

PETITIONER:
RAM CHANDER AND ORS..

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT 12/05/1983

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
ERADI, V. BALAKRISHNA (J)

CITATION:
1983 AIR 817 1983 SCR (3) 257
1983 SCC (3) 335 1983 SCALE (1) 638

ACT:

Criminal Procedure-Appeal against acquittal-while reversing acquittal High Court has to deal with each one of the reasons which prompted trial court to record acquittal.

HEADNOTE:

The appellants were tried along with one other person for offences under ss. 302 and 323 read with s. 34, I.P.C., as also under ss. 218 and 302, I.P.C., on allegations that they had taken one Balwant Singh into custody, tortured him to death and thereafter created false evidence with a view to escape from legal punishment in connection with the murder of Balwant Singh. The Sessions Judge acquitted all the accused after coming to the conclusion that the prosecution story was highly improbable. He dealt with the prosecution evidence elaborately and gave substantial reasons for rejecting the same.

In the appeal preferred by the State, the High Court reversed the acquittal and convicted and sentenced the appellants without dealing with or discussing the reasons given by the Sessions Judge for acquitting them. The High Court was principally influenced by the nature of injuries that had been noticed on the dead body at the time of autopsy. Based on the injuries found on the soles and buttocks of the deceased the High Court came to the conclusion that the deceased had been given a sound bearing while he was in police custody. The High Court mentioned that its conclusion had been strengthened by the fact that appellant No. 2 had, while preparing the inquest report, made a deliberate effort to minimise the number of injuries sustained by the deceased inasmuch as in column No. 10 thereof, injuries on file different parts of the body had been mentioned without giving the actual number of injuries in those parts, while according to the doctor's post mortem report there were 33 external injuries.

Allowing the appeal,

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HELD: The duty of the High Court while dealing with the appeal against acquittal was quite clear. It should have dealt with each one of the reasons which prompted the trial court to record the acquittal and should have pointed out how, if at all, those reasons were wrong or incorrect.

Without undertaking such exercise the High Court could not reverse the acquittal. [267 A-B]

The High Court was clearly in error in solely relying upon the nature of some of the injuries for drawing the conclusion that the deceased must have

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been assaulted by the appellant in custody. In doing so, the High Court indulged in conjectures and surmises. There were only two injuries which could properly be regarded as injuries on the soles of the two feet of the deceased which may be indicative of the police using third degree methods but the injuries on the buttocks could not be indicative of user of third degree methods. Apart from injuries on the soles and the buttocks, there were other injuries on several other parts of the body which could not be regarded as being necessarily consistent with the assault on the deceased only in police custody. The criticism made against appellant No. 2 that he made deliberate attempt to minimise the injuries sustained by the deceased while writing column No. 10 of the inquest report also cannot be accepted. It is quite possible that he may not have noticed all the injuries or, even after noticing them, he may not have mentioned in detail all the injuries that were present on the dead body at the time of the inquest. In any event it cannot be forgotten that he has broadly indicated five parts of the body on which it has been stated several injuries were noticed. His only fault is that the actual number of injuries were not mentioned but from this alone it will be difficult to impute the motive that he had deliberately done so with a view to minimise the number of injuries sustained by the deceased. [266 B-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 584 of 1976.

Appeal From the Judgment and order dated the 22nd November, 1976 of the Punjab & Haryana High Court in Criminal Appeal No. 501 of 1973.

Prem Malhotra for the Appellants.

R.N. Poddar for the Respondent.

The Judgment of the Court was delivered by

TULZAPURKAR, J. The three appellants alongwith one Ram Kishan (since acquitted) were tried for offences under ss. 302 and 323 read with s. 34 I.P.C. as also under ss. 218 and 342 I.P.C. before the learned Sessions Judge, Karnal in Sessions Case No. 3 of 1973 but the learned Sessions Judge on an appreciation of the evidence led by the prosecution as well as by the defence acquitted them of all the charges on the ground that the prosecution had failed to prove the offences charged. The State of Haryana preferred an appeal being Criminal Appeal No. 501 of 1973 to the High Court challenging the said acquittal and the High Court by its judgment and order dated 22nd November, 1976 allowed the State appeal so far as the three appellants before us are concerned, but confirmed the acquittal of Ram Kishan. The High Court convicted the appellants under s. 302

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read with s. 34 I.P.C. and sentenced each of them to suffer imprisonment for life and further convicted the first two appellants (Ram Chander and Chand Ram) under s. 218 I.P.C. and sentenced them to suffer rigorous imprisonment for two years each; the substantive sentences were directed to run concurrently. In other words, so far as the three appellants are concerned, their acquittal has been reversed and the

question in this appeal is whether the High Court is right in that behalf.

