

CASE NO.:
Appeal (crl.) 916 of 2003

PETITIONER:
Harjinder Singh @ Bhola

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 27/07/2004

BENCH:
P.VENKATARAMA REDDI & B.P. SINGH.

JUDGMENT:
J U D G M E N T

P.VENKATARAMA REDDI, J.

Three persons including the appellant herein, were charged for the murder of Gurpreet Singh on the night of 30th January, 1994, at village Ranguwal. The appellant together with one Manjit Singh was charged under Section 302 IPC, read with Section 34 IPC. It appears that the second accused Manjit Singh has been absconding and the trial proceeded only against the appellant. The other accused, namely Sohan Singh, who was charged under Section 302 read with Section 109 IPC, died during the course of trial. The Sessions Court convicted the appellant under Section 302 read with Section 34 I.P.C and sentenced him to life imprisonment. The High Court upheld the conviction and dismissed the appeal. The prosecution case, as revealed by the FIR lodged by Mohinder Singh, the father of the deceased and his deposition in Court is as under:

On the crucial date, when the informant (P.W.3) returned to his house at about 7 p.m., his wife told him that their son Gurpreet Singh left the house at about 5 p.m in the company of the two accused as the accused wanted his presence at Jorahan Village for settling the dispute between Jarnail Singh and Ranjit Singh (P.W.4). As his son did not return till 7.30 p.m., Mohinder Singh (P.W.3) decided to search for him and he first went to village Jorahan. Ranjit Singh (P.W.4) also joined him in the search at Jorahan which according to the evidence of the Investigating Officer (P.W.11) is at a distance of about 1.5 kms. from Ranguwal. Not finding him there, P.W.3 and P.W.4 were coming back to Village Ranguwal. It was about 10 p.m (9 or 9.15 p.m as per the deposition) when they reached the Primary School at Ranguwal. They witnessed the attack on the deceased by the two accused in front of the Primary School building. The appellant placed a 'Pharna' (scarf) around the neck of the deceased after pushing him down to the ground and he continued to press the neck with Pharna. The other accused namely, Manjit Singh took out knife from his pocket and inflicted injuries on the face of the deceased. At that stage P.Ws. 3 and 4 raised hue and cry. They were warned and threatened to leave the place. Soon after the accused left the place, P.Ws. 3 and 4 were able to go to the spot and noticed that Gurpreet Singh succumbed to the injuries. P.W.3 claimed to have witnessed the occurrence in moonlight and also with the aid of a torch. Some persons including Chowkidar Nahar Singh and his servant Pritam Singh came to the spot immediately after the occurrence. Leaving them with the dead body, P.Ws. 3 and 4 set out to the police station on motorcycle (moped) for reporting the matter.

The motive is said to be that the deceased was helping

Ranjit Singh (P.W.4) and the appellant was helping his cousin Jarnail Singh in a dispute relating to a plot in Village Joharan. It comes out in evidence that P.W.11 Sub Inspector of Police was found at the Nakabandi at a distance of about 2.5 kms. from the Village Ranguwal and he recorded the statement of P.W.3 at 11.20 p.m and sent the same to the Police Station through the Constable and the FIR was drawn up at 11.45 p.m by the Head Constable. The inquest was held on the dead body on the same night at about 2 a.m. In the course of inquest it was found that there was a bluish mark on the neck apart from the injuries on the eyebrows and cheeks. The Pharna wrapped around the neck was also noticed, but it was not produced before the Court. The post mortem was conducted on 31.1.1994 at 10.30 a.m. by the Medical Officer (P.W.10) attached to S.S.C. Khatran. He noticed five lacerated wounds and two incised wounds on the dead body. The Medical Officer (P.W.10), who was examined, stated that there was a bruise-reddish brown in colour on either side of the neck in the front. The neck was found tilted towards the left side, faecal matter was present in the Pyjama, hyoid bone was found fractured and the cartilage was broken. He stated that the deceased could have received injuries at about 5 p.m. the previous day. He gave the opinion that the death was on account of strangulation. However, he did not notice any ligature mark or any sort of injury on the back of the neck.

It is contended by the learned counsel for the appellant that the death by strangulation has not been established by the medical evidence brought on record. The absence of ligature marks and the symptoms associated with the asphyxia has been highlighted to substantiate his argument. On this aspect, the High Court was of the view that the absence of ligature marks was not conclusive and the fact that the bruise-reddish brown in colour, was found on the two sides of the neck together with the evidence of fracture of hyoid bone established the death by strangulation. The High Court also commented that the medical witness was not cross examined challenging his opinion. We need not probe into the correctness of the medical opinion as regards the cause of death i.e. whether the death could be by strangulation as we are of the view that the eye witnesses' account is not reliable and it is not safe to act on their testimony. P.Ws. 3 and 4, apart from being close relatives of the deceased, happen to be the chance witnesses. It looks as though the assailants were all the while waiting for P.Ws. 3 and 4 to reach the spot and witness the incident. Of course, for the mere reason that they are chance witnesses, their evidence cannot be discarded if we find assurance from the prosecution evidence pointing to the guilt of the accused. We, however, feel that their evidence should have been more carefully analysed and evaluated, which the High Court failed to do.

