

**SUPREME COURT OF INDIA**

State of Punjab

Vs.

Atma Singh

Crl.A.No...of 2009

(Dr. Arijit Pasayat J.)

08.05.2009

**JUDGEMENT**

**Dr.Arijit Pasayat, J**

1. These appeals are inter-linked and are directed against the judgment of a Division Bench of the Punjab and Haryana High Court. By the impugned judgment the High Court allowed the appeal filed by the respondents. The appeal before the High Court was numbered as Criminal Appeal No.406-DB of 1996. The learned Additional Sessions Judge, Amritsar had found the accused persons guilty of various offences. Accused Lal Singh was found guilty of offence punishable under Section 302 of the *Indian Penal Code, 1860* (in short the `IPC') while Dial Singh, Atma Singh, Sajjan Singh and Karam Singh were found guilty of offence punishable under Section 302 read with Section 149 IPC. Accused Dial Singh was also found guilty of offence punishable under section 302 IPC while four others were found guilty of offence punishable under Section 302 read with Section 149 IPC. All the five accused persons were guilty of offence punishable under Section 148 IPC. Accused Lal Singh was found guilty of offence punishable under Section 307 IPC while accused Lal Singh, Atma Singh, Sajjan Singh and Karam Singh were found guilty of offence punishable under Section 307 read with section 149 IPC. Accused Atma Singh, Sajjan Singh and Karam Singh were found guilty of offence punishable under Section 324 IPC. Accused Lal Singh and Dial Singh were found guilty of offence punishable under Section 324 read with Section 149 IPC. Accused Lal Singh and Dial Singh were also found guilty under Section 27 of *Arms Act, 1959* (in short the `Arms Act').

2. It is to be noted that Criminal Revision No.279 of 1997 was filed by Atma Singh and Others and it was taken up alongwith Criminal Appeal as noted above. The High Court by the impugned judgment held that the prosecution case suffers from various infirmities and, therefore, allowed the appeal.

3. Prosecution version in a nutshell as unfolded during trial was as follows:

“At about 6.45 p.m. on 11.2.1993 Mal Singh (PW-1) accompanied by his sons Major Singh and Bhupinder Singh was returning to his dhani in the fields after closing the shop. When they were on the kacha path leading to the house of accused Lal Singh, they were confronted by Lal Singh armed with a DBBL gun, Atma Singh with a Gandassi, Sajjan Singh with a kirpan, Karam Singh with a datar, while Dial Singh son of Lal Singh was empty handed. On seeing Mal Singh and his sons, the accused raised a lalkara that the opposite party should be done to death for getting their relatives arrested by the Batala Police. At this, Lal Singh fired a shot from his gun, which hit Major Singh on his chest, receiving which he fell down on the ground. Lal Singh fired another shot which hit Bhupinder Singh on his right arm after which he took shelter in the fields and raised a halla. On hearing the noise, Dalip Kaur W/o Mal Singh and his sons Mohinder Singh and Manohar Singh came to the spot and tried to rescue them. Sajjan Singh and Atma Singh then gave one blow each to Mohinder Singh on his head, on receiving which he fell down on the ground. Karam Singh then gave a datar blow on the head of Mohinder Singh and when Dalip Kaur came forward to rescue them, Dial Singh snatched the gun from his father Lal Singh and fired a shot on her head and she too fell down. Mal Singh and his son Manohar Singh raised a raula on which all the accused ran away carrying with them their weapons. Mal Singh and Manohar Singh came forward and found that Dalip Kaur and Major Singh had succumbed to their injuries. Leaving Manohar Singh near the dead bodies, Mal Singh rushed to Amritsar and got a vehicle to take the injured sons Mohinder Singh and Bhupinder Singh to the hospital. He however came across a police party headed by S.I. Satwant Singh (PW-13) at the bus stand of Khalchain, who recorded Mal Singh's statement at 0.05 a.m. on 12.2.1993 and on its basis the formal FIR was registered at Police Station 30 minutes later with the special report being delivered to the Illaqa Magistrate at 6.11 p.m. on 12.2.1993. Sub Inspector Satwant Singh thereafter accompanied by the complainant and other police officials reached village Kaleke. He examined the place of incident in the presence of respectable persons of the village and completed the necessary formalities. He also picked up 4 empty cartridge cases of .12 bore DBBL from the spot. Accused Lal Singh and Dial Singh were arrested on 26.2.1993 and on the basis of the disclosure statement made by Lal Singh a licensed DBBL gun was duly recovered. Accused Atma Singh, Sajjan Singh and Karam Singh were arrested on March 4, 1993 and on the basis of the 4 disclosure statements made by them the weapons of offence that they had been carrying were also recovered. On completion of investigation charge sheet was filed. Since the accused pleaded not guilty, trial was held.

In the present appeals the informant and the State of Punjab had question the acquittal directed by the High Court. The High Court primarily directed acquittal on the ground that there was delay in lodging the FIR and there is doubt about the weapon used. It was also observed that there was delay in delivery of the special report of Illaqa Magistrate. The direction of injuries was referred to by the High Court. In that view the prosecution version was held to be not acceptable.”

