

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
JINDER SINGH & ORS.

DATE OF JUDGMENT: 24/01/1997

BENCH:
M.M. PUNCHHI, FAIZAN UDDIN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Faizan Uddin, J.

1. Both these appeals are preferred against the common judgment, one having been preferred by the State of Haryana and another by complainant Hazara Singh, the son of the deceased. These two appeals have been directed against the reversing judgment of the High Court of Punjab & Haryana rendered in CrI.A.No. 265-DB of 1984 decided on 12.10.1984 whereby the judgment of the Sessions Judge, Karnal in Sessions Case No. 6/84 convicting the respondents under Section 302 read with Section 34 IPC, sentenced to undergo life imprisonment and respondent Ranjit Singh also under Section 27 of the Arms Act of undergo rigorous imprisonment for six months, both the sentences to run concurrently, has been set aside.

2. The prosecution case was that the deceased Ran Singh had taken two trolleys of paddy for sale to the grain market, Karnal on 25.10.1983 along with his son Hazara Singh, PW 2 and one Sukha Singh, PW 3. Since one of the trolleys could not be unloaded for want of space in the market area and, therefore, all the three had to stay for the night at Shop No. 18 of Ajit Singh, a commission agent. It is said that during the intervening night of 25th and 26th October, 1983 at about 12.30 AM the accused / respondent No. 2 Baldev Singh came to the Shop No. 18 to find out whether the trolley of Dalbir Singh had reached there or not. The deceased Ran Singh, his son Hazara Singh, PW 2 and Sukha Singh, PW 3 who were staying in the said Shop No. 18 came out of the shop later, to have an eye on the unloaded trolley standing out side. According to the prosecution, at that point of time the three accused respondents, namely, Jinder Singh, respondent No. 1 armed with a lathi, Baldev Singh, respondent No. 2 with a Parna and Ranjit Singh, respondent No. 3 armed with a gun of his father emerged from behind the heap of bags stacked ere. Respondent Baldev Singh caught hold of Ran Singh while the other two respondents opened an assault with lathi and the butt of the gun. Respondent Jinder Singh also smashed a bottle on the head of the deceased and when the victim fell down, the accused respondent Baldev Singh wrapped the Parna

around the neck of the victim and dragged him to some distance. Ran Singh succumbed to his injuries on the spot. Hazara Singh, PW 2 the son of the deceased went to the police station, city Karnal leaving Sukha Singh, PW 3 and commission agent Ajit Singh to watch the dead body.

3. Hazara Singh, PW 2 reached police station at about 1.00 AM where he lodged the FIR Ext. PB with the Inspector Balwant Singh, PW 6. Inspector Baldev Singh sent the police constable to Ilaqa Magistrate with the special report at about 1.30 PM and then reached the place of occurrence and prepared the inquest report Ext. PA/1. He also prepared the site plan of the place of occurrence Ext. PD. The police inspector seized blood stained earth from the Phad, blood stained Parali, broken bottle pieces, broken neck of the bottle with a tin cork and turban etc. from the place of occurrence and on a disclosure statement made by the accused respondents gun and cartridges, etc. were also seized. On a search being made the accused respondents were not traceable. They were, however, apprehended later on 29.10.1983.

4. According to the prosecution the motive for the crime committed was that about 3-4 months prior to the occurrence Kulwant Singh, the elder brother of the accused respondent Jinder Singh had committed rape on the young blind wife of Dhyani Singh, an aged elder brother of deceased Ran Singh for which said Kulwant Singh was given a beating by the deceased Ran Singh and his son Avtar Singh resulting into the fracture of his arm but having regard to the honour of the family the matter was not reported to the police.

5. Dr. Batla, PW 1 had performed an autopsy on the dead boy of Ran Singh on 26.10.1983 and found the following injuries on his person:-

1. Reddish contusion running circular and horizontal around the neck on left side. It was 1 1/2 cm wide and going 12 cm back. On right side it was of variable width going up to 7 cm back. Maximum width was on right side 1 1/2 cm. Underlying tissues were congested. Thyroid bone and hyoid cartilages were healthy.
2. Abrasion 2 x 1 cm on the right knee joint.
3. Abrasion 1 x 1 cms on the left knee joint.
4. Multiple abrasions of variable length and 1/2 cms wide on the back and outer side of left forearm.
5. Nose was depressed and nasal bone was fractured.
6. Reddish contusion 3 x 2 cms below the left eye over the cheek. There was congestion on the mustle when explored and maxillary bone was fractured.
7. Reddish contusion 5 x 3 cms over the left side of forehead, 4 cm above the left eye and 8 cms from the left ear. On exploration, there was fracture of the posterior rim of the left orbit.
8. Lacerated wound, partial muscle deep on the inner side of lower lip, near the gums 3 x 1/2 cms.