Right from the origin of the prosecution story, we find a number of irreconcilable versions and contradictions on certain material aspects which throw any amount of doubt on the veracity of the evidence tendered by P.Ws. 3 and 4. According to the version of the mother of the deceased (P.W.6), the accused persons took the deceased with them at about 5 p.m. This fact was brought to the notice of her husband when he returned home at about 7 p.m. This is what P.W.3 also says. P.W.3 stated that he left for Joharan Village at about 7.30 p.m. to find his son. He met P.W.4 (Ranjit Singh) there and both of them searched, but could not find his son. They returned to Ranguwal after 9 p.m. While on the way, they saw the incident near the Primary School. But we have the evidence of P.W.5 (Granthi of the Gurudwara of Village Joharan) according to whom, he at the instance of P.W.3 made the announcement over the loud-speaker before sunset about the missing person Gurpreet Singh. P.W.4 also states that P.W.3 met him before sunset. As it was the peak winter

month of January, the sunset should have been at about 5.30 p.m. This version of P.Ws. 5 and 4 does not, therefore, fit into the version of P.Ws. 3 and 6 that they became apprehensive of the safety of the deceased at about 7 p.m. and thereafter P.W.3 left the house at 7.30 p.m. in search of his missing son.

Why P.W. 3 should weave a story that he came to know that his son was missing only after he went home at 7.00 p.m. is an unanswered question. Apparently P.W. 3 did not come forward with a truthful version. Keeping this background in view, let us turn to the evidence of P.W.4 who is the other eye witness. P.W. 4 stated in the cross-examination that the sun was setting when P.W. 3 met him. According to P.W. 4, the incident took place at 7.00 p.m. when they reached Ranguwal village. Thus, P.W.3's evidence and his version in F.I.R. goes directly contrary to the evidence of P.Ws. 4 and 5 in regard to the time of occurrence and the knowledge about missing of his son. It remains unexplained as to why the prosecution came forward with an inconsistent and distorted version of the time at which P.W. 3 came to know about his missing son and the actual timing of the occurrence. The High Court brushed aside the argument regarding the variation in regard to the time, observing as follows:

"The witnesses belong to a small village and are not educated. The mere fact that there is some variation in point of time when the occurrence took place would not be fatal to the case of the prosecution".

It may be that some allowance has to be given for the variation in time but the variation in this case is so vast (7.00 p.m. to 10.00 p.m.) that it cannot be attributed merely to the inability of the witnesses hailing from the village to give correct time. We find that P.W.3 appended his signatures to the deposition in Hindi and he is described as 'Lamberdar' by P.W. 5 and P.W. 4 signed in English. So, they are not illiterate persons, though living in a village. It is difficult to assume that they will not have the idea of time.

The time of incident assumes some importance in the instant case for the reason that the report was given to the police at about 11.20 p.m. If the occurrence had been witnessed at 7.00 p.m. as per P.W.4's version, there would then be a gap of 3 = hrs. to 4 hrs. Probably to cover up this delay, P.W. 3 has come forward with the story that the incident happened between 9.00 and 10.00 p.m.

Another important factor is that Chowkidar Nahar Singh and P.W.3's servant Pritam Singh who gathered on the spot allegedly after the incident and were put on guard of the dead body were not examined. Though one of them was cited as witness, he was given up by the public prosecutor as being unnecessary. The evidence of the persons who gathered immediately after the occurrence on hearing the alleged cries of P.Ws.3 & 4 would have been valuable piece of evidence to serve as corroboration of the account given by the direct witnesses, especially when the presence of the alleged eye witnesses at the spot was too much of a coincidence. No reason is forthcoming for not examining them. This is another serious lapse which casts a doubt on the prosecution case.

When we come to the actual account of P.Ws. 3 & 4 regarding the incident which they are supposed to have observed with the aid of moonlight, we have serious doubt whether P.Ws. 3 & 4 could have observed the details of attack in the manner in which they narrated. In view of the alleged threats, they dared not to go close to the actual spot of assault. In fact if they were in a position to go close to the spot, they would have made some endeavor to resist the attack. That is the natural course of human conduct. Therefore, standing at a respectable distance for

fear of being assaulted, it is doubtful whether they were in a position to observe each and every detail of the alleged occurrence, that too in the moonlight. As far as P.W. 3 is concerned, there is any amount of doubt as regards his eye sight. While being examined in the Court, he admitted that he had weak eye sight and could not tell whether any person was sitting near the wall or on his right side. P.W. 4 stated that P.W. 3 got his eye operation done after the incident. In all probability, eye sight problem would have been there even at the time of the incident which was 3 years earlier. Be that as it may, considering the situation and other circumstances it is doubtful whether P.Ws. 3 & 4 would be in a position to give graphic details of the alleged incident. Their version in this regard cannot be considered to be credible. True, even in the absence of giving such details, if P.Ws. 3 & 4 had seen the accused attacking the victim and immediately thereafter found him dead, it would have been sufficient to establish the prosecution case. We have only adverted to the fact that P.Ws. 3 & 4 would not have been in a position to observe the details to demonstrate that they were prepared to sacrifice the truth to support the prosecution.

The evidence of P.W. 6 is evidently meant to build up the "last seen" evidence. Her version that at the instance of the two accused the victim left the house is open to serious doubt. If her version is truthful, one would expect P.W. 3 contacting the two accused or their leader. It was nobody's case that P.W. 3 went to the houses of those persons and tried to make inquiries. It is seen from the deposition of P.W. 6 that her statement was recorded on 6.4.1994 i.e. about three months later, for which no explanation is forthcoming.

The foregoing discussion leads us to conclude that the Trial Court and the High Court did not consider certain material aspects apparent from the evidence and there was almost a mechanical acceptance of the evidence of the two chance witnesses whose evidence should have been evaluated with greater care and caution. As pointed out by this Court in *Satbir Vs. Surat Singh & Anr.* [1997 (4) SCC 192], a "cautious and close scrutiny" of the evidence of chance witnesses should inform the approach of the Court. In these circumstances, this Court need not feel bound to accept the findings. The overall picture we get on a critical examination of the prosecution evidence is that P.Ws 3 & 4 were introduced as eye-witnesses only after the dead body was found.

The appeal is, therefore, allowed. The conviction and sentence against the appellant is set aside. The appellant is directed to be released forthwith.