

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.47 OF 2014

PARGAN SINGHAPPELLANT(S)

VERSUS

STATE OF PUNJAB & ANR.RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.1929 OF 2014
(arising out of S.L.P. (Crl.) No.4071 of 2013)

HARMINDER SINGHAPPELLANT(S)

VERSUS

STATE OF PUNJABRESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Leave granted in Special Leave Petition (Criminal) No.4071 of
2013.

2. By these appeals, the two appellants challenge the veracity of the judgment of the High Court dated 13.12.2012 whereby the High Court has dismissed their appeals which were preferred against the judgment dated 25.09.2008 and order of sentence dated 27.09.2008 passed by the Sessions Judge, Kapurthala, Punjab. The Sessions Judge had, by the aforesaid judgment, convicted the appellants under Section 302, 397 as well as Section 307 IPC read with Section 34 IPC. For the offence under Section 302 IPC, both the appellants were given the sentence of rigorous imprisonment of life and fine of Rs.50,000/- each and in default of payment of fine, they have to undergo further rigorous imprisonment for two years. For conviction under Section 307 IPC read with Section 34 IPC, sentence of 10 years rigorous imprisonment and fine of Rs.25,000/- is imposed and in default of payment of fine, they have to undergo further rigorous imprisonment for one year. Likewise, for offences under Section 397 IPC, rigorous imprisonment for a period of 10 years is imposed. All these sentences were ordered to run concurrently.
3. The prosecution case, as contained in the chargesheet presented in the trial court, runs as under:

One Naveen Sharma reported the matter to the Police, on the basis of which FIR was registered, that on 25.03.1999 at about 5:00 p.m., he had gone to Bank of Punjab on scooter No.PB-08-5477.

Varun Kumar alias Kaka was accompanying him though he was driving his own scooter LML Vespa. Both of them reached the Bank and withdrew a sum of Rs.4 lakhs from the Bank. Varun Kumar placed the bag containing money in front of scooter and they started coming back to their office which is at Gandhi Chowk, Phagwara. Varun Kumar was ahead of Naveen Sharma. When they reached at Chadha Market at about 5.30 p.m., one black colour scooter came from their backside on which two sikh gentlemen with trimmed beard, one was tall in height and other was of middle height, both of them wearing pants and shirts, started firing with pistol on Varun Kumar which hit him and Varun Kumar fell down from the scooter. The person sitting on the pillion of scooter, snatched the money bag from Varun Kumar which was also having one cheque book and they turned back their scooter. Then Kamaljit Singh tried to stop them but out of whom one sikh gentleman, who was sitting on the pillion, fired with pistol on Kamaljit Singh and he fell down. Both unidentified persons ran away on scooter with the money bag. Complainant Naveen Kumar and other persons arranged the vehicle and sent Varun Kumar and Kamaljit Singh to Civil Hospital, Phagwara. When the complainant was going to police station to report the matter, the police party met him and his statement was got recorded by ASI Iqbal Singh (Investigating Officer), Police Station City Bhagwara at 6.00

p.m. on the same day. Ruqa was sent to the police station on the basis of which FIR was registered. Then Investigating Officer alongwith complainant and police party went to Chadha Market, City Phagwara and saw the dead body of Varun Kumar and one injured Kamaljit Singh at the spot. The injured was sent to Civil Hospital, Phagwara. Inquest proceedings were prepared and the dead body of Varun Kumar was sent for postmortem examination. Blood stained earth was lifted from the spot and the same was taken into police possession after preparing a sealed parcel. Vespa scooter lying at the spot was also taken into police possession. As can be seen from the aforesaid statement of Naveen Sharma, the two perpetrators of the aforesaid crime were sikh gentlemen but unknown to the complainant or other persons. The Police tried to trace the culprits but was unsuccessful for number of years.

4. After more than 7 years i.e. on 18th July, 2006, a special team was constituted to apprehend the perpetrators of the crime. As per the prosecution version, the investigating officer (I.O.) received a secret information on 24.07.2006 that the two appellants herein were actually the persons who had committed the said crime. On receiving this information, I.O. conducted the raids at the houses of these accused persons but could not arrest them. Further allegation of the prosecution is that on 02.08.2006, one Vishwa Mitter (PW-1) informed

the I.O. that both the accused had confessed before him that they had shot the persons and committed the aforesaid robbery. His statement was recorded by the I.O. on 02.08.2006 to this effect. On 07.08.2006, a naka was laid and at about 6:45 p.m. both the accused were seen coming on a scooter which was being driven by Pargan Singh and Harminder Singh was sitting on the pillion. Both the accused were apprehended and arrested. On 08.08.2006, both the accused were produced before the Court and application was moved for conducting Test Identification Parade (TIP) of the accused persons but the accused declined the same through separate statements Ex.PM/1 and Ex.PM/2. Statements of witnesses were recorded. After necessary investigation, challan against the appellants was presented before the Court.

