

PETITIONER:
RAM KUMAR

Vs.

RESPONDENT:
THE STATE OF HARYANA

DATE OF JUDGMENT: 12/04/1996

BENCH:
MAJMUDAR S.B. (J)
BENCH:
MAJMUDAR S.B. (J)
RAY, G.N. (J)

CITATION:
JT 1996 (5) 341 1996 SCALE (3)443

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT
S.B. Majmudar. J.

The appellant, Ram Kumar. along with seven other co-accused was tried for the murder of deceased Balwant Singh at about 9.30 Ph on the night of 30th September. 1982 at village Shamgarh near Nilokherii in the State of Punjab. Five co-accused were convicted under section 302 read with section 148 while the appellant was convicted under section 302 of The Indian-Penal Code and was sentenced to suffer life imprisonment. The appeal before the High Court failed and in the application for enhancement of sentence filed by the complainant the High Court imposed a fine of Rs.25,000/- on the appellant. The rest of the co-accused were acquitted. The appellant, having obtained special leave to appeal has preferred this criminal appeal.

We have heard learned counsel for the appellant as well as the learned counsel for the respondent-State in support of their respective stands. It must be stated at the outset that there are concurrent findings of facts recorded by both the courts below whereby it is found that the appellant was instrumental in giving pistol shot injury on the forehead of the deceased, Balwant Singh on that fateful night. For arriving at the said finding reliance was placed by both the courts on the eye-witness account of prosecution witness no. 4, Dalel Singh, brother of the deceased who is said to be present with the deceased in the bara. Reliance is also placed on the evidence of PW-S, Mansa Ram, father of the deceased who was also sleeping nearby on his cot. In order to appreciate the grievance voiced on behalf of the appellant by his learned counsel, it is necessary to note a few background facts.

Balwant Singh, deceased was the younger brother of Dalel Singh PW-4. They had another brother Baldev Singh, who was youngest of them all. All three of them were married and used to live separately. Their father, Mansa Ram, PW-5 used to reside with Baldev Singh, the youngest son. Near the

house of Dalel Singh PW-4, there was a vacant site of land which stood in the name of Mansa Ram, father of Dalel Singh PW-4. This bara was the bone of contention between the complainant side and the side of the accused. Mansa Ram PW-5 claimed ownership and possession of this bara while one Surta Ram, son of Chhaju Ram claimed ownership of the bara in himself. Appellant, Ram Kumar, is the son of Surta Ram. It is the case of the prosecution that a litigation regarding this bara was pending in court since years and the trial court had decided the same in favour of Mansa Ram. Against that decision an appeal was pending in the High Court on behalf of Surta Ram, father of appellant Ram Kumar. It is the further case of the prosecution that pending this appeal, Ram Kumar on behalf of his father was insisting the complainant's side to vacate the bara. That two days prior to the incident, i.e. on 28.9.82 the appellant Ram Kumar and accused Shamsher Singh came to the bara, abused the complainant and asked them to vacate the bara. They again came on 29.9.82, previous day of the incident, abused them and asked them to vacate the bara. Because of these threats, the complainant-side convened a Panchayat meeting on the day of the incident, i.e. 30.9.82 and although the accused were summoned they did not turn up in the Panchayat. The Panchayat dispersed after waiting for two hours and then followed the fateful incident on the night of that very day. As deposed to by complainant PW-4, before the trial court at about 9.30 to 10 PM, the complainant, deceased Balwant Singh and also their father, Mansa Ram were lying on their respective cots in front side of the bara. Mansa Ram was on his cot in the door of the bara. That at that time, a fiat car of cream colour arrived there and the driver of the car brought it near the cots. Six persons alighted from the car. They included, amongst others, the appellant Ram Kumar and co-accused Shamsher Singh and started abusing them. They wanted to know why they had not vacated the bara although they had insisted for two days. When Balwant Singh was in the process of getting up, the accused, except Ram Kumar challenged that a lesson should be taught to the complainant for not vacating the bara. At that juncture the appellant, Ram Kumar fired a shot from his pistol which hit Balwant Singh. Balwant Singh fell down on the ground. The complainant and his father, Mansa Ram raised an alarm. By that time, the accused persons bolted away in the said car.