9. Abrasion (reddish) 3 x 1 cm over the right side of scalp, 7 cm above the right ear. There was a clot underneath.

10. Lacerated wound 6 x 2 cm muscle deep. Bone visible on the upper part of occipital area just to the right side of the midline. There was haematoma underneath.

11. Lacerated wound 3 x 1/2 cm in the back of the lower part of the neck. This was muscle deep and 2.5 cm below injury No. 10.

12. There was fracture of the base of the skull in the middle in the left side, just along the midline.

In the opinion of the doctor the injuries were sufficient in the ordinary course of nature to cause death and that the death was due to shock and hemorrhage as a result of the said injuries.

6. The accused respondents were sent for trial for the charge under Section 302/34 accused respondent Ranjit Singh also under Section 27 of the Arms Act. The respondents denied their guilt and pleaded false implication in the case. They also examined Patwari Kishan Chand as a defence witness to show the Sukha Singh, P.W.3, did not possess any land. The trial court relying on the ocular version of Hazara Singh, PW 2 and Sukha, PW 3 coupled with the corroborative medical evidence convicted and sentenced the three respondents as said earlier. However, on appeal by them the High Court took the view that there was no impelling motive for the respondents to commit the crime and that in the absence of proper light it was not possible for the witnesses to have identified the assailants in the dark night, that the evidence of Hazara Singh, PW 2 suffers from material improvements from the facts stated by him in the FIR Ext. PD and that the presence of Sukha Singh, PW 3 at the place of occurrence was doubtful and, therefore, set aside the conviction and sentence awarded to the respondents and acquitted them of the offence they were charged with against which these two appeals have been directed.

7. Learned counsel for the appellants strenuously urged that the High Court did not appreciate the well reasoned order of conviction recorded by the trial court and fell into serious and patent error in holding that there was any difficulty in identifying the culprits for want of light or there was any delay in lodging the report and sending the special report to the Ilaqa Magistrate. He submitted that the evidence of Hazara Singh P.W.2 is fully consistent and does not suffer from any blemish or improvements. The High Court has made these observations ignoring the material on record which has been highlighted by the learned trial Judge. He further submitted that similarly the evidence of Sukha PW 3 has been wrongly rejected by the High Court on the ground that his presence at the place of occurrence was doubtful which is very much established from the evidence on record as pointed out by the learned trial Judge which has not been considered by the High Court at all resulting into serious miscarriage of justice. He submitted that the High Court has faulted in all the material aspects and taken patently as erroneous view that the prosecution has failed to establish the guilt against the respondents.

8. We have critically examined the material on record as well as the judgments of the trial court and that of the High Court and find that there is merit and great substance

in the submissions made above by the learned counsel for the appellants. It may be stated that Hazara Singh, PW 2 made a categorical statement that about 3-4 months prior to the occurrence Kulwant Singh the elder brother of Jinder Singh was beaten by the deceased Ran Singh and his son Avtar Singh for committing the rape on the young and blind wife of Dhyan Singh, elder brother of deceased Ran Singh but no challenge to this piece of evidence was made. On the contrary from the suggestion made to the witness Hazara Singh in cross-examination that the young wife of Dhyan Singh was a lady of easy virtues and was once found in compromising position with one Amar Singh, indicated that the accused did not dispute the earlier occurrence with Kulwant Singh. These facts undoubtedly do provide a motive for the crime. But surprisingly enough the High Court rejected the same by mere vague observation that there was no impelling motive for the appellants to commit the crime which is erroneous on the face of it, being against the weight of evidence on record.

9. Coming to the presence of light at the place of occurrence we find the High Court has against faulted in taking the view that there was any want of light in order to enable the witnesses to identify the culprits. First of all it may be pointed out that admittedly the accused respondents are closely known persons to the witnesses. Secondly the learned trial Judge on examination of the calendar noticed that the date of occurrence was the 4th day after "Pooranmashi" from which it is evidence that the moon had arisen on the night of occurrence at about 8.30 PM and had set down at about 9.57 AM. That being so it was almost a full moon lit night which would have been sufficient for the witnesses to see the assailants who were known to them. Thirdly, Ext. PD is a site plan of the place of occurrence and according to the site plan at point 'F' there was an electric pole with double electric tube-light. Further at point 'G' there was an electric bulb installed in the neem tree. All this evidence has not been appreciated by the High Court before coming to the conclusion that there was want of light simply on the basis that Sukha PW 3 stated in cross-examination that after arrival of the police inspector writing work was done in the head light of motor-cycle if Avtar Singh. It may be noted that for writing purposes more light is required and, therefore, the assistance of the head light of motor-cycle may have been taken but it does not mean that from the light already available as discussed above was not sufficient to identify an individual. It is thus clear that the High Court took patently an erroneous view in recording the finding that it was not possible for the eye-witnesses to identify the culprits which is a perverse view and contrary to the evidence on record.

