SUPREME COURT OF INDIA

Sukhdeep Singh @ Deep Singh

Vs.

State of Uttar Pradesh

Crl.A.No.1037 of 2005

(Harjit Singh Bedi and T.S. Thakur JJ.)

01.12.2009

ORDER

1. This appeal by way of special leave is directed against the judgment of the Allahabad High Court whereby the judgment of acquittal of the Sessions Judge has been reversed and the accused appellant has been convicted and sentenced to imprisonment for life etc. under Sec.302 of the *IPC*.

2. The facts of the prosecution story are as under:

> "The appellant Sukhdeep Singh and the acquitted co- accused Raje were friends whereas Gurbachan Singh (PW.2) the first informant and Karam Singh were brothers.
>
> Balvendra Singh, brother of Sukhdeep Singh aforesaid, had some dispute with one Kashmir Singh against whom some Criminal and Civil proceedings were also going on. As per the prosecution story about a month before the incident the two accused had come to the house of Gurbachan Singh and had threatened Karam Singh to leave the company of Kashmir Singh, failing which they would kill him. As this threat had no effect on Karam Singh, the two accused arrived at his home at about 6.00 a.m. on 5th June, 1980 and whereas Sukhdeep Singh was carrying a rifle belonging to Balvendra Singh, Raje was carrying a shotgun. It appears that a compromise was proposed even at that time and to ensure that it would not be violated the accused suggested that they go to the Gurudwara to take an oath before the Guru Granth Sahib. On this assertion Gurbachan Singh and Karam Singh accompanied by the accused left for the Gurudwara and along the way associated Mahender Singh and Darshan Singh and also told them as to what had transpired and the terms of the compromise. As the group reached the crossing of village Nateura, Gurbachan Singh, Darshan Singh and Mahender Singh who were following the two accused and Karam Singh who had gone swiftly ahead, Raje suddenly caught hold of Karam Singh and Sukhdeep Singh fired a shot which struck him in the stomach. Gurbachan Singh and the others raised an alarm on which Sukhdeep Singh fired another shot towards them without hitting anybody. The accused then ran away with their weapons."

3. One Ninder Singh (PW.3) who was working in a nearby field also saw the incident. Gurbachan Singh and the others also found that Karam Singh had died instantaneously on account of the gun shot injury suffered by him. Gurbachan Singh also rushed to the police station which was about 9 miles away and recorded the FIR at about 1.30 p.m. ASI Ragghu Singh (PW.7) reached the murder site, recorded the inquest report and sent the dead body for its post-mortem examination. The post-mortem examination was held on the next day at about 4.15 p.m. by Dr. C.P.Srivastava (PW.1).

4. On the completion of the investigation the two accused were put to trial on a charge of murder. The prosecution relied primarily on the statements of Gurbachan Singh (PW.2) Ninder Singh (PW.3) and Mahender Singh (PW.5) the alleged eye witnesses to the incident as also on the evidence of PW.4. Ram Asray Pandey the expert from the Forensic Science Laboratory and Dr. C.P.Srivastava (PW.1) the Doctor concerned.

5. The trial court on an appreciation of the evidence held that the statement of Gurbachan Singh (PW.2) was at variance with the medical testimony given by Dr. C.P. Srivastava (PW.1) in as much that the direction of the injury suffered by Karam Singh falsified the ocular evidence of Gurbachan Singh. The Court also held that the evidence of the recovery of the empty shell from the place of incident appeared to be a bit of padding by the police as the weapon that had been recovered from Sukhdeep Singh accused was of .315 bore whereas the cartridge that had been recovered at the time of the inspection of site by ASI Ragghu Singh on the day of the murder, was of .303 bore and it was thus impossible to believe that this cartridge could have been fired from the weapon in question. It was also observed that as .303 bore was a prohibited bore weapon, cartridges of this category were not available in the market and the prosecution had, failed to explain as to the source from where this cartridge had been procured. The Court further held that before the incident about a month earlier when the accused had advised Karam Singh to leave the company of Kashmir Singh was also not proved and as such the motive itself was not acceptable.

6. Having held as above, the trial Court acquitted both the accused.

7. The State of U.P., thereafter, filed an appeal before the Allahabad High Court. The High Court maintained the acquittal of Raje but reversed the acquittal of the present appellant Sukhdeep Singh. The High Court held that there was no reason to disbelieve the eye witnesses (PW.2 and PW.3) one the brother and the other a close relative of the deceased. The High Court, however, confirmed the finding of the trial Court that Ninder Singh's (PW.3) statement could not be relied upon. The High Court further held that the medical evidence clearly supported the ocular evidence, as the anomaly pointed out by the trial Court with regard to the upward direction of the wound in the dead body had been explained by Gurbachan Singh (PW.2) in the course of his evidence. The High Court also observed that Ram Asray Pandey (PW.4) had clarified that though the cartridge recovered from the place of incident was of .303 bore and the weapon was of .315 bore, yet on testing he had found that a cartridge of this calibre could be fired from the weapon in question and as the empty shell had specific and distinctive markings, it had in fact been found the alleged murder weapon. The High Court, therefore, conscious of the fact that in an appeal against acquittal,

interference should be minimal and that too in case of perversity of the judgment of the trial Court, held that the finding were indeed perverse and accordingly reversed the judgment of acquittal.

