SUPREME COURT OF INDIA

Dhanaj Singh @ Shera

Vs.

State of Punjab

(Arijit Pasayat and Doraiswamy Raju JJ.)

10.03.2004

JUDGMENT

Arijit Pasayat, J.

1. There are some unusual cases when the complainant himself is treated as an accused and made to suffer a trial. The present appeal is a case of that nature. But the persons against whom he made accusations subsequently faced trial, and are the accused so far as the present appeal is concerned. The appellants have been convicted for offence punishable under Section 302 read with Section 34 of the *Indian Penal Code, 1860* (in short the 'IPC') and sentenced to undergo imprisonment for life and a fine of Rs. 1, 000/- with default stipulation. The conviction made and the sentence imposed by the Additional District and Sessions Judge, Bhatinda were confirmed by the impugned judgment by a Division Bench of the Punjab and Haryana High Court.

2. The prosecution version as unfolded during trial is as follows:

3. The present three appellants along with Jagrup Singh and Nachhattar Singh faced trial for alleged commission of murder of one Sukhmander Singh (hereinafter referred to as the 'deceased'). The five accused persons including to who had been acquitted i.e. Jagrup Singh Nachhattar Singh were charge sheeted for allegedly hatching a conspiracy for committing the murder of deceased Sukhmander Singh, thereby committing the offence punishable under Section 120B IPC, and in furthermore of their common intention caused the death of deceased with fire arms and thereby committing offence punishable under Section 302 read with Section 34 IPC. The first information report has lodged on 21.10.1995 by Sukhdev Singh (PW-2) stating that while he and his nephew Bikramjit Singh @ Butta Singh (PW-3) and the deceased had gone to plough the land, suddenly the accused persons armed with fire arms reached the spot of occurrence and raised 'lalkara' that they would tech a lesson to the complainant party for committing the murder of their relations. All the three appellants chased the deceased and fired three shots. The complainant (PW-2) and Bikramjit Singh (PW-3) ran away towards village. After committing the murder the accused persons went towards the village with their weapons. After they departed, PWs. 2 and 3 went to the spot of the occurrence to ascertain the fate of the deceased and found that he had already died. Leaving PW-3 to guard the dead body. PW-2 reported the matter to his bother Ranjit Singh,

the Sarpanch. While he and Ranjit Singh were proceeding to the police station, on the way they found police party headed by Mukhtiar Singh (PW-6) and reported the matter to him. The occurrence took place around 11.00 a.m. and the first information report was recorded at 4.30 p.m. and was sent to the Area magistrate at a distance of about 20 Kms. from the police station and was received by him at 8.40 p.m. It was indicated that the motive of the crime was certain killings where the deceased and family member of PWs. 2 and 3 were involved and with a view to take revenge the murder took place. Investigation started in the line as reflected in the FIR, but strangely the police took a view and proceeded as if PWs. 2 and 3 were the murderers and had falsely implicated the accused persons. Accordingly they challenged them for trial, but they were acquitted. In the meantime, a complaint was filed by Sukhdev Singh (PW-2) in the Court of Chief Judicial Magistrate, Bhatinda alleging that investigating officer had yielded to political pressure and had made out a case as if the complainant was the murderer. The trial Court considering the evidence on record, found the accused persons guilty. The High Court by the impugned judgment upheld the conviction and found several disturbing features as to how I.O. had made out a new case to save the accused persons and implicate the complainant party.

4. In supported of the appeal, learned senior counsel submitted that both the trial Court and the High Court have lost sight of the actual scenario, and have erroneously come to hold the accused persons guilty. On the highly tainted evidence of PWs. 2 and 3 the conviction should be have been done. When the police after thorough investigation had concluded that it was the complainant party which caused the death of the deceased Dr. S. K. Rajkumar (PW-1) had stated the pellets were recovered; but they were not sent for test by ballistic expert. Weapons were stated to have been recovered pursuant to the information given in terms of Section 27 of the *Indian Evidence Act, 1872* (in short the 'Evidence Act'). That is really of no consequence because the discovery statement does not show any incriminating statement. It only says that the guns can be found at some place. The complaint is bald and even the relevant details have not been given, though in evidence it has been stated as to the type of gun that was used, both the trial Court and the High Court have noted that they were not sent for chemical test. Many persons who could have thrown light on the incident have not been examined. No footprints were found. The pellets, wads and cartridges were not recovered from the spot. Merely because the FIR was lodged very promptly, the trial Court and the High Court should not have termed a highly exaggerated and manipulated version to be truthful. The ballistic examination should have been done to find out whether the guns allegedly produced were in the fact used. Failure of PW-6 to even smell the guns to find out whether they were recently used provides the foundation for doubt. As the blood stained earth was not sent for chemical examination, the situs of assaults has not been established. The guns were also not sent of ballistic examination. Such examination would have provided authenticity of the fire arms purported to have been used. The evidence of PW 2 and 3 being that of highly interested and inimical person should have been discarded.

5. In reply, learned counsel for the State submitted that faulty investigation cannot be a ground to affect the credibility of the eye-witnesses. It is a fairly settled position in law that when witnesses are partisan or inimical, their evidence has to be analysed with care and scrutiny. That has been done in the present case and both the trial Court and the High Court

have found the evidence to be credible. Even if the investigation was faulty, both the trail Court and the High Court have acted only in the permissible way i.e. to weigh the evidence carefully and come to an independent conclusion. As rightly noted by the High Court, the investigation seems to be slip shod. The highly improbable stand that the complainant and his relatives killed the deceased who was their close relative can hardly be accepted with even a pinch of salt. Though the deceased and the complainant had criminal track records that per se will not affect the evidence of witnesses if it is otherwise credible and cogent. Both the trial Court and the High Court after analysing the evidence found it to be credible, cogent and trustworthy. The plea that the primary duty to investigate the evidence is that of the police and when the police has given clean chit, that should prima facie be accepted is clearly without substance.

6. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (*Karnel Singh v. State of M.P.*[1]).

7. In *Paras Yadav and Ors. v. State of Bihar*[2] it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

8. As was observed in *Ram Bihari Yadav v. State of Bihar and Ors.*[3] if primacy is given to such designed or negligent investigation, to the commission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the (sic) Law enforcing agency but also in the administration of justice. The view was again re-iterated in *Amar Singh v. Balwinder Singh and Ors.*[4]. As noted in Amar Singh's case (supra) it would have been certainly better if the fire arms were sent to the forensic test laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eye-witnesses corroborated by the medical evidence fully establishes the prosecution version failure or omission or negligence on part of the IO cannot affect credibility of the prosecution version.

9. The stand of the appellants relate essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets etc. in the background of defective investigation have been considered in Amar Singh's case (supra). In the case at hand, no crack in the evidence of the vital witnesses can be noticed.

10. Both the trial Court and the High Court have analysed the evidence of Ps 2 and 3 with due care and caution keeping in view the correct legal principles and have found accused

persons guilty. We find no scope for interference with the conclusions so arrived in an appeal under Article 136 of the Constitution of India. The appeal is dismissed.

Appeal dismissed.

[1]*1995 (3) RCR (Cr.) 526 (SC)*
[2]*1999 (1) RCR (Cr.) 627 (SC)*
[3]*1998 (2) RCR (Cr.) 403 (SC)*
[4]*2003 (1) RCR (Cr.) 701 (SC)*