

SUPREME COURT OF INDIA

Jarnail Singh

Vs.

State of Punjab

Crl.A.No.1288 of 2007

(Harjit Singh Bedi and Dr. B.S. Chauhan JJ.)

26.08.2009

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been preferred by the appellants against the judgment and order dated 31st August, 2005 of the Punjab and Haryana High Court dismissing their appeals and affirming the conviction and sentence awarded by the Trial Court vide its judgment and order dated 8.1.2004 in Sessions Trial under Sections 302, 148, 149, 307, 364, 342, 506, 201, 120-B of the Indian Penal Code, 1860 (in short the 'IPC') and under Section 30 of the Arms Act, 1959 (in short the 'Arms Act') awarding life imprisonment and other sentences.

2. The facts and circumstances giving rise to this appeal are, that an First Information Report (in short the 'FIR') was lodged on 24th June, 2000 on the basis of a statement of Darshan Singh (PW-4) that he was living with his sister Gurcharan Kaur for the last 3= years at village Nandpur as his nephew Gurjeet Singh, son of his sister Gurcharan Kaur, had been murdered by Rattan Singh and Balbir Singh, close relatives of Gurcharan Kaur in 1997. On 23rd June, 2000 at about 10.00/11.00 p.m., when Darshan Singh (PW-4) was having his meal at his tube well after preparing his fields for plantation of paddy crop, about 30 persons armed with fire arms came in five vehicles (cars and jeeps) from the side of village Dadiana. They started shouting and firing shots in the air. They came to the tube well and caught hold of Darshan Singh (PW-4) and injuries were inflicted on him with the butts of rifle on his head, chest and back. Migrant labourers (migrated from Bihar) sitting on the tube well also suffered injuries. There had been a dispute on the land as the same was purchased by Inderjit Singh (Accused) from Rattan Singh, Balbir Singh and Rajwinder Kaur. Inderjit Singh wanted to take possession of the land from the complainant party forcibly.

3. The migrant labourers tried to run away, however, one Jaldhar received the gun injury who was taken by the assailants in the jeep alongwith two other labourers Sikandar Rai (PW-6) and Babu Lal (PW-7) under the pretext that the injured will get proper treatment at Patiala. Darshan Singh (PW-4) alongwith two labourers Nand Kishore and Budhu was detained in a room of the tube well. In the morning at 6.00 a.m., the assailants took Darshan Singh (PW-4) alongwith Nand Kishore and Budhu in a car to village Dadiana. There had been 3.12 bore guns in the car and after taking them to several places they were brought back to the tube well at 10.30 a.m.

4. On the basis of the said report, a case was registered under Sections 342/336/323/506/148/149/120-B IPC and under Sections 25/27/54/59 of the Arms Act. On 27th June, 2000 statement of Babu Lal (PW-7) was recorded. He deposed that he was taken alongwith Jaldhar injured, with Sikandar Rai (PW-6) and they were taken to Ambala Railway Station in a vehicle and had been given Rs.900/- for meeting the expenses to travel back to Bihar. However, they came back to Mohali and informed the other migrant labourers about the incident and, also, that he was suspicious that Jaldhar had been killed. Thus, on the basis of the said statement, Sections 307 and 364 IPC were added to the previous sections. Again on 4th July, 2000 statement of Sikander Rai (PW-6) was recorded. He had stated that Jaldhar died on the spot but in order to avoid the hue and cry of the labourers, the assailants had taken the dead body under the pretext to get him proper treatment and the dead body was thrown in the canal at about 2.30 a.m. in the night. He had been threatened that, in case, he disclosed the factum of the death of Jaldhar he would also be killed. Thus, on the basis of his statement, offence punishable under Section 302 IPC was also added.