5. The trial court framed the charges against these appellants for the offences under Section 302, 307 and 397 IPC read with Section 34 IPC. The appellants pleaded innocence and claimed trial. The prosecution examined as many as 14 witnesses. It is not necessary to mention about deposition of all these witnesses. Material witnesses are PW-1 (Vishwa Mitter), PW-2 (Kamaljit Singh – an injured eye witness), PW-3 (Naveen Sharma – the complainant and eye witness), PW-5 (Dr. Kamaljit Singh – Medical Officer) who has conducted the postmortem examination of the dead body of Varun

Kumar on 26.03.1999 along with two other Doctors i.e. PW-6 (Dr. Ajay Kumar, Medical Officer, Civil Hospital, Phagwara), Dr. Gurdit Singh, who had medically examined Kamaljit Singh, the injured person, PW-10 (ASI Iqbal Singh) and PW-12 (SI Inder Singh) who deposed regarding the investigation of the case.

6. PW-1 had mainly stated about the extra-judicial confession which the appellants had allegedly made to him on 30th July, 2006. PW-2 Kamaljit Singh who sustained injury and had seen the occurrence, deposed about the incident that occurred on 25th March, 1999. PW-5 Dr. Kamaljit Singh, Medical Officer, Civil Hospital, Phagwara, deposed regarding conducting the postmortem examination on the dead body of Varun Kumar on 26.03.1999 along with Dr. Ajay Kumar and Dr. Gurdit Singh and found a lacerated wound 1.75 x 1.5 cm round to oval inverted margins situated just on left side of midline in the area of described upper half of scapula and back bone. Blackish staining with burned margins present. In the opinion of the doctors, injuries were ante-mortem in nature and the cause of death in this case was severe haemorrhage and shock and injury to vital organs lung, liver and major vessels which was sufficient to cause death in ordinary course of nature. PW-6 Dr. Ajay Kumar, Medical Officer, Civil Hospital, Phagwara, mainly deposed regarding conducting the medico legal examination of Kamaljit Singh and found the following injuries:-

1. Multiple lacerated wounds 8 in number of size 3 mm x 3 mm x 2 mm in front of right shoulder. Red in colour and bleeding from the wound was present.

2. Lacerated wounds four in numbers of size 3 mm x 3 mm x 2 mm in front of right side of neck. Bleeding from the wound was present. It was kept under observations and advised x-ray on neck.

3. Three lacerated wounds 3 mm x 3 mm x 3 mm below the lower leg and chin on right side. Bleeding from the wound was present. It was kept under observation and advised x-ray.

4. Four lacerated wounds 3 mm x 3 mm x 2 mm one above and one below the right eye, two on its lateral side. Bleedings from the wounds were present, upper and lower eye lids were swollen and blackened. Eye was closed. It was kept under observation. X-ray was advised and eye check up was advised.

5. Lacerated wound on right side and below the tongue, which was 4 mm x 4 mm. Bleeding from the mouth was present. Tongue was edematous. X-ray was advised and kept under observation.

All injuries were caused with fire arm.

7. After the prosecution concluded its evidence, the appellants were examined under Section 313 of the Code of Criminal Procedure and were confronted with the incriminating evidence which had come on record against them. They denied the correctness of the evidence and maintained that they were innocent. No defence evidence was, however, led by them. After hearing the arguments, the trial court convicted and sentenced both the appellants, which has been upheld by the High Court, as mentioned above.

8. A perusal of the judgment of the High Court reveals that the High Court has accepted the version of PW-2 on the ground that he was an injured eye witness to the occurrence and, therefore, his presence cannot be doubted. It is further observed by the High Court that similarly the presence of Naveen Sharma, the complainant (PW-3) also cannot be doubted who had reported the matter to the Police within no time and the FIR was prompt one. In the opinion of the High Court, the testimony of both PW-2 and PW-3 was consistent on material points; that there were no material improvements or material contradictions which could shake the veracity of their version.
9. The defence had strongly pleaded before the High Court that the statements of PW-2 and PW-3 identifying the appellant in the Court was not credible as the persons who committed the offence were admittedly unknown to these witnesses. Therefore, it was not possible to remember the faces of said criminals after a period of 7 years. This argument is brushed aside by the High Court on the ground that the appellants had refused to take part in the TIP. Plea of the appellants that their refusal to participate in the identification parade was because of the reason that the Police had already shown their faces to these witnesses in the Police Station after their arrest, also did not find by the High Court to be of any merit. Another reason given by the High Court in accepting the version of PW-2 and PW-3 is

