

CASE NO.:
Appeal (crl.) 440 of 1996

PETITIONER:
State of Punjab

RESPONDENT:
Sucha Singh & Ors.

DATE OF JUDGMENT: 11/02/2003

BENCH:
Y.K.SABHARWAL & H.K. SEMA

JUDGMENT:
J U D G M E N T

Sema, J.

By an order dated 15.6.1990, the Addl. Sessions Judge, Amritsar, convicted the accused Sucha Singh, Major Singh and Kashmir Singh alias Bitoo for an offence under Section 302/34 IPC and sentenced them to undergo RI for life and a fine of Rs.5000/- each and in default of payment of fine further RI for 2 years each. Being aggrieved, the accused preferred an appeal i.e. Criminal Appeal No. 220 DB of 1990. By the impugned judgment and order dated 11.5.1992, the High Court has reversed the conviction and sentence passed by the Addl. Sessions Judge and recorded the acquittal of the accused. This appeal has been preferred by the State.

Briefly stated, the prosecution case is that PW-4 Gurdial Singh lodged a complaint at S.G.T.B. Hospital, Amritsar on 8.10.1987 at 11.40 a.m. to the effect that he was a resident of village Lawan and was an agriculturist. He had two sons. The elder one was Sarabjit Singh (deceased) and the younger one was Gurwinderpal Singh. He further stated that his wife Amarjit Kaur was having pain in the abdomen and was suffering from dysentery. At about 7.00 a.m complainant Gurdial Singh was in his fields which is adjacent to the matalled road. PW-5 Shangara Singh was present in his fields, which is adjoining to the fields of Gurdial Singh. While PWs 4 and 5 were talking about the current situation prevailing in the State, his son Sarabjit Singh came there on his scooter No. PAA-660 and on being inquired from PW-4 as to where he was heading to, his son told that he was going to bring medicine for his mother from Chogawan. When he had hardly covered a distance of about 20/21 karams, the accused Sucha Singh armed with kirpan, Major Singh armed with gandasi and Kashmir Singh alias Bitoo armed with datar emerged from the fields of basmati crops and encircled his son Sarabjit Singh. He further stated that accused Sucha Singh raised lalkara that the deceased be taught a lesson for the murder of Kuldip Singh, nephew of Sucha Singh, committed by him and others earlier. Sucha Singh gave two kirpan blows successively which hit on the head and forehead of Sarabjit Singh, resulting in the fall of Sarabjit Singh on the ground. Thereafter, the accused Bitoo gave two datar blows, which hit Sarabjit Singh on the head towards the side of right ear and right wrist. Accused Major Singh gave two gandasi blows successively which hit Sarabjit Singh on the right eye and forehead. Accused Sucha Singh gave further kirpan blow, which hit Sarabjit Singh on his wrist of left arm. Bitoo gave datar blow on the right ankle. On alarm being raised by Sarabjit Singh 'Mar Ditta, Mar Ditta', his father Gurdial Singh PW-4 and Shangara Singh PW-5 went running towards the place of occurrence and on seeing them all the accused fled away with their respective weapons. Sarabjit Singh was immediately taken to S.G.T.B hospital, Amritsar and was admitted for treatment at 9.20 am. He expired at 10.00 a.m. and the FIR was lodged at 11.00 a.m., as noticed. The motive of the crime, as stated in the FIR, was that about two years prior to the occurrence, Kuldip Singh nephew of Sucha

Singh had been murdered by the complainant party in which all the complainant party were acquitted by the High Court. Accused Sucha Singh was the prosecution witness in that case and deposed against the complainant party, and therefore, he and co-accused nursed a grudge against the complainant party. The High Court, on re-appraisal of the evidence, recorded the acquittal of the accused mainly on two grounds; (1) that the presence of PWs 4 and 5 at the place of occurrence is doubtful and (2) that the ocular testimony is belied by the medical evidence, with regard to the injuries sustained by the deceased.

