

CASE NO.:
Appeal (crl.) 1474 of 2005

PETITIONER:
Paramjit Singh @ Mithu Singh

RESPONDENT:
State of Punjab Through Secretary (Home)

DATE OF JUDGMENT: 31/10/2007

BENCH:
P.P. Naolekar & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

B.Sudershan Reddy, J.

1. The appellant has preferred this appeal under Section 379 of the Code of Criminal Procedure read with provisions of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 impugning the judgment and order of the High Court of Punjab and Haryana in Criminal Appeal No. 25-DBA of 1995 whereby the High Court reversed the judgment of acquittal against the appellant, who was tried along with three other co-accused, recorded by the Additional Sessions Judge, Sangrur in Sessions Case No. 44 of 1989. The High Court accordingly convicted the appellant for the offence punishable under Section 302 read with 34 of the Indian Penal Code (IPC) and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment, to undergo rigorous imprisonment for six months.

2. The prosecution case, in brief, is that the accused Mukhtiar Singh (A-1) and Gurdial Singh (A-2) and deceased Harnek Singh were real brothers. The family consists of eight brothers altogether. Deceased Harnek Singh along with his wife Tej Kaur and son Gurmail Singh (PW-4) were living jointly with one of his brother Amar Singh (PW-3). Gurdev Singh and Dalbara Singh, two other brothers were residing together whereas the others were residing separately in their respective houses located in their agricultural lands. Dalip Singh, father of Gurcharan Singh (A-3) and Mithu Singh (A-4) were residing separately. Dalip Singh is stated to have entered into an agreement to sell his house to Babu Singh, Balak Singh and their sons but the same could not be fructified into regular sale as Harnek Singh had interfered in the deal. The accused accordingly developed grudge as against Harnek Singh over his unwarranted interference in the sale transaction.

3. On 6.5.1989 about 7.00 p.m. Amar Singh (PW-3) and deceased Harnek Singh were going towards their houses in the fields whereas Tej Kaur and Gurmail Singh (PW-4) were already present in the house. The deceased Harnek Singh and Amar Singh (PW-3) saw all the four accused standing outside the house of Mukhtiar Singh(A-1). Mukhtiar Singh(A-1) was armed with a Sumewali Dang, both Gurcharan Singh @ Charna (A-3) and the appellant were armed with a gandas each.

Gurdial Singh (A-2) shouted a lalkara that Harnek Singh should be taught a lesson for interfering in Dalip Singh's property deal and he should be killed, on which the rest of the three accused inflicted several injuries on Harnek Singh. Amar Singh (PW-3) raised an alarm, which attracted Tej Kaur and Gurmail Singh to the spot and they too witnessed the incident. The accused ran away from the scene of occurrence. Harnek Singh was first removed to his farm house and then to the Civil Hospital, Longowal by Amar Singh (PW-3). It was about 9.10 p.m. Dr. Rakesh Jain (PW-6) having noticed the critical condition of Harnek Singh immediately referred him to the Civil Hospital, Sangrur. Dr. Rakesh Jain (PW-6) sent information to SHO, Police Station, Longowal at about 9.25 p.m. Harnek Singh, however, died soon after reaching the Civil Hospital, Sangrur. Amar Singh (PW-3) along with his brother Gurdev Singh left the hospital and reached the police station, Longowal at about 1.15 a.m. on 7.5.1989 and lodged First Information Report. Gurmail Singh (PW-4) was at the hospital near the dead body. The special report sent to the Illaqa Magistrate, Sangrur reached at 5.00 a.m. The police on the completion of the investigation filed charge sheet against Gurcharan Singh @ Charna (A-3) for the offence punishable under Section 302 of the IPC whereas the other accused were charged under Section 302/34 of the IPC. The accused pleaded not guilty.

