

PETITIONER:
JOGINDER SINGH AND OTHERS

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 06/03/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

Leave granted. Heard learned counsel for both the sides.

This appeal by special leave is filed against the judgment of the High Court of Punjab and Haryana in Criminal Appeal No. 91-SB of 1986. The High Court confirmed the conviction of the appellants under sections 147, 353, 447 and 307 read with 149 IPC, but reduced their sentence to the period already undergone. The appeal to the High Court was against the judgment and order of the Court of Additional Sessions Judge in Sessions Code No.9 of 1984.

It was the prosecution case that a dispute was going on since 1981 between Ghala Singh and Balbir Singh on the one hand and Dayal Singh and Munsha Singh on the other, in respect of an agricultural land of village Bhadaur. Ghala Singh and Balbir Singh who belong to the faction of Sant Narain Singh were claiming that they are the owners and in possession of that land. Dayal Singh were claiming that the land belongs to Gurudwara Nanaksar and it is cultivated by Daya Singh and Munsha Singh. There is a building in one corner of the said land and it is used as a 'That' (a place where reading of the 'Holy Book' is done). This dispute led to initiation of proceedings under section 145 of the Code of Criminal Procedure. The Sub-Divisional Magistrate, Barnala passed an order under section 146 of the Code on 22.4.1983 to attach the said land and to give effect to that order appointed Naib Tehsildar, Lal Chand as the Receiver and ordered him to take its possession and manage it till the final order was passed. A police guard comprising Head Constable, Chanan Singh and Constables Pawan Kumar, Karnail Singh and Bhalinder Singh was also posted on that land to see that land to see that no breach of peace took place. Before the Receiver could take possession of the land the incident giving rise to this case happened. During the night between 24th and 25th April, 1983 at about 1.00 a.m. accused Joginder Singh along with a large number of persons belonging to the party of Sant Gurdev Singh went to the land in a truck and two jeeps. They had carried a saffron collared 'Nishan Sahib' and were also armed with fire arms and other

weapons. They wanted to fix the Nishan Sahib there to create evidence that they were in possession of that land. When they reached near the gate of the building Head Constable, Chanan Singh inquired about their identity and then tried to persuade them not to take forcible possession of the land in that manner. At the stage accused Joginder Singh raised a 'lalkara' that "come what may, we shall take possession and finish the dispute once for all". Joginder Singh and his companions then surrounded the building. Apprehending danger to their persons, Karnail Singh, Gurcharan Singh and Mohinder Singh who were present in a tent pitched on the adjoining land rushed to that building at the same time. In order to save themselves Mohinder Singh, Karnail Singh and Gurcharan Singh who were armed with guns also started firing. As the situation became serious Head Constable, Chanan Singh instructed the three constables to take care of themselves and rushed to the Police Station for help. He reached there at about 1.30 a.m. and informed Sub-Inspector, Iqbal Singh about what had happened. Iqbal Singh registered an offence and then along with Head Constable, Chanan Singh and other policemen went to the place of the incident at about 3.00 a.m. By that time all except the three constables had left that place. Iqbal Singh inspected the scene of offence in the morning and found five dead bodies belonging to the party of Joginder Singh on that land outside the 'That'. He also found one jeep lying there. After completing further investigation he charge-sheeted 19 persons.

In order to prove its case the prosecution mainly relied upon the evidence of the three eye-witnesses, namely, Head Constable Chanan Singh (PW-1), Constable Pawan Kumar (PW-2) and Constable Karnail Singh (PW-4). Neither Karnail Singh nor Gurcharan Singh nor Mohinder Singh was cited and examined as an eye-witness.

All the accused except Harjinder Singh and Sukhdev Singh stated in their examination under section 313 of the Code that they were falsely involved. Accused Sukhdev Singh adopted the version of accused Harjinder Singh. The version of Harjinder Singh was that on 24.4.1983 in the evening he, Sukhdev Singh, Major Singh, Nachhattar Singh, Jit Singh and Nazir Singh were present at Gurudwara Nanaksar to hear recitation of Rehras'. The recitation was over at about 8.00 p.m. At that time they saw one harvester combine proceeding towards the land in dispute. They apprehended that Ghala Singh and other followers of Sant Narain Singh might harvest and take away the crop from that land. They, therefore, decided to go to the land to inquire and for that purpose were waiting for a vehicle to come. After some time Dayal Singh came there with his jeep. So they all left in that jeep for the land. As they had not seen the policemen who were posted near the Gurudwara Nanaksar they thought that possibly the policemen had gone on a round to the land. So after reaching there they shouted for those policemen but they were not found there. Suddenly Gurcharan Singh, Ghala Singh, Daya Singh, Bachan Singh and Gurdial Singh came out of the building armed with rifles, swords and gandasas and attacked them. He was injured by a bullet and, therefore, took shelter in a nearby 'khal'. He had also noticed that others were also injured by the bullets and other weapons. After some time when the assailants had left he along with Sukhdev Singh tried to find out what had happened. He found that Nazir Singh, Dayal Singh and Jit Singh were hit by bullets and had died. Nachhattar Singh and Major Singh were injured with sharp edged weapons and they had also died. He, therefore, along with Sukhdev Singh went to Gurudwara Nanaksar and from there along with Rupinder Singh, Joginder

Singh and others went to the Police Station at Bhadaur to inform the police about the incident. Sub Inspector, Iqbal Singh who was in charge of the Police Station did not record their complaint and instead took them into custody. He and his companions were released on 3.5.1985.

