5 cms. on left and 6 cms. on right from mid line of neck, underlying structures i.e. trachea, oesophagus, all the blood vessels, muscles and third vertebrae were cut through and through. Clotted blood was present. There was cut on both sides of coat, shirt and sweater corresponding to the injury.

2. Incised wound 3 cms. x 1 cms. present on the right side of chest at the level of right clavical in its middle, underlying bone was cut. Clotted blood was present. There was corresponding cut on shirt and coat and sweater.

3. Incised wound 2 cms. x 1 cm. present on the left side of lower lip, 1 cms. inwards from left outer angle of mouth, underlying bone was cut and teeth were dislocated. Clotted blood was present.

4. Incised wound 2 cms. x 1 cms. present on the left side of upper and lower lip starting 1 cm. inwards from left angle of mouth extending upwards, underlying bone was cut, teeth were disclosed, clotted blood was present.

5. A punctured wound 1 cm. x 1 cm. present on left side of face, 2 cms. lateral to outer angle of left eye, clotted blood was present. On dissection, the temporal bone was fractured.

6. Incised wound 4 cms. x 1 cm. present on the left side of forehead, 3cms. above the left eyebrow and 2 cms. lateral to mid line, clotted blood was present.

7. Incised wound 4 cms. x 1 cms. present on the left occipital region, 10 cms. above the left ear pinna and 2 cms. below the occipital, clotted blood was present.

8. Incised wound 3 cms. x 1 cm. present on the left occipital region, lying 1cm medially and posteriorly to injury No. 7, clotted blood was present.

9. Incised wound 4 cms. x 1 cms. present on the left occipital region, 2cms. below injury No. 8. Clotted blood was present.

10. Incised wound 4 cms. x cms. present on the left side of neck, at its back lying near the lower margin of occiput. Clotted blood was present.

11. Incised wound 3 cms. x 1 cms. present on the left side of back of neck, 3 cms. below injury No. 10. Clotted blood was present.

12. A contusion 3 cms. x 2 cms. present on the anterior aspect of left shoulder."

13. PW-1-Billu Singh stated that accused-Hardam Singh caused gandas blow on the left shoulder of Hari Singh, Jagjit Singh gave a takwa blow on the back side of Hari Singh and Resham Singh gave gendhali blow on the left shoulder of Hari Singh. High Court found that injury No. 1 is on the front of the neck; injury No. 2 is in the right side of the chest; injury No. 3 is on the left side of lower lip, injury No. 4 is on the left side of upper and lower lip; injury No. 5 is on the left side of face, injury No. 6 is on the left side of forehead, injury Nos. 7, 8 and 9 are on the left occipital region; injury No. 10 is on the left side of neck; injury No. 11 is on the left side of back of neck and injury No. 12 a contusion is on the anterior aspect of left shoulder.

14. In our view, there is no discrepancy in the ocular evidence of PW-1 and the medical evidence of PW-6. Injury Nos. 9, 10 and 11 correspond to the testimony of PW-1.

15. Mr. Neeraj Kumar Jain, learned counsel for the respondents strenuously urged that PW-6 opined that injury Nos. 7 to 11 could not have been caused if the deceased was lying on the ground with his face upwards, and since PW-1 testified that his father fell down with his face upwards, his presence at the place of incident is doubtful. According to the learned counsel these injuries could not have been caused while Hari Singh was lying on the ground with his face upwards. The learned counsel, therefore, submits that these discrepancies in the ocular and medical evidence make the presence of Billu Singh doubtful. We are unable to accept this submission. PW-1 categorically stated in examination-in-chief that these injuries were caused by the assailants when Hari Singh was running or standing. He further stated that rest of the injuries were given to Hari Singh by the three accused on his face and neck while he was lying on the ground. The witness was not put to cross-examination on this part of the evidence. This witness also stated in cross-examination that Hari Singh kept his face upwards, but he was moving about on sides. PW-6 opined that all the injuries were ante-mortem. It is quite natural that he must be tossing around trying to evade the strike blows dealt by the accused with their weapons and in this process he must have received various injuries

which had not been witnessed by PW-1 as he hurriedly ran away on his bicycle after seeing the first incident. It must be remembered that PW-1 was following his father on a bicycle and witnessed the incident at a distance of about 10-12 karams. Having seen the accused armed with weapons and dealing blows to his father, being unarmed it could have been the sudden reaction of PW-1 to run for safety and lodged a report to the police. PW-6 in his cross-examination had stated that injuries 2 to 11 were individually sufficient to cause the death in the ordinary course of nature. He also stated that if injuries 1 to 11 were caused when the victim was in standing posture he was likely to fall. PW-6 further opined that if any of the injuries 1 to 11 was inflicted when the victim was lying on the ground he was likely to lose his senses. We have already held that injuries 9, 10 and 11 were inflicted while in the standing posture. We do not see any discrepancies between ocular and medical evidence, which would make the presence of PW-1 at the place of incident doubtful.

16. The next submission of Mr. Neeraj Kumar Jain, learned counsel for the respondents is that the murder of Hari Singh is a blind murder and he has been killed at about 12 noon and his body was lying unattended is based on the evidence of Bant Singh-DW-1. It must be remembered that Bant Singh was a Chowkidar of Joian village where the accused Gurdip Singh was the Sarpanch. It is because of this reason that he was given up by the prosecution as he was alleged to have been won over by the accused. Naturally, a Chowkidar of a village is very much subordinate to a village Sarpanch and functions under his mercy and in his testimony he even denied that Sarpanch was involved in any murder case. He even denied that Sarpanch was ever arrested in connection with murder case. In fact Gurdip Singh, accused surrendered himself in Court on 4-10-85 and remained in jail till he was released on bail on 9-10-85. The testimony of DW-1 was correctly not acted upon by the trial Court.

17. In the result, this appeal succeeds. The judgment and order of the High Court dated 28-5-1987 under challenge is, hereby, set aside. The order of the trial Court dated 29-5-1996 convicting the accused is restored. The respondents are on bail. Their bail bonds are cancelled. They are directed to be taken back into custody forthwith to serve out the remaining part of their sentence.

Appeal allowed.