4. The prosecution in order to establish its case relied on the evidence of Dr. K.S. Raikhy (PW-1), who performed the post-mortem examination on the dead body and found six injuries thereon, three incised and three lacerated; Amar Singh (PW-3) and Gurmail Singh (PW-4), the two eye witnesses; ASI, Malikat Singh (PW-5), the Investigating Officer and Dr. Rakesh Jain (PW-6) who first received the injured at Civil Hospital, Longowal.

5. The trial court upon appreciation of evidence available on record acquitted all the accused of the charges. The trial court recorded finding that the presence of the eye-witnesses Amar Singh (PW-3) and Gurmail Singh (PW-4) was unlikely as they were not stamped witnesses and had not intervened at the time when Harnek Singh was being belaboured. The court also found that Gurmail Singh (PW-4) had apparently not been present at the spot as his ocular version did not correspond with the medical evidence with regard to the number and situs of the injuries on the dead body. The trial court also referred to the contents in the DDR (Exh. DX/1) in which it is stated that the accused were armed with Sotis and there was no reference to any of the accused armed with gandasa and accordingly held this important circumstance itself nullify the prosecution story. The trial court also held that there was delay in lodging the First Information Report. The trial court accordingly acquitted all the accused giving them the benefit of doubt.

6. The High Court upon re-appreciation of evidence found that there was no delay in lodging the First Information Report. The High Court also reversed the finding recorded by the trial court as regards the presence of the eye-witnesses as it came to the conclusion that there is no reason to doubt the presence of Amar Singh (PW-3) and Gurmail Singh (PW-4) at the scene of occurrence. The High Court took the view that the presence of eye-witnesses was absolutely natural and they had good reason for being

present at the scene of offence. The High Court relied upon the First Information Report in which it has been mentioned that the accused were armed with gandas and dangs. The High Court found the DDR (Exh. DX/1) is the photocopy of the original which was not produced in the court. Be it noted that the prosecution had closed its evidence on 22.9.1993 and the statements of all the accused under Section 313 Cr.P.C. had thereafter been recorded and it is only thereafter the accused moved an application to recall Amar Singh (PW-3) and Iqbal Rai (PW-7) who had recorded the DDR (Exh. DX/1) which was allowed by the trial court. The application was ordered about 4 years after the closure of evidence. The High Court upon appreciation of the evidence, however, found that the so-called entry made in the DDR (Exh. DX/1) by itself may not make any difference to the prosecution case inasmuch as the evidence of Iqbal Rai (PW-7) clearly reveals that the First Information Report had been recorded first and entries in the DDR were made thereafter. The High Court also found that the injuries found on the body of the deceased were inflicted by sharp cutting weapons which finds support from the medical evidence. The High Court in conclusion held:

\023As per the ocular version, injuries 1, 3 and 4 are incised wounds, which had allegedly been caused by Gurcharan Singh and Mithu accused and injury No. 2 by Gurcharan Singh whereas injury No. 5 had been attributed to Mukhtiar Singh accused. There is no clear cut evidence as to who had caused injury No. 6, which had been detected by Dr. K.S. Raikhy (PW-1) at the time of post-mortem examination. We also observe that the Gandasa is a cutting weapon with a Lathi attached to it. It is, therefore, possible that a Gandasa could have been used Lathiwise as well while causing the lacerated injuries. Mukhtiar Singh, who was armed with a Dang, has been attributed one simple lacerated wound 3 cm x 3 cm in dimension. He is, therefore, entitled to claim some benefit in an appeal against acquittal for an incident, which happened in the year 1989. Gurdial Singh was unarmed and only a Lalkara has been attributed to him. To be on the safe side, he too must be dealt with in the same manner as Mukhtiar Singh.