PRESENCE OF PW-4 AND PW-5 AT THE PLACE OF OCCURRENCE

It is submitted by Mr. Sudhir Walia, learned counsel for the appellant, that the presence of PWs 4 and 5 at the place of occurrence has been wrongly disbelieved by the High Court. According to him, the prosecution has established the presence of PWs 4 and 5 at the place of occurrence. More so, PW-4 being the father of the deceased is a natural witness and inspired evidence.

Counsel on both the sides have taken us through the entire evidence. PW-4 Gurdial Singh, father of the deceased stated before the Trial Court that in the morning of fateful day he had gone to his fields known as 'Babianwala field'. The said field touches the matalled road leading to the Attari Chugawan road. He also stated that when he went to his fields, PW-5 Shangara Singh was also present in his fields. The time when PW-4 went to his fields is stated to be at 6.45 a.m. He also stated that the distance between his land and that of PW-5 was about two killas. He further stated that at about 6.45 a.m. PW-5 came near him and they were discussing the current situation prevailing in the State. When they were engaged in the discussion as stated, his son Sarabjit Singh, came on a scooter from the side of his house located in the village Abadi. On being inquired as to where he was going to, the deceased stopped the scooter and told him that he was going to bring medicines for his mother from Chogawan as she was down with loose motions. He had hardly covered 15/20 karams on his scooter, when the accused emerged from the Basmati fields. All the accused encircled him and the accused Sucha Singh raised a lalkara that they would teach him a lesson for murdering their man. Thereafter, Sucha Singh gave two kirpan blows on the head of Sarabjit Singh, who fell down from the scooter. Accused Bitoo gave two datar blows, one landing him on the right ear and the other on right wrist followed by accused Major Singh armed with gandasi who inflicted two blows, one on the right ear and the other on the forehead. Accused Sucha Singh gave another kirpan blow, which landed on the left arm of the wrist of Sarabjit Singh. Accused Bitoo gave another blow on the right ankle of the victim. Thereafter, the accused caused more injuries with their respective weapons. He further stated that he and PW5 raised hue and cry, whereupon the accused fled away with their respective weapons.

Similarly, PW-5 claimed to be present at the place of occurrence and saw the occurrence. He stated that at the time of occurrence he was present in his fields where Basmati crop was sown. PW-4 also stated in his cross-examination that land of PW-5 joins his land. PW-5 Shangara Singh, however, stated in his cross-examination that he did not own any land in village Lawan. In his cross-examination he has stated:- "I do not own land in village Lawan. I did not state to the police that I owned some land in village Lawan which is adjoining the land of Gurdial Singh. Confronted with portion B to B of Ex.DA where it is so recorded. I in fact own land in village Lawan which was purchased by me. That land in village Lawan so purchased by me is one kms. away from the spot of occurrence."

The shifting stand taken by PW-5 would clearly show that he is an unreliable witness and not creditworthy. No reliance can be placed on such testimony to establish the presence of PW-5 at the place of occurrence, which would form the basis for conviction.

Mr. Sudhir Walia, learned counsel, has drawn our attention to the testimony of PW-9 Dhanjit Singh Patwari. He stated that he knew both

PWs 4 and 5. One Amar Singh is the father of PW-5 Shangara Singh and he further stated that Jamabandi Ex.PH is recorded in the name of Amar Singh. He also stated that the land of Amar Singh is at a distance of 5/6 killas from the land of Gurdial Singh (PW-4).

