SUPREME COURT OF INDIA

State of Punjab

Vs.

Pohla Singh

Crl.A.No.907 of 1996

(Doraiswamy Raju and Arijit Pasayat JJ.)

22.09.2003

JUDGMENT

Arijit Pasayat, J.

1. Questioning correctness of judgement directing acquittal of the respondents as passed by the Punjab and Haryana High Court, the State of Punjab has filed this appeal. Respondents were charged for commission of offence punishable under Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the `IPC'). Originally, there were four accused persons. The learned Sessions Judge, Bathinda vide his judgment dated 29.9.1994 held that the present two respondents Pohla Singh and Balkaur Singh were guilty of offences punishable under Section 302 read with Section 34 IPC and were sentenced to imprisonment for life and to pay a fine of Rs. 2,000/- each with default stipulation. Other two accused i.e. Raja Singh and Goga Singh were given the benefit of doubt. While the convicted accused questioned the legality of their conviction, a revision was filed to seek conviction of the acquitted accused and enhancement of the sentence passed against the convicted accused.

2. Prosecution version as unfolded during trial is as follows:

> "On 11.6.1991 Mandip Singh (hereinafter referred to as the `deceased') suffered homicidal death. The incident took place at about 5.30 a.m. on the aforesaid date. During the night between 10th and 11th of June, 1991 irrigation of certain lands under the cultivation of complainant Gurmail Singh (PW2) and others was being carried. During that night, deceased Handip Singh who is the nephew of the complainant Gurmail Singh, was sleeping near the tubewell in the adjacent land belonging to Sukhdev Singh. Deceased Mandip Singh was to get up in the morning in order to undertake the agricultural work in the land which was being cultivated by Gurmail Singh (PW2) and others. Gurmail Singh (PW2), therefore, went towards the place where deceased was sleeping. Pal Singh (PW3) was then irrigating his land near the place of occurrence. When Gurmail Singh (PW2) came near the place where deceased was sleeping, he noticed the two accused-respondents and acquitted accused Goga Singh armed with a `Ghop' near deceased. Accused-Pohla Singh then shouted to teach

lesson to deceased for having developed illicit relations with Amar Kaur who is sister of accused-Pohla Singh. Thereupon deceased was dealt with by these accused with their respective weapons. Deceased sustained 13 injuries. On seeing that deceased was being, thus attacked, Gurmail Singh (PW2) and Pal Singh (PW3) raised alarm. Thereupon these assailants fled away with their respective weapons. Deceased succumbed to his injuries at the spot itself. Thereupon, Gurmail Singh (PW2) initially proceeded to the village in order to inform his brother Baldev Singh. Thereafter, he proceeded towards police station. On way, he happened to meet the police patrolling party at Jalal bus stand. His report was recorded at about 10.00 a.m. The said report was duly registered at the police station, Dialpura at 10.45 a.m. The special report regarding the registration of the said offence was sent to Magistrate, Phul who received it at 2.40 p.m. on the same date. The police arrived at the scene of occurrence and prepared the inquest report on the dead body. The dead body was duly sent for autopsy. The doctor found in all 13 injuries. The cause of death was stated to be shock and haemorrhage on the vital organs such as brain."

3. Accused persons pleaded innocence and false implication. Their specific case as revealed in the examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the `Code') was that they were falsely implicated at the instance of one Balkar Singh who is a close relative of Gurmail Singh (PW2). They claimed that accused Goga singh was formerly a partner in the cultivation with Balkar Singh and there was a dispute between them on the issue of sharing the money. Deceased was associated with terrorists and robbers and he was in all probability murdered by rival gang and they were falsely involved on suspicion. The trial Court found that material was not sufficient to fashion guilt of two accused. But two accused were held guilty. They were in appeal before the High Court. It was submitted that there was inordinate delay in reporting the matter to the police and further delay in sending the special report to the Magistrate. The incident took place at 5.30 a.m. as per Gurmail Singh (PW-2). He stated that after the incident he rushed to the village to inform his brother Baldev Singh who is the father of the deceased. The evidence does not indicate as to what steps Baldev Singh took on getting the information to set law into motion. According to Gurmail Singh (PW2), he and Baldev Singh proceeded towards the police station but on the way they happened to meet the patrolling police party at the Jalal bus stand. It was expected that Baldev Singh was to rush to the field where his son was killed, and ascertain the situation there. It is also in evidence that Gurmail Singh (PW2) owned a tractor. It was not explained why he and Baldev Singh did not try to cover the distance up to the police station by tractor. It has also been accepted that in a village there was a police post. The explanation that two policemen of the police post declined to take down report as officer in charge was outside the Ilaqa has been stated for the first time in Court. The distance between the village where the incident took place and the police station is a 9 K.M. only. This distance could have been covered by using a tractor. Despite all these facilities being available, information was recorded at 10.45 a.m. It creates a strong suspicion that time was spent in deliberation.

4. The evidence of so called eye-witnesses PWs 2 and 5 was attacked on the ground of improvements and relationship with the deceased. When Gurmail Singh tried to introduce a false statement about extra judicial confession, the same has been found to be unreliable by

the Trial Court. It was in essence submitted that the trial Court was wrong in convicting the accused.

5. The stand of the State on the contrary was that how a particular person would react in a given situation cannot be laid down by a rigid formula. There was no unusual and inordinate delay in lodging the FIR or sending the same to the Magistrate. The explanation offered is plausible and should have been accepted. A plea was also taken that evidence of PW-5 Gurnam Singh has been wrongly discarded and the extra judicial confession should have been relied upon for convicting the accused who were acquittal.