We accordingly dismiss the appeal qua Mukhtiar Singh and Gurdial Singh. We, however, find that case against Gurcharan Singh and Mithu stands proved beyond doubt. The appeal qua them is allowed. Gurcharan Singh is held guilty for an offence punishable under Section 302 of the Indian Penal Code whereas Mithu Singh is held guilty for the offence punishable under Section 302/34 thereof. They are sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each and in default of payment of fine, to undergo rigorous imprisonment for six months each. The fine, if paid, shall be paid to Tej Kaur, the widow of the deceased.\024

7. This appeal has been preferred by Mithu Singh (A-4) alone.

8. The learned counsel appearing for the appellant submitted that the entries made in the DDR in which it has been mentioned that the accused were armed with Sotis completely falsify the prosecution story. The learned counsel made an attempt to contend that the entries were first made in the DDR based on the First Information Report made by Amar Singh (PW-3) and only thereafter the First Information Report has been recorded making improvements to implicate the accused in the case. The learned counsel also contended that the presence of Amar Singh (PW-3) and Gurmail Singh (PW-4) at the scene of occurrence is highly doubtful for they did not intervene when the deceased was being attacked. It was also contended that two injuries were simple in nature out of which one is alleged to have been caused by the appellant herein and, therefore, there is no evidence of any common intention to kill the deceased.

9. The learned counsel for the State of Punjab submitted that the common intention is evident from the fact that the appellant was armed with deadly weapon and it is immaterial as to the nature of the injuries inflicted by the appellant on the body of the deceased. The learned counsel supported the findings of the High Court.

10. We have considered the submissions made during the course of hearing of the appeal and perused the evidence available on record.

11. We shall first deal with the contention with regard to delay in lodging the First Information Report. The evidence available on record reveals that the incident took place on 6.5.1989 at 7.00 p.m in village Longowal. The distance between village and police station is about 3 kms. It is in the evidence of Amar Singh (PW-3) and Gurcharan Singh (PW-4) that they had immediately removed critically injured Harnek Singh to their farm house and thereafter to the Primary Health Center, Longowal in a bullock cart and reached there at 9.10 p.m. Dr. Rakesh Jain (PW-6) who attended the injured sent the ruqa (Exh. PN) to the police station, Longowal at 9.25 p.m.. Having regard to the grievous nature of injuries and condition of the victim Dr. Rakesh Jain (PW-6) referred the injured to the Civil Hospital, Sangrur. The evidence of Dr. Rakesh Jain (PW-6) in this regard remains unimpeached and there is absolutely no reason to disbelieve any portion of his evidence. It is Amar Singh (PW-3) who took the injured to the Civil Hospital at Longowal and thereafter to the Hospital at Sangrur where the injured succumbed to injuries. It is only thereafter Amar Singh (PW-3) went to police station which is at a distance of about 9-10 kms. from the hospital and lodged First Information Report. Amar Singh (PW-3) was present not only at the scene of offence but accompanied the injured to Civil Hospital, Longowal and thereafter to the Hospital at Sangrur. It is only after Harnek Singh died in the hospital Amar Singh (PW-3) left to police station to lodge First Information Report at 1.15 a.m on 7.5.1989. The special report sent by the police reached the Illaqa Magistrate at 5.00 a.m. In order to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts normally look for certain external checks. One of the checks is the receipt of the

copy of the FIR, called a special report, by the Illaqa Magistrate. In this case, the report has been received by the Illaqa Magistrate in time. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. This requirement is also complied with in the present case. The inquest report clearly refers to the lodging of the First Information Report by Amar Singh (PW-3) at 1.15 a.m. on 7.5.1989 in Police Station, Longowal and it also refers to the registration of the First Information Report and dispatch of special report for their delivery to the concerned authorities. Thereafter, Malkiat Singh, ASI (PW-5) along with some constables and Amar Singh (PW-3) rushed to the Civil Hospital, Sangrur where the inquest report has been prepared. The sequence of events clearly reveals that there was any unexplained and unreasonable delay in lodging the FIR. In the circumstances, it cannot be said that the FIR was ante-timed and brought into existence after some deliberations.