The prosecution case against the three appellants and Ram Kishan may briefly be stated as follows. Ram Chander (appellant No 1) had been posted as a Station House officer, Police Station, Sadar Panipat a few days before the occurrence, while appellants Nos 2 and 3 (Chand Ram and Baljeet Singh) and Ram Kishan were working as Assistant Sub Inspector, Head Constable and Constable respectively under him at that Police Station. According to the prosecution on the evening of September 6, 1972, appellant No. 1 summoned some persons suspected of having committed a theft to the Police Station; Banta (P.W.7) on being summoned through appellant No. 3 held reached the Police Station at about 4/5 p.m. while Vir Singh (P.W.6) and one Sukha Singh were personally brought by appellant No. 1 to the Police Station at about 7 p.m.; at about 10 p.m. appellants Nos. 2 and 3 and Ram Kishan went to the house of Balwant Singh, the deceased, and proclaimed that Balwant Singh was wanted by the appellant No. 1 at the Police Station whereupon Joginder Singh (P.W.4) his brother and other members of his family requested that Balwant Singh should not be taken to the police station at that odd hour and that they themselves would produce him before the S.H.O. on the following morning but their request went unheeded and reluctantly Balwant Singh and his servant Harnam Singh (PW5) went with the police party in a tempo driven by Som Nath (P.W.14) to the police station while Joginder Singh (PW4), Amarjeet Singh (P.W.12) another brother of Balwant Singh and two others followed the police party on their bicycles; on the way the police party told them (the witnesses) to go back, but Joginder Singh and his companions did not listen and followed the police party right up to the Police Station. Joginder Singh (P.W.4) approached appellant No. 1 and enquired from him about the matter for which the deceased Balwant Singh had been summoned but appellant No. 1 told him to go back and to make inquiries about the matter on the following morning. According to the prosecution further, within their sight Balwant Singh deceased and Harnam Singh

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(P.W.5) were taken in a room of the police station where Moharrir A Head Constable (Balwant Singh PW 15) used to sit, and while Joginder Singh (P.W. 4) and his companions were standing just outside the police station they heard the cries of Balwant Singh deceased who was saying that he was innocent and should not be beaten. In short, according to the prosecution, Balwant Singh was tortured to death by the three appellants and Ram Kishan while he was in police custody on the night between 6th and 7th September, 1972.

In the morning at about 6.30 (on September 7, 1972) Vir Singh (PW6) who came out of the police station told Joginder Singh (PW4) and his companions, who were still waiting outside the police station, that the three appellants and Ram Kishan had continuously beaten Balwant Singh inside the police station for the whole night and that he was not sure whether Balwant Singh was alive or not and that the appellants were conspiring to some how or other dispose of the dead body. At the instance of Joginder Singh (PW4), Amarjit Singh (P.W.12) went to the Sub Divisional Magistrate's Court, Panipat and got an application (Ex. PM) drafted and presented it to the Sub Divisional Magistrate, who marked it to the Station House officer, Sadar Panipat (appellant No. 1) for report. Smt. Harnam Kaur (P.W.13) mother of Balwant Singh deceased, after waiting in vain for her sons to come back till 11 a.m. herself went to the

police station Panipat and met Joginder Singh (PW4) and others outside the police station and after hearing about the beating of Balwant Singh in the custody of the police station, at the instance of Joginder Singh (PW4), she sent a telegram (Ex. PL) to the Superintendent of Police Karnal to the effect that Station House officer, Sadar Panipat and five constables and Havildar Baljeet Singh raided her house on the previous night and took her son Balwant Singh and servant Harnam Singh (PW5) to the police station, that Balwant Singh had been beaten ruthlessly and taken to an unknown place and that his life was in danger and she prayed for an early action to save the precious life of Balwant Singh. At about 7 or 7.30 p.m. On September 7, 1972, Joginder Singh (PW4) contacted Dy. S.P. Iqbal Singh (PW16) and narrated to him all that had happened and Iqbal Singh assured him that justice would be done in the case. By this time it had become that Balwant Singh had succumbed to the injuries received by him and therefore Joginder Singh requested the Dy. S.P. to have the autopsy on the dead body done by Chief Medical officer Karnal instead of by the local Medical officer.