A perusal of the statements of PWs 4 and 5, coupled with the testimony of other witnesses and facts and circumstances of the case, shows that the presence of PWs 4 and 5 at the place of occurrence is inherently improbable for the following reasons:- PW-5 has admitted in his cross-examination that he owned no land in village Lawan. If that is so, he has no reason to be there at the place of occurrence, that too, at 6.45 in the morning. PW-4 has stated that the distance between his land and the land of PW-5 is about two killas. Assuming this statement is accepted, in normal circumstances, no one would travel from a distance of two killas, that too, at 6.45 a.m. to meet a friend without a purpose. The prosecution has not been able to establish the circumstances leading PW-4 going to the field of PW-5 at that time. From the evidence on record it appears that the deceased travelled on a scooter to Chogawan village for purchase of medicines for his mother all of a sudden. Even PW-4, father of the deceased did not know about the illness of his wife, which led him to inquire from his son as to where he was going. If the father of the deceased himself did not know the programme of the deceased going to Chogawan village in advance it is inherently improbable that the accused would know his programme, way-lay and attack him armed with kirpan, gandasī, datar etc. It is in the evidence of both PWs 4 and 5 that the accused emerged from the Basmati crop fields and attacked the deceased. The evidence on record shows that in the murder case of Kuldip Singh nephew of Sucha Singh where PW4 was also one of the accused, were acquitted by the High Court. If that could be the motive to nurse a grudge against the complainant party, the accused would not have spared PW-4. It is also humanly improbable that the deceased sustained as many as 24 injuries on his body and the father of the deceased would be a mere spectator without trying to rescue him or intervene. The evidence on record would also show that the house of the accused is 6/7 killas towards the west of the village Abadi and the place of occurrence was at a distance of half a kilometer on the eastern side of the village Abadi. In ordinary circumstances, it is difficult to accept that the accused would be loitering around the place of occurrence covering a distance of 6/7 killas armed with kirpan, gandasī, datar etc. PW-5 did not accompany the injured to the hospital. No explanation by the prosecution as to why he could not accompany the injured to the hospital. The conduct of PW-5 is quite unnatural. This would make the presence of PW5 at the place of occurrence all the more doubtful. In our view, these circumstances would make the alleged presence of PW4 and PW5 at the place of occurrence inherently improbable.

DISCREPANCY BETWEEN MEDICAL EVIDENCE AND OCULAR TESTIMONY.

At the risk of repetition we may recapitulate what has been stated by PW-4 in his FIR and statement recorded under Section 161 Cr.P.C. PW- 4 ascribed the part played by each of the accused in assaulting the deceased as under:

"Accused Sucha Singh gave two kirpan blows one after the other which hit on the head and forehead of Sarabjit Singh. On receipt of the said injuries Sarabjit Singh fell down on the ground. While Sarabjit Singh was lying fallen on the ground, Bitoo accused gave two datar blows, which hit Sarabjit Singh on the head towards the side of right ear and right wrist. Accused Major Singh also gave two Gandasi blows one after the other, which hit Sarabjit Singh on the right eye and forehead. Accused Sucha Singh gave further kirpan blow, which hit Sarabjit Singh on his wrist of left arm. Bitoo gave datar blow on the right ankle."

Similar is the statement of PW-5. Altogether 8 injuries were said to have been caused by the accused persons.

Dr.Jagdish Gargi, Assistant Professor, PW-1 conducted the autopsy and found as many as 24 external injuries:-