In connection with this incident, a police complaint was lodged. The deceased was, in the meantime, removed to the Hospital at Nilokheri in injured condition. But within half an hour, he expired in the hospital. The case which was originally registered under section 307 was thereafter converted to section 302 IPC. All these accused were committed to the court of Sessions to stand their trial. After recording evidence offered by the prosecution and after hearing the accused, the learned Sessions Judge came to the conclusion that the appellant and other five co-accused were guilty of the offences with which they were charged and convicted and sentenced them as aforesaid, it is thereafter, that in their appeal, the High court acquitted other co-accused but maintained the conviction and sentence of the appellant under section 302 IPC and on complainant's application enhances the punishment by imposing the fine of Rs 25,000/- in the appellant as noted earlier.

As this is an appeal on special leave, the concurrent findings reached by both the courts on evidence cannot be lightly brushed aside and unless it is shown that the findings are against the weight of evidence or vitiated by any error of law, normally this Court would not interfere as

a matter of course with such findings. It is in that light that we have to consider the main contentions canvassed by the learned counsel for the appellant in support of this appeal.

Learned counsel took us through the relevant evidence of the alleged eye-witnesses. According to him, this is a case of blind murder and the so called eye witnesses were not present in the bars at the time when the deceased suffered from pistol injury. Nor supporting this contention he submitted that the bara in which the incident occurred, belonged to deceased while the eye witnesses were staying separately. He invited our attention to what PW-4. Dalel Singh stated in this regard. The witness had stated that besides Balwant Singh deceased, Baldev is also his brother and all of them were residing separately. However, in the very next line, he stated that there was a joint bara in the name of his father and that bara was allotted to them in consolidation proceedings about 30 years back and that they had constructed a cattle shed in that bara. The witness had further stated that they used to sleep in order to protect their cattle. It is, therefore, not possible to agree with the contention of the learned counsel for the appellant that there was no occasion for this witness or even his father, Mansa Ram to sleep in this bara. It has also to-be kept in view that there was bitter litigation pending in connection with the ownership of this bara between the complainant's side and the accused's side. The complainant's side had succeeded in the District Court and the appeal was pending in the High Court. Even apart from that, the evidence of PW-4 shows that two days prior to the date of the incident, the appellant Ram Kumar and his supporters had abused them and asked them to vacate the bara and that attempt failed. The act was also repeated on the previous day and even on the date of the incident, a Panchayat had to be convened by the complainant's side where the accused did not remain present and in that sequence the incident that occurred on the night of that very day had to be appreciated. When such constant threats were given by the appellant and his supporters in connection with the bara, it would be quite natural for the witnesses to sleep with the deceased in the said bara to protect their possession. Consequently, it is not possible to agree with the contention of the learned senior counsel for the appellant that these witnesses would not have been present in the bara at the time of the incident.

It was next submitted that the first information report was filed very late. It is difficult to appreciate this contention. The High Court was right when it took the view that the evidence of ASI Vijender Singh PW-10, who recorded the statement of PW-4 Dalel Singh by way of FIR, Ex. PE had done so at about 12.20 A.h. on that very night. It is easy to visualize that when the incident occurred at bara between 9.30 and 10 PM at night and when effort was to be made first to remove the injured to the hospital at Nilokheri which was a couple of kilometres away and when evidence shows that they had to requisition the vehicle of one Sikh, as stated by the witness, Mansa Ram PW-5, it would naturally take some time. After the injured was removed to the hospital in the jeep brought by Baldev who took the victim to the hospital, the witness had proceeded towards the police station but at the bus stop of the village on the G.T. Roads ASI accompanied with constables met him and then immediately on the bus stop itself the complaint was recorded. It is also in evidence of ASI, Singh Ram PW-7, that while he was on duty in Control Room on 30.9.82 at Karnal at about 23.08 hours, during the night intervening 30.9.82 and 1.10.82, he

had received a telephonic message that there was firing going on in village Shamgarh and on inquiry he was told that the name of the informant was Kishan. He was further informed that telephone of Butana Police Station was out of order. He then made entry in the log book and passed on the message to Police Station Butana for proceeding to village Siamgarh to find out as to what had happened. That he had passed on this message to Police Station Butana at about 11.10 P.M. and it is thereafter that the police could reach the village Shamgarh and record the statement of the witness PW-4 and an FIR. All this would naturally take some time. It could not, therefore, be said that the recording of FIR was unduly delayed.