The trial court held that Ghala Singh and Balbir Singh were in possession of the land and the defence of the accused that they were in possession was false. It also held that those who had gone to the land had gone with the object of taking forcible possession and thus they constituted an unlawful assembly. It also held that they had committed trespass into the field and obstructed Head Constable, Chanan Singh in execution of his duty to maintain peace. It further held that while firing at the policemen and the other three persons who were in the building the members of the unlawful assembly had committed an attempt to murder those persons. It held that the identity of Joginder Singh, Harinder Singh, Rupinder Singh Sohan Singh, Harjinder Singh, Major Singh, Sukhdev Singh and Amar Singh was established beyond doubt; and therefore, convicted them for the offences punishable under Sections 147, 354, 447 and 307 read with 149 IPC. Rest of the accused were acquitted as their identity was not established.

The High Court after re-appreciating the evidence confirmed the findings that Ghala Singh and Balbir Singh were in possession of the land, that Joginder Singh, Harjinder Singh and other convicted accused along with others had gone to the land to take possession forcibly and that they had fired shots towards the building in which the police party consisting of Head Constable, Chanan Singh and other three constables were present. It, therefore, confirmed the conviction of the appellants but reduced their sentence.

It was forcefully urged by the learned counsel for the appellants that in this case neither the investigation was fair nor the trial was conducted fairly by the Public Prosecutor. It was submitted that the High Court did not properly consider this aspect and brushed aside this point by observing that there was no reliable evidence that Sub-Inspector, Iqbal Singh and Inspector, Gurnam Singh were followers of Sant Narain Singh and had, therefore, suppressed the true facts and falsely made out a case against the accused instead of registering a case against Ghala Singh, Daya Singh, Bachan Singh and Karnail Singh who had caused the deaths of as many as five persons and injured Harjinder Singh.

Having gone through the evidence, we find that there is considerable substance in the contention raised by the learned counsel for the appellants. Though it is true that in view of the dispute regarding the land between the two factions, a police party was required to be posted, Sub-Inspector, Iqbal Singh was not right when he stated before the Court that a police party headed by Head Constable, Chanan Singh was posted at the land which was the subject-matter of dispute. Iqbal Singh had to admit in cross-examination when confronted by documentary evidence that the police party was posted near Gurudwara Nanaksar and not on the land. It is not believable that if the police party was really posted at the land the accused either by themselves or along with others would have gone to that land to take forcible possession thereof. If the police was really staying in the 'That' as deposed by Iqbal Singh then at the time when site and recovery Panchnamas were made some articles or things belonging to the police party would have been found from inside the building. As a matter of fact

nothing belonging to the police party was found from that place. If as a result of the dispute regarding the land the situation had so worsened that it had become necessary to post the police at the land then they would have certainly carried fire arms with them. The evidence of Chanan Singh is that they did not have fire arms at the time of the incident. it also becomes clear that the prosecution witnesses have falsely stated that the building was used as a 'That'. No sacred book or any other religious scripture or any other material was found from the building which could have supported their case that the building was used as a 'That'. The version of Chanan Singh and other two constables that they were occupying the building and that Karnail Singh, Gurcharan Singh and Mohinder Singh had pitched a tent in the nearby field which belonged to them is unnatural and does not appear to be correct. If Ghala Singh and Balbir Singh were in possession of the land and Karnail Singh, Gurcharan Singh and Mohinder Singh were there to keep a watch over the land are there was hardly any necessity for them to pitch a tent in the adjoining land and not to stay in the building itself. The High Court failed to take into consideration all these relevant and material aspects while appreciating the evidence of Chanan Singh (PW-1), Pawan Kumar (PW-2) and Karnail Singh (PW-4) and Iqbal Singh (PW-12) which grate a serious doubt regarding truthfulness of their version.