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Meanwhile, as per the direction of the Sub Divisional Magistrate, endorsed on Ex. PM (Amarjit Singh's application), appellant No. 1 submitted his report (Ex. DE) on September 9, 1972, stating his version as to what had transpired, which substantially became the defence version at the trial. In his report it was stated that on September 7, 1972 at about 5.30 a.m. Bhim Singh (D.W.2) reported that at night two thieves entered his residential Kotha for committing theft which he noticed on returning from the field and on finding the thieves there he raised an alarm "thief, thief". Both the thieves opened an attack on him with lathis which they were carrying but many persons of the village also gathered there carrying lathis; that one of the thieves who was a Sikh succeeded in running away while the other was knocked down by the people who gave him many lathi blows. Later on he was found to be Balwant Singh; consequently a case under s. 458 IPC had been registered at the police station Sadar Panipat on the information given by Bhim Singh (DW2) and that during this operation currency notes worth Rs. 2260/- alongwith one gold ring belonging to Bhim Singh had been stolen; the investigation was still in hand and the search for the second accused was being made. Appellant No. I denied that Balwant Singh deceased and Harnam Singh (PW5) had been asked to attend the police station. The appellants also pleaded that they were falsely implicated in this case by the complainant and others who were not merely related to and interested in the deceased but were inimical to them, being people of shady character and were aggrieved by the appellant No. 1's strict surveillance over their illegal activities. Appellant No. 1 and Ram Kishan also Raised pleas of alibi suggesting that on the night in question they were not at police station Sadar Panipat but were away on duty elsewhere and examined defence witnesses to support their case.

It may be stated that as desired by the deceased's relatives the autopsy on the dead body of Balwant Singh was performed by Dr. P.N. Kapila (P.W. 1), Chief Medical officer, Karnal on September 8, 1972, who noticed as many as 33 external injuries and four internal injuries and opined that the cause of death was shock as a result of multiple injuries which were all ante-mortem and were sufficient in the ordinary course of nature to cause death collectively. It was not disputed that Balwant Singh's death was homicidal

and those responsible for assault on him would be guilty of murder. Main question was whether the prosecution discharged the onus of proving convincingly that the appellants were involved in such assault ?

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In view of the aforementioned rival versions put forward by the prosecution and the defence, three main questions arose for determination: (a) whether deceased Balwant Singh was taken to the Police Station Sadar Panipat by the appellants Nos. 2 and 3 and Ram Kishan in the tempo driven by Som Nath (P.W.14) on the night between 6th and 7th September, 1972 ? (b) what transpired at the Police Station, that is to say, whether deceased Balwant Singh was given a beating by the three appellants and Ram Kishan while he was allegedly in their custody ? and (c) whether the appellants particularly appellant No. 1 created false evidence by preparing documents in connection with the theft said to have been committed in the house of Bhim Singh (DW2) with a view to escape from legal punishment in connection with the murder of Balwant Singh ? on the first two points the prosecution mainly relied upon the evidence of Som Nath (P.W.14), the driver of the tempo, Vir Singh (PW6), Banta Singh (PW7), Harnam Singh (PW5), Joginder Singh (PW4) and Amarjeet Singh (PW12), out of whom Banta Singh and Harnam Singh were said to be 'stamped witnesses' as they had injuries on their persons allegedly suffered by them at the time of causing injuries to deceased Balwant Singh. On analysing the entire material on record the learned Sessions Judge came to the conclusion that the prosecution story was highly improbable and that the evidence of the aforesaid witnesses was not reliable. The pleas of alibi were accepted and the defence version of theft at the house of DW Bhim Singh involving deceased Balwant Singh was held to be true. Leaving aside the defence case, it must be observed that he dealt with the prosecution evidence quite elaborately and gave substantial reasons for rejecting the same.

