

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1560 OF 2019

PREM SINGH

...APPELLANT(S)

Versus

SUKHDEV SINGH & OTHERS

...RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). 1561 OF 2019**J U D G M E N T****Deepak Gupta, J.**

These appeals by the victim as well as by the State are directed against the judgment dated 24.07.2013 whereby the High Court allowed the appeal of the accused and set aside the judgment of the trial court whereby the respondents herein were convicted for various offences punishable under Sections 148,

302/149 of the Indian Penal Code (IPC for short) and Section 25 of the Arms Act, and sentenced to various terms including life imprisonment.

2. We do not intend to give detailed facts of the case. The gist of the case is that on 25.05.2005, accused Jagir Singh had caused injuries to Palwinder Kaur, who is the sister-in-law of Prem Singh (PW-1). Prem Singh (PW-1) had gone to the milk chilling centre at Lopoke, because his father was contesting election being contested there. At about 3.15 PM, Prem Singh (PW-1), along with Major Singh (PW-2) proceeded to Civil Hospital at Lopoke to see his sister-in-law, Palwinder Kaur. Satinder Pal Singh (since deceased) was already there in the Hospital.

3. When these two witnesses reached the Hospital, they found a Tata Sumo vehicle bearing registration no. PB-02-AL-5478 was parked outside the Hospital. Accused Sardul Singh alias Kalu came out of the Tata Sumo with a knife in his hand. Accused Sawinder Singh raised a *lalkara* (exhortation) that Satinder Pal Singh should be killed. Thereafter, Sardul Singh inflicted a knife blow on the person of Satinder Pal Singh which hit both sides of his abdomen and chest. Satinder Pal Singh tried to run away, but in the meanwhile accused Sukhdev Singh, Resham Singh,

Sawinder Singh and Swaran Singh, who were armed with rifles came out of the sumo vehicle and fired at Satinder Pal Singh, which hit him on the forehead, right ear, eye and back of the head. Thereafter, he fell down. Prem Singh (PW-1) and Major Singh (PW-2) raised alarm. All the accused ran away with their respective weapons after jumping over the boundary wall of the Hospital, leaving behind the Tata Sumo and one motorcycle.

4. The case of the appellant is that there was a land dispute and Jagir Singh wanted to take possession of the land of the complainant and hence the appeal. FIR was got lodged by Prem Singh (PW-1), at the milk chilling centre at Lopoke, because according to him the police was present there. Thereafter, the police came to the Hospital. After investigation the accused were charged with committing murder of the deceased and other offences. The trial court convicted them. The High Court, in appeal acquitted them mainly on the ground that the medical version was totally different from that of the eye-witnesses and, therefore, reliance cannot be placed on the eye-witnesses.

5. We may now refer to the relevant portion of the statement of Dr. Deepak Walia (PW-13), who found the following injuries on the deceased:-

1. A lacerated wound with inverted margins 1 cm x 0.8 cm present center of upper eye lid, right abrasion collar around it, phtisis (*sic*) of right eye ball present subconjunctival hemorrhage on right side.
2. A lacerated wound with inverted margins 4 cm x 2.8 cm on right side of fore head 1 cm above the right 1/3rd of right eye brow. Clotted blood was present.
3. A lacerated wound 3.8 x 2.1 cm present on right temporo parietal region 2 cm above pinna of right ear. Margin were everted, brain matter coming out.
4. A lacerated wound 4.2 cm x 1.8 cm on right parieto occipital region with everted margins. Clotted blood was present at the site. Brain matter coming out.
5. An incised penetrating wound 1.5 cm x 0.5 cm on left side of chest just below nipple in anterior axillary line, muscle deep. No infiltration of blood and no clot was present in the wound.
6. An incised penetrating wound 1.5 x 0.5 cm on left side of abdomen in the left Lumber region. It communicated with peritoneal cavity. No infiltration of blood in the wound.
7. An incised penetrating wound 3 cm x 1 cm obliquely placed in right hyponchondric region, it communicated with peritonal cavity. No infiltration of below was present in the tissue.

He recovered a bullet from inside the brain and 12 pellets. According to him, injury nos. 3 and 4 are the exit wounds, corresponding to the entry wounds, which are injury nos. 1 and 2. He also states that injury 1 to 4 were antemortem and was a result of fire arm, whereas injury nos. 5 to 7 were post-mortem, as a result of injuries caused by sharp pointed weapon.

6. The High Court held, and in our opinion rightly so, that the version of the eye-witnesses that knife blows were given by accused Sardul Singh is falsified by the testimony of the doctor,

who clearly states that the injuries caused by a sharp edged weapon were post-mortem. This is a major discrepancy in the statement of eye-witnesses because both the eye-witnesses claim that the knife blows were given first by Sardul Singh and, thereafter when Satinder Pal Singh (deceased) tried to run away, the other accused came out from the Tata Sumo with fire arms.

7. It has been contended on behalf of the appellant that the FIR was lodged within two hours of the occurrence and all the accused were named in the FIR and, therefore, no chance of cooking up a false story arises. It is also urged that the doctor's statement is contradictory and according to learned counsel for the appellants injuries bore entry wounds.

8. A number of authorities were cited to show that ocular evidence should be preferred to medical evidence. We are not referring to those, since in our view each case has to be decided in its own facts.

9. In the present case the medical evidence does not support the prosecution and we also find that there are other reasons to discredit the prosecution witnesses. No attempt was made by PW-1 or 2 to take Satinder Pal Singh (deceased) inside the Hospital for treatment. The first reaction of close relatives would

be to try and save their relative rather than rush to the police station. This is especially so when the occurrence took place in the Hospital compound itself. The second doubtful feature is that instead of going to the police station the witness went to the milk chilling centre to lodge the report. There is no reasonable explanation given except that since the police were present at the milk chilling centre when the elections took place, he went to the milk chilling centre. He himself admits that the elections were over at 3.30 P.M. and the occurrence is of 4.30 P.M. Why would he expect that the police would still be present there at the milk chilling centre even after one hour?

10. Another aspect is that though the licensed fire arms of the accused were seized but they were not sent to a ballistic expert and there is no forensic evidence to show that these were the guns actually used during the occurrence.

11. As far as the recovery of the Tata Sumo vehicle is concerned, it is not proved to be belonging to the accused. It belongs to some other person and the accused have not been linked to this.

12. According to the two eye-witnesses PW-1 and 2, all the four fire arm shots hit the deceased on the head. According to the doctor there were only two entry wounds. This also belies the

statement of the so called eye-witnesses according to whom the accused gave four fire arm injuries on the head of the deceased. The doctor was a prosecution witness and the prosecution cannot be heard to say that his statement should not be relied upon. The prosecution did not pray that the doctor be declared a hostile witness. Therefore, we have to go by the statement of the medical expert.

13. In view of the above discussion, we find no merit in the aforesaid appeals and the same are dismissed. Pending application(s), if any, shall also stand dismissed.

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi
October 17, 2019