The learned senior counsel next submitted that if the information had reached Sub Inspector, Vijender Singh PW-10 at about 11.10 PM on 30.9.82 when he received the wireless message which had stated that firing was taking place at 11.08 PM, it is not possible to believe that the firing had taken place in the bara between 9.30 to 10 PM and this showed that the prosecution had ante-timed the incident- It is difficult to agree with this contention As noted earlier, Singh Ram PW-7, himself has stated that he had received telephonic message from village Shamgarh by about 11.08 PM that firing was going on. Therefore, the message must have been flashed after the firing had taken place. In the process of receiving the said message, the witness was also informed that earlier an attempt was made to telephone P.S. Butana but it was out of order and thereafter this message was sent to Karnal Police Control Room. This process itself would take quite some time. Secondly, even if the firing had taken place at about 10 PM its information would have taken some time before it could reach a stranger like Kishan and then Kishan made unsuccessful attempt to contact Butani PS and as he could not do so then he contacted Control Room at Karnal. By that time it was informed that the firing had taken place at 11.08 P.M. Thus, the difference of one hour one way or the other would not make any difference or would not necessarily falsify the prosecution case that firing had taken place in the bara of Balwant Singh situated at village Shamgarh on that night or that the prosecution had tried to ante-time the incident with a view to make the presence of eye-witnesses available on the spot as alleged. In this connection? it may also be noted that the High Court has rejected this contention by observing that when there were constant threats to the possession of the bara by the complainants side it would be natural for the witnesses to remain present in the bara to protect the same and 10 P.M. or so was not a time when the witnesses would have necessarily gone to sleep under such circumstances or that they would not keep awake at that hour. We may also note that the High Court has rightly placed reliance on the evidence of PW-2 who stated that some semi-digested food was present in the stomach when he performed the post mortem and that if the deceased had died at 10.40 AM on 1st October, 1982, then he would have probably taken his food at 7 PM on the earlier evening. That it normally took for the food eaten by peasants in Haryana four to six hours to leave the stomach. After the deceased had been injured, the process of digestion had probably slowed down. When these factors are taken into consideration, it becomes obvious that the two eye witnesses were right when they stated that the occurrence took place at about 9.30 to 10 PM on September 30, 1982 at village Shamgarh and that in the months of summer, in a well populated village like Shamgarh people hardly go to sleep before 10 to 11 PM. In our view, the

aforesaid reasoning of the High Court is well sustained on evidence and therefore, it is not possible to agree with the submission of the learned counsel for the appellant that the incident was tried to be ante-timed by the prosecution or that the eye witnesses would not have been present and it was a blind murder.

It was next submitted that the medical evidence showed that the deceased had received the bullet only on the left side of his face and that would indicate that he must be sleeping when the pistol injury was given to him. Even this submission cannot be of any use to the appellant for the simple reason that being apprehensive of injury from pistol, the deceased would naturally have turned his face to avoid the injury and in the process might have been hit on the left side because only one shot was fired at the deceased.

It was next contended that the statement Ex. DL and DL-1 made in the remand application by the police did not implicate the appellant. This submission was rightly rejected by the High Court which has observed that the English translation was defective and the original application in Hindi showed that Ram Kumar, appellant was in the company of other persons and had appeared on the scene and fired the fatal shot. Even if some other persons were mentioned in the remand applications, once the appellant's name was clearly mentioned in the applications, his involvement in the incident does not get in any way lessened or obliterated. It is also pertinent to note that the evidence given by PW-4 in connection with what had happened on the day of the incident when Panchayat was convened and even on previous two days, could not be effectively challenged in the cross-examination.