12. We do not find any merit in the contention that the entries made in the DDR (Exh. DX/1) in which it has been mentioned that the accused were armed with Sotis falsify the First Information Report lodged by Amar Singh (PW-3). We have already noted that the original of the DDR has not been filed into the court and what has been filed was only a photocopy and that too at the instance of the accused after four years of the closure of evidence. It is clearly evident from the statement of Iqbal Rai (PW-7) that the First Information Report was recorded first and the DDR thereafter. He further stated that the DDR had been recorded on the basis of the facts recorded in the First Information Report. We find it difficult to comprehend as to how totally a different version is found in DDR which is said to be a photocopy of DDR. There is obviously something more than meets the eye. The contention that under the Punjab Police Rules information must be reduced to writing and be entered in the police station daily diary and only thereafter the First Information Report is to be issued is absolutely untenable. The relevant rule says:

\023Every information covered by Section 154 Criminal Procedure Code must be reduced to writing as provided in that Section and the substance thereof must be entered in the police station daily diary which is the book provided for the purpose.\024

A bare reading of the rule makes it clear that every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station shall be reduced to writing and the substance thereof shall be entered in a book to be kept in such form as may be prescribed and only thereafter in the Police Station diary.

13. Chapter XII of the Code of Criminal Procedure, 1973 deals with information to the police and their powers to investigate. Investigation into allegations relating to commission of a cognizable offence starts on information given to an Officer-in-charge of a Police Station and recorded under Section 154 of the Code. If from information so received or otherwise, the Officer-in-charge of the Police Station, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct the

investigation to any police officer subordinate to him, in the manner provided by the Code. The procedure as regards the registration of information relating to the commission of a cognizable offence and the procedure for investigation is structured and regulated by Chapter XII of the Code. The procedure prescribed is required to be followed scrupulously by the Officer-in-charge of the Police Station. The Punjab Police Rules do not in any manner override the provisions of the Code of Criminal Procedure. The said rules are meant for the guidance of the Police Officers in the State and supplement the provisions of the Code of Criminal Procedure but not supplant them. In our considered opinion the truth and veracity of contents of the FIR cannot in all cases be tested with a reference to the entries made in the police station daily diary which is maintained under the Punjab Police Rules. This avoidable controversy need not detain us any further since it is well settled that even a defect, if any, found in investigation, however, serious has no direct bearing on the competence or the procedure relating to the cognizance or the trial. A defect or procedural irregularity, if any, in investigation itself cannot vitiate and nullify the trial based on such erroneous investigation.

14. Amar Singh (PW-3) clearly and categorically stated that the entries in the DDR had been recorded on the basis of the facts given in the First Information Report. It is difficult to place any reliance upon the photocopy of the DDR that was produced before the court after four years of the closure of evidence. There is no explanation as to the fate of original DDR. It is not possible to doubt the timing and contents of FIR based on the entries made in DDR. We have serious doubts about the genuineness of the very document DDR. We wish to say no more on this aspect of the matter.

15. In our considered opinion there is no basis to contend that Amar Singh (PW-3) and Gurmail Singh (PW-4) were not present at the scene of offence and did not witness the incident. The contention was that Amar Singh (PW-3) and Gurmail Singh (PW-4) had not intervened to save Harnek Singh when he was being attacked by the accused. The evidence available on record reveals that Amar Singh (PW-3) and deceased Harnek Singh had almost reached their house when they had been way laid by the accused. The appellant and Gurcharan Singh (A-3) were armed with gandasas and Mukhtiar Singh (A-1) with a dang. As has been rightly observed by the High Court that it would be well nigh impossible to apply a universal yard stick as to how a person would react to a given situation. The presence of Amar Singh (PW-3) and Gurmail Singh (PW-4) cannot be doubted on the ground that they have not made any attempt to rescue the deceased. We cannot ignore the fact that the accused were armed with deadly weapons and the same may have deterred PW-3 and PW-4 in making any attempt to rescue the victim when he was under attack.

16. It is true that Gurmail Singh (PW-4) had not been able to spell out accurately the situs of the injuries on the dead body but the same would not make his presence doubtful. The victim was under attack from a group of persons armed with deadly weapons. He must have made attempts to save himself from the attack and in the process may have not remained static without moving one way or the other. One cannot expect that in such a situation the

witness would graphically describe the nature of injuries and spell out accurately the situs of the injuries on the body of the victim. Their presence at the scene of offence is evident from the First Information Report itself which was lodged by Amar Singh (PW-3) himself. The fact remains Harnek Singh had been way laid by the four accused and thereafter inflicted several blows with the gandasas and dang.