5. The police recovered the dead body of Jaldhar on 5.7.2000 from the canal about 40 KM. away from the place of occurrence and post mortem was conducted. After completing investigation, the charge sheet was submitted against the appellants alongwith Inderjit Singh, Gurdeep Singh, Balbir Singh, Kanwal Preet Singh and Amarjit Singh. The prosecution examined 19 witnesses to prove its case including the complainant Darshan Singh (PW-4), Sikandar Rai (PW-6) and Babu Lal (PW-7). However, Amarjeet Singh, who was leader of the assailants remained absconding and thus, could not be put to trial. The trial Court convicted all the accused persons and sentenced them to undergo RI for life under Section 302/149 IPC and to pay a fine of Rs.1,000/- each, in default further to undergo RI for one year. They were also sentenced to undergo RI for one year under Section 148 IPC. All the accused persons were sentenced to undergo RI for five years under Section 307/149 IPC and to pay a fine of Rs.500/- each; in default to further undergo RI for one year. They were sentenced to undergo RI for two years under Section 364 IPC and to pay a fine of Rs.100/- each; in default to further undergo RI for one year. All the accused persons were sentenced to undergo RI for six months under Section 342 IPC. They were also sentenced to undergo RI for six month under Section 506 IPC. All the accused persons were also sentenced to under RI for one year under Section 201 IPC and to pay a fine of Rs.100/- each; in default to further undergo RI for one year. All the accused persons were sentenced to undergo RI for six months under Section 120-B IPC. Accused Inderjit Singh was also sentenced to undergo RI for one year under Section 30 of the Arms Act and to pay a fine of Rs.100/- each and in default to further undergo RI for one year.

6. Being aggrieved, all the convicted persons preferred six appeals before the High Court which were heard together. The High Court vide its judgment and order dated 31.8.2005 allowed the Criminal Appeals filed by Gurdip Singh and Balbir Singh against whom the charge of conspiracy had been framed and dismissed other four appeals and maintained the conviction and sentences awarded by the Trial Court.

7. Against the said common judgment and order of the High Court, Inderjit Singh (Accused), the purchaser of the land in dispute from Rattan Singh, Balbir Singh and Smt. Rajwinder Kaur preferred the Special Leave Petition before this Court and it stood dismissed. Kanwal Preet Singh did not prefer any Special Leave Petition. The other remaining convicted persons filed this appeal.

8. Shri Subhash Sharma, learned counsel appearing for the appellants has agitated all the issues which had been raised before the Courts below and his thrust of arguments had been that, the Criminal Appeals preferred by Gurdip Singh and Balbir Singh had been allowed by the High Court disbelieving the theory of conspiracy for taking possession of the said disputed land forcibly. Therefore, if the foundation of the case disappears, the entire case goes. More so, it is submitted that names of the appellants had not been mentioned in the FIR. There was inordinate delay in lodging the FIR. The dead body of the Jaldhar (deceased) was recovered after about two weeks of the incident. The body was completely in a decomposed state. Thus, it was not in a condition where one could identify the body and in such a fact situation, the appellants ought to have, also been acquitted by the High Court.

9. On the contrary, Shri Kuldeep Singh, learned counsel for the State has submitted that the issue of delay in lodging the FIR has been fully considered by the courts below and the courts were satisfied that there was no delay at all as the complainant/informant remained in the custody of the assailants. The doctors who conducted the post mortem deposed that the body could be identified and it has been identified by Sikandar Rai (PW-6). More so, the acquittal of Gurdip Singh and Balbir Singh by the High Court would have no bearing on the merits of the case, for the reason, that Rattan Singh and Balbir Singh had already sold the land to Inderjit Singh. They wanted to get rid of the land as it had been a subject matter of litigation between the parties for long and it was Inderjit Singh who had the grudge and wanted to take forcible possession of the land from the complainant party. The appeal lacks merit and is liable to be dismissed.

10. We have considered the rival submissions made by learned counsel for the parties and perused the record.

11. The land in dispute belonged to one Dalip Singh who had three sons, namely, Gurbux Singh, Hakam Singh and Rattan Singh. It appears that the land had come in the share of Rattan Singh and as he was not having any issue, he had taken in adoption Balbir Singh, son of his wife's sister. Rajwinder Kaur got married with Balbir Singh. Gurbux Singh and his wife Gurcharan Kaur were having the claim on the said land and, in this dispute, their son Gurjit Singh was murdered in 1997 by Rattan Singh and Balbir Singh. In the said case, Balbir Singh stood convicted and his appeal was pending before the High Court. In view of long pending dispute over the land it was decided by Rattan Singh, Balbir Singh and Rajwinder Kaur to get rid of the same and an agreement to sell was executed in favour of Inderjit Singh after receiving the sale consideration on 14th February, 2000. Inderjit Singh after having the agreement, wanted to take forcible possession of land from Gurcharan Kaur and her son Mandeep Singh. Rattan Singh, Balbir Singh and Rajwinder Kaur after receiving the consideration money for the land and executing the agreement might not be very much interested in the land or to recover the possession thereof. Prosecution case had been that it was Balbir Singh, who hatched the conspiracy to take forcible possession of the land.