It was next contended by the learned counsel for the appellant that the road near the bara was a zig-zag and narrow one and the car could not have come carrying the appellant and the other accused as alleged by the prosecution. Even this contention cannot be accepted for the simple reason that in the cross-examination of the witness PW-4, it has been brought out by the defence itself that on one side of their bara, agricultural land was situated and even in further cross-examination of the same witness, it has been brought out that there was sufficient electric light on the vacant place towards which their bara opened. It is also further pertinent to note that there was no cross-examination of these witnesses on the aspect whether the car could have come or not on the spot or whether there was any zig-zag road. In fact, such a suggestion was not even put to any of the eye witnesses. Therefore, it is too late in the day for the learned counsel to submit that the car could not have come near the spot. So far as the presence of electric light is concerned, the witness had clearly stated that there were number of bulbs near the bara and they were burning.

Learned counsel then submitted that the witness Mansa Ram had a weak eye-sight. Even this submission cannot be of any avail for the simple reason that when cross-examined, the witness Mansa Ram PW-5, stated his eye sight had become weak after the death of his younger son, Balwant Singh and that his long distance eye sight was all right.

It was next submitted that if according to the prosecution three persons were sleeping in the bara on their cots, how only one cot was found by the police. In this connection it has to be observed that in the cross-examination of witness Manss Ram, PW-5, it was brought out that a number of persons were sitting on their cots when they had collected at the spot after the incident and the

other cots lying on the spot were removed for that purpose and only one cot on which the deceased was sleeping at the time of the incident was not removed from the spot. This explanation, which is accepted by both the courts below, cannot be said to be in any way an unreasonable explanation.

It was then contended that the FIR itself appeared to be a concocted one and as such detailed averments were made therein and such detailed averments could not be written on the bus stand as alleged by PW-4, Dalel Singh. It is pertinent to note that nothing substantial in this connection could be taken out in the cross-examination. The statement of the witness in respect of the recording of the FIR on the bus stand is fully corroborated by the evidence of ASI, Vijay Singh. Even such a contention was not canvassed before the High Court in support of the appeal. It is, therefore, clearly an after-thought.

It was also contended that according to the version of the eye witnesses they waited for about one or one and a half hour at village Shamgarh after the incident before taking the victim to the hospital and this was improbable. We fail to appreciate this submission. It has to be kept in view that between 9.30 to 10 PM the incident had happened at the village. The accused who had come in car had thereafter fled. Villagers had gathered on the spot. The evidence shows that they were in search of a vehicle to take the deceased to the hospital at Nilokheri which was a couple of kilometres away. After procuring the jeep, they could take the victim to the hospital. That would naturally take quite some time. Therefore, one and a half hours cannot be said to be an unduly long period which had elapsed before the victim could be taken to the hospital.

It was next contended that when the investigating officer had admitted that he had recorded statement of several persons, evidence at the stage of trial was given only by the victim's close relatives - PW-4, his elder brother and PW-5, his father. In our view when the eye witnesses who were in company of the deceased at the time of the assault and who had witnessed the assault were examined there remained no occasion to examine other witnesses who obviously had come on the spot after the incident and would not have thrown any light on the actual happening of the incident. It was not the case of any one that along with the deceased and the eye witnesses there were any other witnesses present in the bara when the assault was mounted by the accused. Consequently, this argument is of no avail to the appellant.

It was lastly submitted that the High Court ought not to have imposed the fine of Rs. 25,000/- in the application filed by the complainant. In our view, this contention cannot be of any avail for the simple reason that when the High Court found that the deceased was done away with in such a brutal manner on the night of the incident, the accused should bear the fine of Rs. 25,000/-. It could not have been said that such a discretionary order was not justified in the facts and circumstances of the case.

These are the only submissions made by the learned counsel for the appellant. We find no substance in any of them. In the result the appeal fails and is dismissed. The appellant was released on bail pending this appeal. His bail bonds are, therefore, ordered to be cancelled. He is directed to be taken in custody to serve out the remaining part of the sentence imposed on him.