As regards Som Nath (P.W. 14), aged about 18 years, who is alleged to have brought Harnam Singh and Balwant Singh in his tempo to the Police Station in the company of the police officials, the learned Judge found that though the witness asserted that he was driving the tempo for the last about 5 years, he was not in possession of any licence till the date of his evidence, that it was surprising how he could remember the date 6th of September, 1972 as the date on which he brought Balwant Singh in his tempo to the police station when he could not remember other dates of other occasions when his tempo had been requisitioned by the police and who were the police officials who had travelled in his tempo on those occasions and that his statement had been recorded by the police as late as on 17th September, 1972 though he was shown to have remained in

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Panipat throughout. For these reasons the learned Judge was not prepared to accept Som Nath's evidence and if that be so the very A basis of the prosecution story that deceased Balwant Singh was taken to the police station on the night in question, was kept in custody there and was assaulted by the appellants, would fall to the ground. As regards the other prosecution witnesses mentioned above, the learned Judge referred to the admitted position that each one of them had past antecedents and history of shady character to his credit and being inimical towards the police attached to Panipat Police Station had shown anxiety to involve the Police officials in the case. With this background he examined their evidence with great care and caution and came

to the conclusion that none of them was worth relying upon and their evidence hopelessly fell short of connecting any of the appellants with the offences charged. The learned Judge further pointed out that in Ex. PM dt. 7th September, 1972, the earliest application made by Amarjeet Singh (P.W. 12) to the Sub Divisional Magistrate, the names of appellant No. I (Ram Chander) and Ram Kishan had not been mentioned at all and this fact assumed importance especially when it was immediately after getting information about the assault on Balwant Singh from Vir Singh (PW 6) in the morning at 6.30 a.m. Amarjit Singh made that application as directed by Joginder Singh (PW 4). The learned Judge further pointed out that in the telegram Ex. PL sent by Harnam Kaur (PW 13), to the Superintendent of Police, Karnal, it was stated that S.H.O. Sadar Panipat alongwith five constables and Hawaldar Baljeet Singh had taken away her son Balwant Singh and servant Harnam Singh to the police station whereas it was never the case of the prosecution that S.H.O. Ram Chander (appellant No. 1) was among those police officials who had gone to the Dera of Balwant Singh. In view of these facts and the other material on record the learned Judge came to the conclusion that Ex. PG, the regular First Information Report lodged by Joginder Singh as late as on 9th September, 1972 had been got drafted after holding deliberations and consultations in which detailed allegations were made against the appellants mentioning even the sections of the Penal Code. One more crucial circumstance was referred to by the learned Sessions Judge and that was that Joginder Singh (PW 4), Amarjeet Singh (PW 12) had claimed that they had not allowed the dead body of Balwant Singh to be taken away from the police station and that it was brought out in the morning in the immediate presence of hundreds of persons and if that were so there should have been no dearth of independent persons, who could have been examined for

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substantiating the prosecution case that at some stage of the other the dead body of Balwant Singh was at the police station but nothing of the kind was done. What is more, Amarjit Singh (P.W. 12) had stated before the Dy. S.P. Iqbal Singh (PW 16), with which portion he was confronted, that he had seen the dead body of Balwant Singh for the first time at the morgue. The learned Sessions Judge, therefore, concluded that there was no satisfactory proof that the deadbody of Balwant Singh had ever remained in the police station of Sadar Panipat either during the night intervening between 6th and 7th September, 1972 or any time subsequently and prior to its post mortem. As regards the two injured witnesses Banta Singh and Harnam Singh, the learned Sessions Judge pointed out that neither in Ex. PM dt. 7th September 1972 the fact that Banta Singh too had received injuries while at police station was mentioned and further, since Dr. R. S. Naiyar, who had examined Banta Singh's injuries had stated that Banta Singh could have received those injuries within 3 to 7 days of his examination, which was done on 13th September, 1972, it could not be pin-pointed with certainty that he had received those injuries during the night of the occurrence. As regards injuries on Harnam Singh, the learned Judge observed that the possibility of Harnam Singh being the other thief alongwith Balwant Singh during the theft that occurred on the night in question at the house of Bhim Singh (D.W. 2) and he being the thief who had escaped on that occasion with minor injuries at the hands of the villagers could not be ruled out. It was for this state of evidence and for the reasons indicated above that the learned Sessions Judge acquitted the appellants of

the charge of murder. Consequently, the other charge under s. 218 also failed.