17. It is required to notice that Dr. K.S. Raikhy (PW-1) had found six injuries on the dead body at the time of post-mortem examination. The injuries found on the body were:

1. Incised wound 12 cms x 5 cms x bone deep on the right parieto-temporal region, wound placed obliquely bone cut and brain matter and meningis protruding through the wound; dark clotted blood was present on the wound. On dissection underlying bone was cut, meningis cut. The brain matter protruding through the wound haematoma was present.

2. Lacerated wound 3 cms x 2 cms on the left clevicular region. The wound was skin deep. On dissection underlying bone was intact. Haematoma was present.

3. Incised wound 3 cms x 2 cms x 1 cm on the posterior lateral aspect of left forearm 2 cms above the wrist joint. Dark blood clot was present. On dissection the underlying bone was intact haematoma was present.

4. Incised wound 10 cms x 3 cms x bone deep on the antero lateral aspect of left leg, wound placed obliquely 3 cms below the knee joint. Dark blood clot was present in the wound. On dissection the underlying tibia bone was cut. Haematoma was present.

5. Lacerated wound 3 cms x 3 cms x skin deep on the anterior aspect of left leg 10 cms below the tibial tuberosity. Dark blood clot was present. On dissection the underlying bone was intact.

6. Lacerated wound 4 cms x 2 cms x bone deep on the antero lateral aspect of right leg 3 cms below the tibial tuberosity. Dark blood clot was present. On dissection the underlying bone was intact.

It is in the evidence of PW-3 that Gurcharan Singh inflicted injury No. 1 by giving a gandasā blow on the head of the victim and whereas the appellant herein inflicted injury Nos. 3 and 4 gandasā blows on his right leg below the knee and another blow on the left side of the chest using the reverse side of the gandasā. The appellant was armed with deadly weapon namely gandasā. Dr. K.S. Raikhy (PW-1) stated in his evidence that the cause of death was shock and haemorrhage and all the injuries were ante-mortem in nature. It is further stated by him that injury No. 1 itself was sufficient to cause death in the ordinary course of nature.

18. The learned counsel for the appellants further submitted that the injuries inflicted by the appellant were not sufficient to cause the death of the victim and, therefore, the common intention to kill is not evident and therefore, he cannot be convicted for the offence punishable under Section 302 read with Section 34 of the IPC. We are unable to agree. The evidence of PW-3 and 4 the direct witnesses is consistent and they had deposed that the appellant inflicted injuries with gandasā to kill the deceased. The fact that the appellant inflicted injuries with the deadly weapon itself shows that he had also shared the common intention. In order to convict the person vicariously under Section 34, it is not necessary to prove that each and every one of them had indulged in such overt act inflicting deadly injuries. It is enough if the material available on record discloses that the overt act of one or more of the accused was or were done in furtherance of common intention. The common intention shared by the appellant is evident from the fact that he was armed with deadly weapon and inflicted two injuries on the victim. All the accused attacked the deceased and caused injuries in furtherance of the common intention to murder the deceased. In such a situation the nature of injuries inflicted by the appellant on the victim and whether those injuries were sufficient in the ordinary course to cause death pales into insignificance. The appellant was not a curious onlooker and had not accompanied the assailant who gave a deadly blow out of any ideal curiosity. Each one of them is liable for that act of murder as if the act of murder was done by each one of them. It is true that if the High Court had adopted this reasoning even Mukhtiar Singh (A-1) and Gurdial Singh (A-2) could not have escaped from conviction. However, we do not propose to express any firm opinion on that aspect of the matter since there is no appeal by the State against their acquittal.

19. For the aforesaid reasons we find no merit in this appeal. The appeal shall accordingly stand dismissed.