The evidence of PWS -1,2 and 4 is that when Joginder Singh and his companions came near the gate of the 'That', Chanan Singh inquired about their identity and tried to persuade them not to take forcible possession of the land. Their evidence is that Joginder Singh then raised a 'lalkara' "come what may, we shall take possession and finish the dispute once for all". Thereafter they surrounded the 'That' and also the tent in which Karnail Singh, Gurcharan Singh and Mohinder Singh were present and so these three persons left the tent and took shelter in the 'That'. Joginder Singh and his companions thereafter made an attempt to enter into the 'That' and also started firing. Apart from this version being unnatural and, therefore, not believable it also becomes clear from the site plan and the recovery Panchnama that it is not a true version. It is not likely that when police was present there they would have made such an attempt. The site plan and the other evidence on record discloses that there is a building in the north-western corner of the land consisting of about 10 rooms having an open compound on the east and south and bounded by a compound wall having a gate in the southern wall. The compound was covered from all the sides. The distance between the gate of the accused or other companions of Joginder Singh had entered the compound and had tried to enter into the building then as a result of firing by s Karnail Singh, Gurcharan Singh and Mohinder Singh, dead bodies of the persons who were hit by the bullets would have been found inside that compound. Not a single dead body was found lying inside that compound. All of them were found outside and that too at some distance. The dead bodies were found lying scattered in the south-west, west and north-west directions. Not a single article belonging to the accused or other companions of Joginder Singh was found within the compound. This independent and unimpeachable circumstance clearly establishes that none of the accused or other companions of Joginder Singh had entered the compound of that building. Neither on the outer walls of the building nor on the outer walls of the compound any marks were found indicating that bullets were fired from outside and had hit

the walls. Not a single fired bullet was found either inside or near the building. The evidence of PW-13, lachhman Singh, the Patwari who had prepared the site plan has stated that neither Pawan Kumar nor anyone else had shown any pellet or bullet mark anywhere.

Most of the empties which were found from within the compound and outside were reported to have been fired from 30 Spring Field gun and 315 rifle which belonged to Gurcharan Singh and Karnail Singh. Some of such empties were recovered from near the building and also from the places outside the compound of that building. Surprisingly, the fire arms alleged to be belonging to the accused and seized by the Investigating Officers were not sent to Ballistic Expert to ascertain when any of them was used recently and whether any of the empties found from the place of the incident could have been fired therefrom. All these circumstances create a serious doubt regarding Head Constable, Chanan Singh and his two companions being impartial and reliable witnesses.

Further, the evidence of Head Constable, Chanan Singh and Sub-Inspector, Iqbal Singh is that after Head Constable, Chanan Singh had informed him about the incident and the FIR was recorded both of them had left the police station and reached the place of incident at about 3 a.m. Their version that they could see the dead bodies of Major Singh, Jit Singh, Dayal Singh, Nazir Singh and Nachhattar Singh in the morning is difficult to be accepted and it creates a doubt also regarding their going to the place of incident at 3 a.m. A serious doubt also arises regarding the FIR having been recorded by Iqbal Singh at 1.30 a.m. as stated by him. There appears to be some substance in the defence suggestion that it was recorded by him after his return from the scene of offence at about 12 noon. If only the beginning of exchange of fire between two factions was reported by Head Constable Chanan Singh, then as an impartial police officer he would have on his return registered an offence regarding the homicidal deaths of those five persons whose dead bodies were found by him. Even though accused Harjinder Singh had gone to the police station in the morning and had injuries on his person he was sent to the doctor only in the afternoon. It is also unlikely that accused Harjinder Singh would not have informed the police to register his complaint against those who had killed his five companions and injured him. The explanation of Iqbal Singh that he did not record any complaint with respect to the homicidal deaths of those five persons and injuries to Harjinder Singh as he had by then come to the conclusion that Joginder Singh and his companions were the aggressors and the deaths and injuries were caused by Karnail Singh, Ghala Singh and Mohinder Singh in exercise of their right of private defence and thus they had committed no offence. By that time he had not come to know how and when those five persons had received injuries. The dead bodies were found lying scattered outside the compound of that building. Two of them, Major Singh and Nachhattar Singh, had died not because of gun shot wounds but because of incised injuries. Neither Head Constable Chanan Singh nor any of the constables who had remained behind or anyone else had informed Iqbal Singh as to how and when the incised injuries were caused to those persons. As the police officer of some standing he would have certainly realised that the assailants of those persons had gone outside the compound and chased them and assaulted them. The body of Jit Singh who had received the gun shot injury on his head was found lying in the north-western direction behind the building. All these circumstances show that Iqbal

Singh was acting with a determined mind and was out to make out a case of self-defence for the assailants of those five persons and Harjinder Singh. Chanan Singh and the two constables who were examined as eye witnesses also fell in line with Iqbal Singh and that proves that they were partisan witnesses and were not giving out the true version regarding the incident.

Karnail Singh, Gurcharan Singh and Mohinder Singh, who had stated to have acted in exercise of their right of private defence, were not examined as witnesses. They were the best witnesses who could have explained under which circumstances and at what point to time they had caused injuries to the five deceased and Harjinder Singh. No good reason was given by the Public Prosecutor for not examining them as witnesses in the case. That also creates a serious doubt regarding fairness of the trial.

As we are of the view that neither the investigation nor the trial was fair and we find that the eye-witnesses examined in this case have not told the truth, this appeal will have to be allowed and the conviction of the appellants will have to be set aside. We accordingly allow this appeal, set aside the conviction and sentence of the appellant. As the accused are on bail, their bail bonds are ordered to be cancelled.