

SUPREME COURT OF INDIA

State of Punjab

Vs.

Mela Singh

(K.G. Balakrishnan and B.N. Agarwal JJ.)

06.11.2003

JUDGMENT

B.N. Agrawal, J.

1. The sole respondent Mela Singh was tried along with his two brothers Jit Singh and Malkiat Singh and the trial court while acquitting the other two accused persons convicted the respondent under Section 302 of the Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 200/- and in default to undergo rigorous imprisonment for a period of six months. He was further convicted under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 100/- and in default rigorous imprisonment for a period of three months. The sentences were, however ordered to run concurrently. Against order of acquittal of the other accused persons, no appeal was preferred by the State whereas the respondent filed an appeal in the High Court of Punjab & Haryana against his convictions which has been allowed and he has been acquitted of all the charges.

2. Prosecution case, in short, was that one Jarnail Singh (PW 2) had six brothers including Karnail Singh and their houses were adjacent to each other. The three accused persons, namely, Jit Singh, Malkiat Singh and Mela Singh were full brothers and their houses were also adjacent to that of members of prosecution party. On 15th September, 1991 at about 10.00 p.m., when Jamail Singh (PW 2) and Karnail Singh were in their houses, accused persons came in front of the house of Karnail Singh in the street and started abusing him whereupon the two brothers came out and asked the accused persons as to why they were abusing Karnail Singh. The respondent Mela Singh was armed with single barrel 12 bore licensed gun belonging to his father Arjan Singh whereas the other accused persons with sticks who exhorted Mela Singh to fire whereupon he fired which hit Karnail Singh as a result of which he fell down with his face downwards. In the meantime, Malkiat Kaur (PW 3) also came out from the house and also witnessed the occurrence. Thereafter, PWs. 2 and 3 went inside the house of Karnail Singh and bolted the door from inside. The accused persons are said to have fired two more shots at Karnail Singh who succumbed to the injuries and dragged his dead body towards their house. The members of prosecution party did not come out from the house during the night out of fear of the accused persons. On the next morning, Jamail Singh (PW 2) is said to have gone to village Sarpanch Hardayal Singh, along with

whom he started for going to police station to lodge the first information report, but on the way, they met Nagore Singh (PW 4), the officer in-charge of the police station, who was on patrolling duty and recorded statement of Jarnail Singh at 9.00 a.m. and sent the same to the Police Station on the basis of which a first information report was drawn up on that day at 9.40 a.m. The motive for the occurrence disclosed in the first information report was that the land of accused and that of Karnail Singh deceased were adjacent to each other and on the morning of the date of occurrence, there was some altercation between them as the accused persons had narrowed down a path way which was in between their lands for which Karnail Singh made a protest to Arjan Singh, father of the accused persons.

3. The police after registering the case took up investigation and on completion thereof, submitted charge sheet, on receipt whereof learned magistrate took cognizance and committed the accused persons including the respondent to the Court of Session to face trial.

4. Defence of the accused was that they were innocent, had no complicity with the crime, no occurrence as alleged had taken place and the deceased might have received injuries in some other manner of occurrence.

5. During trial, the prosecution examined four witnesses in all, out of whom, Dr. Pawan Kumar Mangla (PW 1) held postmortem examination on the dead body of Karnail Singh. Jarnail Singh (PW 2) and Malkiat Kaur (PW 3) claimed to be eyewitnesses to the alleged occurrence and Nagore Singh (PW 4) was the investigating officer. Upon the conclusion of trial, while other two accused persons were acquitted, the respondent was convicted as stated above. But on appeal being preferred, the High Court recorded his acquittal, hence, this appeal by special leave.

6. The question which falls for our consideration is as to whether order of acquittal recorded by the High Court suffers from perversity as it is well settled that an appellate court should not interfere with the same unless it is found to be perverse.

7. In the case on hand, first we proceed to consider the medical evidence. PW 1 conducted postmortem examination on the dead body of Karnail Singh on the next day at 2.00 p.m. and found following injuries on his person :-

“1. A lacerated punctured wound with inverted margins measuring 6 x 5 c.m. present on the upper part of left side of neck. The lower helix of left ear was lacerated. Clotted blood was present.

2. Multiple circular lacerated punctured wounds each measuring 2 x 2 c.m, scattered over the left and central forehead and left temporal and left parietal region was present. Clotted blood was present. Area around each entry was blackened.”

8. According to doctor, injuries were caused by fire arm and injuries on the neck and head were individually sufficient to cause death in the ordinary course of nature. In the opinion of doctor, death was caused within twenty four hours of the holding of postmortem

examination. From a bare perusal of the medical evidence referred to above, it would appear that the same supports the prosecution case in all material particulars.