10. Further, the High Court rejected the testimony of the eye-witness Hazara Singh, PW 2 on the ground of improvements made in the Court statement in-as-much as he did not state in the FIR Ext. PB that the accused respondent Baldev Singh had wrapped the Parna around the neck of the deceased and dragged him and that he stated before the police that the injuries were caused to his father by the appellants on his face and head but no mention of it is to be found in the FIR. It is unfortunate that the High Court made these observations without properly examining the material on record. It may be noticed that the inquest report Ext PA/1 is a contemporaneous document prepared soon after the FIR was recorded. A perusal of this inquest report will go to show that it is mentioned therein that the accused respondent Baldev Singh had wrapped the Parna around the neck of deceased Ran Singh and had dragged him. A mere

omission therefore in the FIR is hardly of any consequence. The medial evidence which has been discussed earlier indicated that the deceased had a circular and horizontal reddish contusion around the neck and contusion over the left eye and the cheek as well as on the forehead which indicated the assault on the face and head. There are, therefore, neither any improvements nor any material omissions in the statement of Hazara Singh, PW 2 as observed by the High Court. To reject the evidence of the eye-witnesses on the ground that there was no dragging mark is again fallacious. It is clear from the evidence that all the area around the place of occurrence, paddy was stored of different persons and some blood was found in paddy itself. That being so there will hardly be any marks of dragging.

11. This brings us to the evidence of Sukha Singh, PW 3 whose presence at the place of occurrence has been doubted by the High Court simply on the ground that he does not any land and, therefore, there was no reason for him to be there in the grain market. This finding is again contrary to the evidence on record. Patwari Kishan Chand, DW 1 himself deposed that on the death of Surinder Singh husband of Ishar Kaur his estate was inherited by his widow, sons and daughter including Jasmer Kaur. He further stated that Sukha Singh, PW 3 and Lakhvinder Singh are sons of Jasmer Kaur, daughter of Ishar Kaur. From this evidence it is abundantly clear that Jasbir Kaur mother of Sukha Singh, PW3 owned land in the same village Churni where Sukha Singh resided. It is, therefore, no correct to say that Sukha Singh had no land and for that reason he had no business to go to the grain market. His presence at the place of occurrence, therefore, cannot be doubted.

12. It was contended on behalf of the respondents that Ajit Singh, the commission agent and owner of shop No. 18 thought present at the place of occurrence and was an independent person but he was not examined by the prosecution and only interested witnesses were examined but we do not find any force in this submission as Ajit Singh though cited as a prosecution witness was given up as he was won over. Under these facts and circumstances it was not necessary for the prosecution to examine him.

13. The High Court also raised a doubt in the prosecution story on the ground that the FIR was lodged late and special report was also sent late to the Ilaqa Magistrate. In our opinion this observation of the High Court also cannot be accepted. The incident had occurred at 12.30 AM and within half an hour the FIR was lodged at 1.00 AM. According to the evidence of Balvant Singh PW 6, he had sent the constable at 1.30 AM to deliver the special report to the Ilaqa Magistrate which no doubt was delivered at about 3.15 AM. The fact could not be lost sight of that the constable had left with the special report after 1.30 AM and at that hour of dead of night, he must have taken some time to reach the residence of Ilaqa Magistrate. He must have found some difficulty in awakening him in the mid night to deliver the special report. In these facts and circumstances the employment of about 2 hours in delivering the special report cannot be considered of any serious consequence in the absence of any prejudice to the accused persons. We have examined the impugned judgment and material on record critically. We find that the view taken by the High Court is patently erroneous and, therefore, could not be sustained.

14. In the result the appeals succeed and are hereby allowed. The impugned judgment of the High Court setting aside the conviction and sentence of the respondents is set aside and the judgment of the trial court is restored.

Respondents are on bail. They are directed to surrender to serve out their sentences.

JUDIS