4. Learned counsel for the appellant submitted that the High Court has come to contradictory conclusions. It has even over-looked the concession made by learned counsel appearing before the High Court that either there was delay in lodging the FIR or in sending the special report to the Illaqa Magistrate. The High Court also completely ignored the evidence of Dr. B.R. Sharma. The High Court acquitted the respondents on "the possibility therefore that the defence story may just be correct cannot be ignored."

“There was no notice taken of the concession made by learned counsel for the accused persons that there could be no doubt that Dalip Kaur had died of gun shot as wads and pellets have been recovered from her body. Unfortunately, the High Court acquitted the accused from the murder of Dalip Kaur also.”

5. Learned counsel for the respondents on the other hand submitted that the High Court has analysed the evidence in great detail and found the evidence of the so called eye witnesses to be not cogent and even the evidence of Dr. S.N. Sharma (C.W.1) did not fit in the prosecution version and in any event considering the limited scope of interference with the judgment of acquittal no interference should be made.

6. The first aspect which has been highlighted by the High Court was purported delay in lodging the FIR. The trial Court noted that there was in fact no delay and even if there was some delay the same was satisfactorily explained. The occurrence took place at 6.30 p.m. on 11.2.1993. FIR was lodged at about 12.00 mid night. The dead body was dispatched to the mortuary and reached there at 1.40 p.m. Police papers reached there at 4.40 p.m. and the special report was received at 6.11 p.m. on 12.2.1993. The explanation given to explain the so called delay was that two sons of Mal Singh were seriously injured and the first reaction was to provide the medical facilities to them and accordingly he took them to Amritsar, got them admitted to the hospital and immediately thereafter the FIR was registered. Therefore, there is absolutely no delay in lodging the FIR.

7. The trial Court noticed that if the special report reached late it was fault of the investigating officer. The High Court came to an abrupt conclusion that the police papers reached the doctor at 4.40 p.m. and it was therefore apparent that the FIR could have been registered at any time prior to that fixed moment. There was no reason for the High Court to conclude that the FIR was registered belatedly. The investigating officer reached immediately after the occurrence, prepared two inquest reports, FIR number was also received and the same was put on the inquest reports and all the papers were required to be handed over to the Head Constable Daljit Singh (PW-9) who was deputed to take dead body to Mortuary.

8. Coming to the so called variance between the ocular evidence and the medical evidence it was essentially because of the weapon that was used. The High Court put unnecessary stress on the use of the expression `shot' and `shots'. Illiterate witnesses hardly know the difference. The exact words used by the witness are "on receiving the fire shots the deceased Major Singh fell down on the ground". Therefore, he has meant definitely more than one shot and not one shot. Additionally, four empty cartridges of 12 bore were recovered from the place of

incident. Therefore, obviously there should not have been one shot fired. Shots fired on Dalip Kaur were clearly from the weapon described by the prosecution as wads and pellets were found in the wounds. As noted above, there was clear concession by learned counsel for the accused that in the light of the report given by Dr. Gurmanjit Rai there could be no doubt that Dalip Kaur had died of gun shot wounds as wads and pellets have been recovered from her body. The High Court unfortunately did not consider the relevance of this concession. The High Court observed that the concession had been made rightly, but it further said that there was doubt about the weapon used on Major Singh. Even if that be so, there was no scope for directing acquittal of the accused persons in respect of murder of Dalip Kaur.

9. Coming to the question of testimony of three injured eye witnesses the trial Court noticed that their statements were flawless and nothing has come out in their cross examination on the basis of which any doubt could be created about their veracity. The place was a secluded one. The incident took place on the turning of the passage. The incident continued sufficiently for a long time which was clear from the fact that many shots were fired, firstly by Lal Singh then by his son Dial Singh resulting in the death of Major Singh and his mother Dalip Kaur and injuries to some of the witnesses.

10. The High Court discarded the credible evidence of the eye witnesses on mere surmises and conjectures.

11. It is to be noted that during the hearing of Criminal Appeal No.406 of 1996 a Bench of the High Court hearing the matter on 9.9.1997, came to a tentative conclusion that opinion of the ballistic expert should be made available to the Court and on 8.9.2000 the expert was examined as a court witness in the High Court. The High Court referred to the statements of Dr. Rai and Dr. S.N. Sharma and without any basis the High Court said that the evidence of Dr. Rai must be given more weightage as he conducted the post mortem examination on the dead bodies. While quoting Dr. B.R. Sharma it did not notice Table first entry LG No. of pellets 6 diameter 9.14 mm. It was in complete accord with the evidence of CW-1 where it is stated that LG size is 9.14 m.m. In the opinion dated 16.12.1997 it was noted that injuries Nos. 1, 3, 5 and 7 on the person of Major Singh could be caused by one shot provided the same cartridge is loaded with four or more of the same dimension. Though there should not be interference with the judgment of acquittal where the view taken is a possible view, but where conclusions are without any foundation, there is need to interfere with the judgment of the appellate Court.

12. In the instant case the analysis done by the trial Court was appropriate and the High Court should not have on mere surmises and conjectures interfered with the judgment of the trial Court and directed the acquittal. In the result, the appeals are allowed. It is to be noted that respondent No.1- Atma Singh died on 26.9.2001. Other accused persons are directed to surrender to custody forthwith to serve the remainder of sentence.

13. The appeals are allowed to the aforesaid extent.