8. Mr. Rohan Thawani, the learned counsel for the appellant has first and foremost pointed out that it was well-settled that interference by the High Court in an appeal against acquittal was called for only in special circumstances and that too in a case where the judgment of the trial Court was completely per-verse and could not have been rendered on the evidence and if the trial court had given good reasons, the High Court in the belief that a different view was also possible, should not have interfered in the matter. He has also pointed out that the medical evidence completely belied the evidence of Gurbachan Singh and Mahender Singh in as much that they had not been able to explain as to manner in which the injury had been suffered by Karam Singh or the direction in which the wound had been caused as Dr. C.P. Srivastava's (PW.1) testimony had completely falsified their evidence. He has also reiterated that the trial Court had on a very correct appreciation of the evidence concluded that the recovery of the rifle and the empty shell of .303 bore was a concocted piece of evidence at the instance of an over-zealous police officer.

9. Mr. Pramod Swarup, the learned counsel for the State of U.P. has, however, argued very vehemently in support of the judgment.

10. Undoubtedly, Mr. Rohan Thawani's broad submission with regard to the scope of the High Court's interference in an appeal against acquittal cannot be faulted but we are of the opinion that trial Court had clearly misread the evidence while discarding the evidence of Gurbachan Singh and Mahender Singh. It has to be borne in mind that Gurbachan Singh was the brother of the deceased and Mahender Singh was his brother-in-law. To our mind, therefore, it would be difficult to accept that they would leave out the true assailants and to involve some other persons. We also find that the spontaneity of the FIR supports the prosecution story. Admittedly the incident had happened at about 9.00 a.m. on 5th June, 1980, and the FIR had been recorded at the instance of PW.2 Gurbachan Singh by 1.30 p.m. at the police station which was 9 miles away.

11. Gurbachan Singh has testified that it had not been easy for him to reach the police station as he had to walk a part of the distance before he could board a bus. We also notice that no challenge has been to made the promptness in the lodging of the FIR. We also see from a reading of the statements of Gurbachan Singh and Mahender Singh that not a single material contradiction had been pointed out in the evidence in court vis-a-vis their statements under Sec.161 Cr.P.C. meaning thereby that the version given by them was consistent from the very first day.

12. We are also of the opinion that the medical evidence far from dislodging the prosecution story fully supports the same. Doctor C.P. Srivastava found the following injuries on the dead body:

"1. The wound of collate shot was (mix 8 cm) and it was on the upper portion of the valley about 3 cm left near the canter line. It was out side any black spot or parched (jhul san) has not been found. this would was in the stomach on the back side going on the upper side.

2. The wound of bullet passing was 2 cm x 2 cm on the right side of the back on the lower part of shoulder this wound was mixing with wound number one."

4 The Doctor also opined that the gunshot injury could have been caused by the firing of a shot from a distance of more than six feet on the premise that there was no charring or burning of the skin.

Mr. Rohan Thawani has, however, placed reliance on the following part of the cross-examination:

"The fire must have made on the left front side of the deceased. The duration of death which I have told can be changed by 5 hours on both side. During summer season the rigor mortis complete pass of within 36 hours. The possibility of the death of deceased is in the morning at 5 or 6' O clock on 5/6/80 seeing the duration of the wound No.1 of the deceased the possibility is that the fire was made when the deceased was lying or fell lying. If the deceased and the killer both stand on the same level than the deceased must have not received these wounds because the killer must have the lower level than the deceased and the barrel of the gun must have been on the lower level."

(Note: The paragraphs quoted above have been taken verbatim from the Paper Book.)

13. We are of the opinion that the opinion rendered by the Doctor does not reflect Mr. Thawani's submission. It bears notice that it is not the suggestion of the defence at any stage that the deceased had been shot after he had fallen to the ground but on the contrary the positive prosecution version is that the incident had happened after Karam Singh had been held by Raje in his grip.

14. We find, therefore, that the very basis of the argument raised by the learned counsel on the basis of the statement of Dr. C.P. Srivastava that the injuries could not have been caused while the deceased was in a standing posture is not borne out from the cross examination. Even otherwise, we believe that it would be impossible for any witness to give a categorical statement as to the posture that the deceased or the assailants were holding at the time when the firing incident happened. The trial Court was not justified in coming to a contrary conclusion as it appears to be a case of the misreading of the evidence.

15. Mr. Rohan Thawani has, however, placed reliance on *Maniram vs. State of U.P.*[1] to contend that if the medical evidence contradicted the ocular evidence account, the prosecution must fail.

16. The observations relied upon by the learned counsel are, however, required to be examined in the peculiar facts of each case. We have gone through the facts of the cited cases and find that they are not applicable to the facts of the present one. Moreover, in a criminal matter based on appreciation of evidence, it would be a very dangerous doctrine to rely on decisions taken on facts as binding precedents as all such matters have to be evaluated on an appreciation of the evidence which has come before the Court in that very case.

17. We also notice that the prosecution has explained the confusion, if any, with regard to the cartridge and the weapon. Dr. Ram Asray Pandey on testing in the laboratory found that a .303 bore cartridge was compatible with firing from a .315 bore rifle and that the crime cartridge had in fact been fired from the crime weapon as the distinctive characteristics matching the two were available on Forensic examination. The mere fact, therefore, that the trial Court was of the opinion that as the prosecution had not been explained as to the source of the .303 cartridge, was a matter of no consequence as it is common knowledge that prohibited bore weapons and cartridges are readily available for those who seek them out. We thus see no cause for interference in this matter.

18. The appeal is dismissed accordingly.

[1]*(1994 (suppl.) 2 SCC 289) and 310)*