12. After considering the oral as well as documentary evidence on record, the High Court came to the conclusion that the statement of Gurcharan Singh (PW-18) in respect of the fact of hatching a conspiracy by Balbir Singh and Gurdip Singh, at the bus stand Bassi Pathana on 21 st June, 2000 at

7.30/8.00 p.m. was not worthy of credence. Gurcharan Singh (PW-18), a chance witness could not explain under what circumstances he was present at the bus stand at the said time.

13. In *Sachchey Lal Tiwari v. State of U.P.* (2004) 11 SCC 410, this Court while considering the evidentiary value of the chance witness in a case of murder which had taken place in a street and passerby had deposed that he had witnessed the incident, observed as under: If the offence is committed in a street only passer- by will be the witness. His evidence cannot be brushed aside lightly or viewed with suspicion on the ground that he was a mere chance witness. However, there must be an explanation for his presence there.

14. The Court further explained that the expression 'chance witness' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country like India where people are less formal and more casual, at any rate in the matter of explaining their presence.

15. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (*Satbir v. Surat Singh* (1997) 4 SCC 192; *Harjinder Singh v. State of Gujarat* (2004) 11 SCC 253; *Acharaparambath Pradeepan Anr. v. State of Kerala* (2006) 13 SCC 643; and *Sarvesh Narain Shukla v. Daroga Singh and Ors.* (2007) 13 SCC 360). Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (*vide Shankarlal v. State of Rajasthan* (2004) 10 SCC 632). Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident. (*vide Thangaiya v. State of Tamil Nadu* (2005) 9 SCC 650).

16. Gurcharan Singh (PW-18) met the informant Darshan Singh (PW-4) before lodging the FIR and the fact of conspiracy was not disclosed by Gurcharan Singh (PW-18) and Darshan Singh (PW-4). The fact of conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution case relating to conspiracy. However, in the fact situation of the present case, acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned.

17. Undoubtedly, in the FIR appellants' name have not been mentioned. The FIR is not the encyclopedia of all the facts relating to crime. The only requirement is that at the time of lodging FIR, the informant should state all those facts which normally strike to mind and help in assessing the gravity of the crime or identity of the culprit briefly.

18. In the FIR, in addition to the names of Balbir Singh and Gurdip Singh, name of Amarjit Singh, the absconding accused, has been mentioned. The complainant Darshan Singh (PW-4) has also mentioned that he could identify some of the assailants if they come before him. Thus, the complainant was not aware of the names of all the accused persons. The submission in this regard remain preposterous. The motive for committing the offence has fully been explained therein that they wanted the forcible possession of the land from the complainant party. The land in dispute had also been the cause of murder of nephew of the informant Darshan Singh (PW-4) as his nephew Gurjeet Singh was killed by Rattan Singh and Balbir Singh, the vendors of the land to Inderjit Singh. The delay in lodging FIR has fully been explained by the prosecution and both the courts below have accepted the same. The concurrent findings recorded by the courts below on this issue

do not warrant any interference whatsoever in this Court. Sikandar Rai (PW-6) and Babu Lal (PW-7) had been the two independent witnesses. They had come from Bihar as migrant labourers. No explanation could be furnished by Shri Subhash Sharma, learned counsel for the appellants as to for what reason either of the said witnesses could depose falsely. Sikandar Rai (PW-6) had been all along with the deceased Jaldhar and he had also witnessed the throwing of his dead body in the canal. The Tata Sumo vehicle used in the offence was recovered. It belonged to Inderjit Singh, vendee of the land. There is full corroboration to the prosecution case by Sikandar Rai (PW-6) and Babu Lal (PW-7). Both of them had been cross examined by the learned counsel appearing for the appellants but nothing could be elicited which could shake their credibility.

19. Darshan Singh (PW-4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tube well.

20. In *Shivalingappa Kallayanappa v. State of Karnataka* 1994 Supp (3) SCC 235, this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case, it is proved that he suffered the injury during the said incident.

21. In *State of U.P. v. Kishan Chand and Ors.* (2004) 7 SCC 629, a similar view has been re-iterated observing that the Testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan Ors. V. State of Haryana* (2006) 12 SCC 459). Thus, we are of the considered opinion that evidence of Darshan Singh (PW-4) has rightly been relied upon by the courts below.