9. Apart from medical evidence, the objective finding of investigating officer-PW4 also supports the prosecution case inasmuch as when after registering the case, he inspected the place of occurrence, dead body was found there. PW 4 seized the blood-stained earth which was sent to serologist who has reported that the same contained human blood. The investigating officer recovered three empty cartridges from the place of occurrence which were sent to ballistic expert along with the licensed gun belonging to father of respondent and seized from his house and it was reported by the ballistic expert that the three cartridges were fired from the aforesaid gun.

10. Turning now to the ocular version of the occurrence given by PWs 2 and 3 who claimed to be eyewitnesses, it may be stated that PW 2 was brother of the deceased whereas PW 3 was nobody else than wife of the deceased and house of PW 2 was just by the side of house of the deceased. The occurrence had taken place in front of their houses in the street, therefore, presence of these witnesses cannot be doubted. Both of them have supported the prosecution case in all material particulars and their evidence is consistent, inter se as well as prosecution case disclosed in the first information report and by the witnesses in their statements before the police. The High Court has refused to place reliance on their evidence as in its opinion, the same was inconsistent with the medical evidence inasmuch as according to evidence of these witnesses, the deceased fell down on the ground on receipt of first shot with face downwards and if he had fallen with face downwards, injury No. 2 could not have been possible. Further ground taken by the High Court was that according to the evidence of Dr. Pawan Kumar Mangla (PW 1), there was a postmortem staining on the back which could not have been possible if the body had been lying on the ground with face downwards. In our view, the presence of PWs 2 and 3 cannot be doubted as it may be possible that on receipt of first shot the deceased might have taken a turn upwards because there is nothing on the record to suggest that he died immediately after receiving the first shot and since two shots were fired thereafter, injury No. 2 might have been caused as a result of second or third shot. The presence of postmortem staining on the back at the highest shows that the body did not remain lying with face downwards and as stated above the deceased might have taken a turn upon receiving first sun shot injury before other two shots were fired. Further, the High Court refused to place reliance upon their evidence observing that conduct of PWs 2 and 3 in not informing the other brothers of PW 2 during night about the incident is quite unnatural. It has been stated by PW 2 that the accused persons had given out threats to the witnesses that if they come out from the house, they would be done to death. In view of this, if the two witnesses remained closeted in the house and did not inform during night the other family members who were residing in close-by houses, no adverse inference can be drawn against them.

11. The High Court has doubted veracity of the prosecution case on the ground that there was delay in lodging the first information report. In this regard, it may be stated that during night, the members of prosecution party could not have gone to the police station for lodging the first information report as during those days, terrorist activities in the state of Punjab were at

its peak, in the first information report, it was specifically stated that the informant could not go to the police station to lodge the first information report during the night out of fear of the accused persons. That apart PW 2 has stated in his evidence that accused persons had given out threats to their lives in case the witnesses go to the police station for lodging the first information report. On the next morning, PW 2 went to Sarpanch at 5.00 a.m. and as it was raining, they started from the house of Sarpanch at 7.45 a.m. for lodging the first information report at the police station white on the way, they met PW 4, the officer in-charge of the police station, who was on patrolling duty and recorded the statement of PW 2 at 9.00 a.m. on the basis of which formal first information report was drawn up at 9.40 a.m. Thus, we find that there was no inordinate delay in lodging the first information report inasmuch as the delay has been duly explained and the High Court was not justified in observing that there was inordinate delay in lodging the same. Further, the High Court was not right in drawing adverse inference against the prosecution from the fact that though it was raining but the fact, whether the cartridges seized by the investigating officer from the place of occurrence were wet or dry, was not mentioned in the seizure memo. In our view, it was not necessary for the investigating officer to mention in the seizure memo about the same. Moreover, omission to mention this fact in the seizure memo cannot in any manner affect the veracity of the prosecution case. Other ground taken by the High Court for doubting the prosecution case was that though PW 2 had stated that during night he and PW 3 had covered the dead body with a cloth but in the inquest report, the investigating officer had nowhere mentioned that he found that the dead body was covered with a cloth. This, in our view, again is a mere omission and cannot be a ground for throwing out the prosecution case.

12. Thus, we are of the opinion that the prosecution has succeeded in proving its case beyond reasonable doubt and the High Court was not justified in doubting its veracity and recording the verdict of acquittal which cannot but be said to be perverse.

13. In the result, the appeal is allowed, impugned Judgment of acquittal of the respondent rendered by the High Court is set aside and that of the trial court recording his conviction is restored. Bail bonds of the respondent are cancelled and he is directed to be taken into custody forthwith for serving out the remaining period of sentence.