1. "An incised wound 12 x 3 cm on the forehead extending from the inner angle of right eyebrow to the temporal bone on the left side. Underneath bone, membranes and brain matter was cut. Clotted blood was present at the site.
2. An incised wound 12 x 4 cm on the forehead and right side of the face upto tragus extending to the left side of the forehead. Underlying bones, membranes and brain matter was cut. Clotted blood was present.
3. An incised wound 8 x 2 cm on the right side of face extending from the right ear upto the outer angle of right eye was present. Underneath bone was cut and clotted blood was present.
4. An incised wound 5 x 3 cm on the right ear in the middle cutting the pinna and underlying bone. Clotted blood was present.
5. An incised wound 12 x 3 cm on the right side of the head 2 cm above the injury No. 4. Underlying bone was cut. Clotted blood was present.
6. An incised wound 7 x 3 cm above the anterior hair line in the middle. Underlying bone was cut and clotted blood was present.
7. An incised wound 4 x 2 cm on the left side of the head, 6 cm above the left ear. Underlying bone was cut alongwith membranes. Clotted blood was present.
8. An incised wound 5 x 2 cm in the middle of the occipital region at the level of external occipital protuberance. Underlying bone was partially cut and clotted blood was present.
9. An incised wound 5 x 2 cm on the back of right index finger vertically placed. Underlying bone was cut and clotted blood was present.
10. An incised wound 2 x 1 cm on the back of right middle finger. Distal phalanx was cut and clotted blood was present. The injury was vertically placed.
11. An incised wound 1.5 x 1 cm on the back of right ring finger vertically placed. Proximal phalanx was cut. Clotted blood was present. Distal phalanx was cut separately and clotted blood was present.
12. An incised wound 2 x 0.5 cm on the back of right little finger in the proximal phalanx region. Underlying bone was cut. Injury was vertically placed and clotted blood was present.
13. An incised wound 3 x 1.5 cm on the back of hand near its medical border. Clotted blood was present.
14. Three incised wounds in an area of 5 x 4 cm, 1cm part were present on the dorsum of left hand. Underneath mate carpals were cut. Injuries were vertically placed and clotted blood was present.
15. An incised wound 2 x 1 cm on the dorsum of left little finger at its base. Underneath bone was cut. Injury was vertically placed and clotted blood was present.

16. An incised wound 4 x cm on the dorsum of left ring finger vertically placed. Underneath bone was cut and clotted blood was present. Injury involved the proximal phalanx.

17. An incised wound 1.5 x 1 cm at the tip of left middle finger. The injury was horizontally placed and the distal phalanx was missing. Clotted blood was present at the site.

18. An incised wound 1.5 x 1 cm at the tip of left index finger. The injury was horizontally placed and distal phalanx was missing. Clotted blood was present.

19. An incised wound 0 x 0.5 cm cutting the nail of the left thumb. Clotted blood was present.

20. A reddish brown abrasion 3 x 1 cm on the front of right knee joint.

21. A reddish brown abrasion 5 x 3 cm on the front of left leg in its middle.

22. Two reddish brown abrasions in an area of 4 x 3 cm on the back of right forearm.

23. Reddish brown abrasion 2 x 1 cm on the medial aspect of right arm, 5cm above the elbow joint.

24. A reddish abrasion with denuding of superficial skin on the left flank of the abdomen extending to the buttock region laterally in an area of 25 x 15 cm. Right and left lungs were pale and so were liver, spleen and kidneys. "

PW-4 in his testimony before the Court stated that the accused also caused more injuries with their respective weapons on Sarabjit Singh. This witness was confronted with his statement recorded under Section 161 Cr.P.C. where he has not stated. Apart from discrepancy between ocular and medial evidence with regard to the injuries sustained by the deceased Sarabjit Singh on his body, the fact that the deceased suffered as many as 24 bodily injuries makes all the more doubtful the presence of PWs 4 and 5 at the place of occurrence. Inflicting 24 injuries on the body of deceased by the three accused persons would require a considerable amount of time. This itself suggest that the accused had sufficient time at their disposal to commit the crime. Any father, worth the name, would not remain a mute spectator when his son is being inflicted as many as 24 injuries at his very nose.

Mr. Walia, learned counsel, lastly contended that there is a strong motive connecting the accused with the crime for the reasons being that Kuldip Singh, nephew of accused Sucha Singh was murdered by the complainant party and the accused had nursed a grudge against the complainant party for revenge. This plea is of no help to the prosecution case. When the basic foundation of the prosecution case crumbled down, the motive becomes inconsequential. At the same time, animosity is a double-edged sword. It could be a ground for false implication, it could also be a ground for assault. In the instant case, in view of the facts and circumstances as discussed above, the motive, however, strong merely creates a suspicion. Suspicion cannot take the place of proof of guilt.

For the reasons aforesaid, we do not find any infirmity in the order of acquittal, recorded by the High Court, which warranted our interference. This appeal is, accordingly, dismissed. The accused are on bail. Their bail bonds are cancelled and sureties discharged.

JUDIS

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