22 The main contention raised by Shri Subhash Sharma, learned counsel for the appellants is that identification parade was never held though it was necessary in the facts and circumstances of the case for the reason that the names of the appellants have not been mentioned in the FIR. However, we do not find any substance in such an argument for the reason that S.I. Gurdial Singh (PW-12), the investigating officer has made it clear in his cross examination that identification parade could not serve any purpose for the reason that the witnesses were present at the time of arrest of the accused, rather they had been arrested on identification by the witnesses. Babu Lal (PW-7) was present at the time of their arrest. At the time of recovery of vehicle Tata Sumo, Sikandar Rai (PW-6) was present in the vehicle itself and it was recovered when accused Inderjit Singh was driving the vehicle and four other accused were also sitting therein. In such a fact situation, though identification in a case like this, may be of paramount importance, but in view of the fact that the accused had been identified by the witnesses at the time of arrest itself, holding the identification parade would have been a futile exercise/inconsequential.

23. Identification parade is of paramount importance in a criminal case. In *S.C. Bahri v. State of Bihar* AIR 1994 SC 2420, this Court held that when the accused person is not previously known to the witness concerned, the identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. But the position would be entirely different when the accused or culprit who stands trial

had been seen at times by the witness as it may do away with the necessity of identification parade.

24. Where the accused has been arrested in presence of the witness accused has been shown to the witness or even his photograph has been shown by the Investigating Officer prior to test identification parade, holding identification parade in such facts and circumstances remained inconsequential. (vide *Shaikh Umar Ahmade Shaikh v. State of Maharashtra* AIR 1998 SC 1922; *Dastagir Sab Anr. v. State of Karnataka* (2004) 3 SCC 106; and *Maya Kaur Baldevsingh Sardar Anr. v. State of Maharashtra* (2007) 12 SCC 654).

25. It has been vehemently submitted by Shri Subhash Sharma, learned counsel for the appellants that the dead body of Jaldhar, deceased had been completely de-composed as it remained in the water for two weeks, and there was no material before the trial Court to hold that the dead body recovered from the canal was that of Jaldhar, deceased. The trial Court as well as the High Court has considered this issue with care and caution. Dr. D.S. Bhullal (PW-2) who conducted the post mortem alongwith Dr. O.P. Aggarwal had opined that the death was due to fire arm injuries as the body was having lacerated wound 0.5 cm x 0.5 cm on the right side of head underneath skull bone and 1 cm x 0.75 cm lacerated wound with everated margins was also present on the left side of the head. Underneath skull bone shows irregular opening of the same size. Dr. Bhullal (PW-2) has deposed that the body was highly decomposed and grossly swollen wearing shirt, pant and underwear. The injuries found on the dead body were ante-mortem and sufficient to cause death in the ordinary course of nature. The dead body was identified by Sikandar Rai (PW-6) and Babu Lal (PW-7). The trial Court had considered the deposition made by Dr. Bhullal (PW-2) and other evidence particularly, the deposition of Sikandar Rai (PW-6) and Babu Lal (PW-7) and came to the conclusion that, in spite of the fact, that the body was highly de-composed as it remained in water for two weeks, the identity of Jaldhar, the deceased stood proved from the consistent and cogent statements furnished by Darshan Singh, complainant (PW-4) and two labourers Sikandar Rai (PW-6) and Babu Lal (PW-7) who proved the presence of the deceased at the relevant time when the incident had taken place in which the fire shot was made by the accused. The witnesses had fully identified the clothes found on the person of the deceased as they were same at the time of incident and at the time of recovery of the dead body. Had the victim/deceased was not having any injury on his person the argument of the defence counsel could have been of some substance. But as in the instant case, Dr. Bhullal (PW-2) proved the injuries of fire arm on forehead of the deceased which was fully corroborated by the other witnesses, the question of any doubt in identification of the dead body of Jaldhar, deceased could not arise. The High Court has considered the issue taking into account the depositions of other witnesses Sikandar Rai (PW-6) and Babu Lal (PW-7) and affirmed the said finding.

26. In the instant case as the dead body of Jaldhar had been identified by two fellow labourers and the medical evidence is same as that of ocular evidence and the dead body was found with the clothes which Jaldhar was wearing at the time of incident, the issue of identification does not require any further consideration. In a case where the dead body is found in a jungle which had been eaten away by vultures or other animals and garments have also been found in torn condition and the dead body stood converted into a skeleton and has been fully de-composed, the identification of the dead body may not be a trustworthy evidence and in such a case the DNA test may be required. (vide *Keshav v. State of Maharashtra* (2007) 13 SCC 284). But in the instant case, the facts are not the same. Thus, in view of the above, we are of the considered opinion that the finding recorded by the courts below on the issue of identification of dead body also does not call for any interference.

27. In view of the above, we find no exceptional circumstance warranting interference by this Court. Appeal lacks merit and is accordingly dismissed.