6. The High Court accepted the stand of the accused. It was held that there delay in lodging the FIR and additionally it was highly improbable that accused would choose a day time for committing the murder, if that was their intention. Essentially with these conclusions the High Court directed acquittal of the accused persons.

7. In the present appeal, learned counsel for the State submitted that the High Court had proceeded on surmises and conjectures. The evidence of the witnesses has not been discussed and nothing has been pointed out to show how the evidence is tainted. There being no delay in lodging the FIR, considering the short span of time between the time of incident and lodging of the FIR, it cannot be said that the delay was so unusual as to attract any suspicion. There was also no delay in sending report to the Magistrate.

8. In response, learned counsel for the accused-respondents submitted that the trial Court had erred in attaching undue importance to certain factors which have been rightly ignored by the High Court. The relevant aspects have been taken note of by the High Court and it would be unfair to interfere with the order of acquittal considering the limited scope for interference with such an order.

9. There is no embargo on the appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal, The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See *Bhagwan Singh and others v. State of Madhya Pradesh*[1]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable. It is a compelling reason for interference. These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade and*

anr. v. State of Maharashtra[2]*, Ramesh Babulal Doshi v. State of Gujarat*[3]*, Jaswant Singh v. State of Haryana*[4]*,* and *State of Punjab v. Karnail Singh*[5].

10. We may also observe that the ground that the witnesses being close relatives and consequently being partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh and others v. The State of Punjab*[6], in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - `*Rameshwar v. State of Rajasthan*'[7]. We find, however, that it unfortunately still persists, if not in the judgements of the Courts, at any rate in the arguments of counsel."
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> These aspects have been highlighted recently in Karnail Singh's case (supra).

11. According to the High Court, there was unusual delay in lodging the FIR. The incident took place around 5.30 in the morning. The FIR was lodged at about 10.45 a.m. The special report reached the Ilaqa Magistrate at 2.40 p.m. on the same day. The High Court found that there was unusual delay in the dispatching the FIR to the concerned Magistrate.

12. The High Court appears to have acted more on surmises than on legal evidence. Merely because the informant and the father of the deceased did not choose to use a tractor to go to the police station, that cannot be a suspicious circumstance. It has only been brought on record that the informant owned a tractor. There is no evidence to show that the tractor was in usable condition. Even if it was in usable condition the frame of mind of one who had lost his son and other close relative using a tractor to cover a distance of 9 K.M. at a point of time, has been lost sight of by the High Court. It is not unusual for a person to avail public transport facility to go to a police station. Much has been made of not lodging the case at the police post. An explanation has been offered as to why it has not been done. The High Court very lightly brushed it aside. Unfortunately, the High Court came to conclude on surmises and conjectures that the FIR was lodged after deliberation. There was no material to support such a conclusion. The distance between the police post and the Illaqa Magistrate is about 20 K.M. The special report reached the Magistrate within a few hours. That by itself is not a suspicious circumstance. The High Court has not considered that the distance is 20 K.M. Additionally, no question was put to the investigating officer as to why it took 3 hours for the report to reach the Magistrate. Had such a question been put, the investigating officer would have been in a position to explain the delay, if any. Without seeking for a response from the investigating officer, it is not open to say that there was delay in sending the report.

Otherwise, an adverse inference would be drawn in respect of a matter for which no explanation is sought for from the relevant witnesses. It is not the time, but unexplained delay in a case, which is of relevance. The inevitable conclusion therefore is that the High Court was wrong in holding that there was delay in lodging the FIR and in sending the special report.

13. One other matter which seems to have weighed greatly with the High Court is time of occurrence. The High Court has raised a question of conjecture as to why somebody would choose a day break time to commit a murder. Since the question is hypothetical and the answer to it would also be hypothetical. What is in the mind of a person and the reason for doing a thing is an aspect within the special knowledge of the accused. The prosecution is not supposed to meet every hypothetical question raised by the defence. If the prosecution is required to meet every fanciful plea, it would be a clear case of deflecting the course of justice. If crime is to be punished in a glosseme way niceties must yield to realistic appraisal. Law would fail to protect the community if it admitted fanciful possibilities to deflect, the course of justice, as was observed by Lord Denning in *Miller v. Minister of Pension*[8]. The High Court has failed to comprehend evidence in its full conspectus and has whittled down the evidence by specious reasoning. Vague hunches cannot take place of judicial evaluation. The vulnerability of the High Court's judgment is amplified by the fact that it has put great emphasis on the acquittal of two co-accused to discard PW's 5 evidence. That per se was not a ground to find the evidence as tainted. The eye-witnesses have described the incident with graphic detail and except minor discrepancies which do not in any way corrode the prosecution version, their testimony has remained unshaken in spite of incisive cross-examination. The trial Court had carefully scrutinized their evidence and acted on it. On the contrary, the High Court without even indicating any plausible reason as to why the evidence was not acceptable, has chosen to ignore it and characterize it as unreliable. By a cryptic judgment more based on surmises and conjectures than appraisal of evidence, the High Court has discarded it. That being the position, inevitable conclusion is that the High Court's judgment is indefensible and deserves to be set aside which we direct. Judgment of the Trial Court is restored. The appeal is allowed. The respondents who are on bail are directed to surrender to custody to serve remainder of the sentence.

Appeal allowed.

[1]*JT 2002(3) SC 387*
[2]*1973(2) SCC 793*
[3]*1996(9) SCC 225*
[4]*JT 2000(4) SC 114*
[5]*2003 AIR SCW 4065*
[6]*AIR 1953 SC 364*
[7]*AIR 1952 SC 54*
[8]*1947(2) All E.R. 373*