When the matter was taken in appeal by the State, we are surprised to find that the High Court reversed the acquittal without dealing with or discussing any of the aforesaid reasons given by the learned Sessions Judge for acquitting the appellants. The High Court, it appears, was principally influenced by the nature of injuries that were noticed by the doctor on the dead body of Balwant Singh at the time of autopsy and in its view some of the injuries which were on the soles and buttocks of the deceased convinced it that the deceased was given a sound beating while he was in police custody. This is what the High Court has observed in that behalf:

"Injuries Nos. 21', 22, 23, 25, 29, 30 and 31 were on the soles and the buttocks of the deceased. Such injuries

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are sustained by a person when he is subjected to third degree methods by the police. The reason is obvious. Injuries inflicted on the soles, unless given continuously for a longer period, do not leave behind tell-tale marks. This consideration apart, we have to see in the light of the two versions before us the probability of the circumstances under which the injuries were sustained by the deceased; assuming while not admitting, that the deceased did go to commit a burglary at the house of Bhim Singh, D.W. 2, and he was knocked down by his co-villagers, it would be wholly improbable on the part of such villagers to aim their blows at the soles of a fallen thief. They would much rather break the shin bones of the thief instead of particularly aiming their blows at that part of the body where injuries do not leave any mark. When we asked the learned counsel for the respondents to explain these injuries, the only explanation which he could put forth was that the deceased could have sustained them by jumping on to the ground. We are unable to accept this explanation because nature has endowed the human sole with more elasticity than which he is required for jumping about. If a person falls from a height, it is more probably for him to sustain fractures of his ankles and shin bones instead of getting redness on the soles. Furthermore, the presence of the contusions on both the soles unmistakably points out to the infliction of injuries thereupon with the help of a small rule which the police men usually carry. We are accordingly convinced that the deceased was given these injuries while he was in custody. In fact the deceased was brutally basted, his tongue was caught in between the teeth, there was bleeding from the right nostril, mouth and left ear. There was seminal discharge from the urethra on the posterior surface of the trunk and back of neck. Human beings possessed with the spirit of the devil alone could have caused. such injuries."

The High Court has further gone on to observe that its conclusion mentioned in the above quoted portion was strengthened by the fact that when Chand Ram (appellant No. 2) prepared the inquest report he made a deliberate effort to minimise the number of injuries sustained by the deceased, for, in column No. 10 of the inquest

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report injuries on S different parts of the body were mentioned A without giving the actual number of injuries in

those parts, while according to doctor's post mortem report there were 33 external injuries.

In our view the High Court was clearly in error in solely relying upon the nature of some of the injuries that were found on the dead body of Balwant Singh for drawing the conclusion that the deceased must have been assaulted by the appellant in custody. In doing so, the High Court has unfortunately indulged in conjectures and surmises. In the first place there were only two injuries, namely, injury No. 22 and 23 which could properly be regarded as injuries on the soles of the two feet of the deceased, which may be indicative of the Police using third degree methods but the injuries on the buttocks could not be indicative of user of third degree methods, for, once a thief is caught by villagers for the purpose of giving a sound beating he may as well fall flat on the ground and the villagers could give beating on his buttocks. Moreover, apart from these injuries on the soles and the buttocks there were other injuries on several other parts of the body, such as fore-head, shoulders, neck, arms, legs, knees, scalp, etc. The impact of these injuries cannot be ignored and these injuries could not be regarded as being necessarily consistent with the assault on the deceased only in police custody. It is thus not possible to agree with the High Court's view which has been expressed thus: "Furthermore, the presence of the contusions on both the soles unmistakably points out to the infarction of injuries thereupon with the help of a small rule which the policemen usually carry. We are accordingly convinced that the deceased was given these injuries while he was in custody."

The criticism made against appellant No. 2 that he made a deliberate attempt to minimise the injuries sustained by the deceased while writing Col. No. 10 of the inquest report also cannot be accepted. It is quite possible that he may not have noticed all the injuries or even after noticing them he may not have mentioned in detail all the injuries that were present on the dead body of Balwant Singh at the time of the inquest. In any event it cannot be forgotten that the appellant No. 2 has broadly indicated 5 parts of the body on which it has been stated several injuries were noticed. The only fault on the part of appellant No. 2 is that the actual number of injuries were not mentioned but from this alone it will be difficult to impute the motive that he had deliberately done so with a view to minimise the number of injuries sustained by the deceased.

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Apart from these aspects of the High Court's reasoning, its duty while dealing with the appeal against acquittal was quite clear it should have dealt with each one of the reasons which prompted the trial Court to record the acquittal and should have pointed out how, if at all, these reasons were wrong or incorrect. Without undertaking such exercise the High Court could not reverse the acquittal. We therefore, allow the appeal, set aside the conviction recorded by the High Court and restore the appellants' acquittal in respect of the charges levelled against them, their bail bonds are cancelled.

H.L.C.

Appeal allowed.

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