that there is no enmity or motive of these eye witnesses to depose falsely against these appellants and that their version was corroborated by the medical evidence in this case. Likewise, statement of PW-1 Vishwa Mitter who is stated to be Pradhan of Mohalla has been accepted as he would not be telling a lie that the appellants had made extra judicial confession before him about the incident. Thus, observing that there was no reason for these witnesses to falsely implicate the appellants and to let off the actual culprits, the High Court took the view that these witnesses were truthful and trustworthy. These are, then, other reasons recorded by the courts below in convicting the two appellants.

10. It is clear from the above that the conviction is primarily based on the depositions of PW-1 to PW-3. PW-1 is the person who stated that the two appellants had confessed their guilt before him and PW-2 and PW-3 are the eye witnesses who have identified the appellants.
11. Before us, it was argued with all vehemence by Mr. Shreepal Singh (who appeared for appellant Pargan Singh) and Shri Shiv Kumar Suri (who argued for the appellant Harminder Singh) that the entire prosecution story was a suspect in the manner in which it was woven and the circumstances in which it was created. Drawing our attention to the cross-examination of PW-2 Kamaljit Singh it was argued that he

had accepted that on 8th August, 2006, he had visited the Police Station and at that time, Police asked him to identify the accused persons in the Police Station. From statement of this witness, the submission raised by the learned counsel for the defence was that since PW-2 had already visited the Police Station on 06.08.2006 and the appellants faces were shown to him, there could not have any purpose of Test Identification Parade thereafter inasmuch as application for Test Identification Parade was moved before the Magistrate only on 8th August, 2006. It was further argued that even as per these witnesses, they had not seen the appellants before the said occurrence. It was thus pleaded that when they were totally unknown faces to PW-2 and PW-3 and the incident lasted for one and half minute, it was beyond comprehension that these two persons would remember the faces of the perpetrators. The learned counsel, thus, argued that the appellants were falsely framed in the said crime which was not committed by them.

12. Learned counsel for the respondent/State, on the other hand, made his submissions on the same lines on which conclusions are recorded by the Courts below. He argued that PW-1 and PW-2 were the eye-witnesses and out of them, PW-2 was even an injured eye-witness. Therefore, there was no reason to disbelieve their testimonies, which aspect was dealt with by the two courts below in

sufficient details and the finding of facts was recorded to the effect that their statements were worthy of credence. He further submitted that 90 seconds was more than sufficient time for these witnesses to observe the assailants namely the appellants herein and absorb them in their memory, more so, when these witnesses are attacked by the said appellants. He further submitted that the High Court has rightly pointed out that PW-1 before whom confession was made, was a reliable witness as he was an independent witness. The argument of the appellants that their faces were shown by the Police to PW-2 in the Police Station and that was the reason to refuse to participate in the Test Identification Parade, was also refuted with the submission that no such case was ever pleaded in the courts below.

13. We have considered the aforesaid submissions with reference to the record.
14. Let us first discuss the testimonies of PW-2 and PW-3 who are stated to be the eye-witnesses. Both of them have narrated the incident in unison and their version is almost the same. PW-2, who is the injured witness, has even in his cross-examination, narrated that deceased was attacked first by the accused and after firing the shot at him, the accused fired PW-2 when they were flee with the bag of money. The occurrence lasted for 1½ minutes. He has further stated that few

seconds after the receipt of injury, he became unconscious and regain consciousness after 4 days of receipt of the injury. The testimony of this witness is sought to be discredited by arguing that when the incident lasted for only 90 seconds, it was difficult to remember the faces of the accused persons after 7½ years of the incident, particularly in the absence of previous acquaintance.

15. Before entering upon the discussion on this aspect specific to this case, we would like to make some general observations on the theory of “memory”. Scientific understanding of how memory works is described by Geoffrey R. Loftus while commenting upon the judgment dated January 16, 2002 rendered in the case of **Javier Suarez Medina v. Janie Cockrell** by United States Court of Appeals, Fifth Circuit in Case No.01-10763. He has explained that a generally accepted theory of this process was first explicated in detail by Neisser (1967) and has been continually refined over the intervening quarter-century. The basic tenets of the theory are as follows: First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires *fragments* of information from the environment. These fragments are then *integrated* with other information from other sources. Examples of such sources are: information previously stored in memory that leads

to prior expectations about what will happen, and information-both information from external sources, and information generated internally in the form of inferences-that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not "cast in concrete." Rather, a memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event-revisits his or her memory of it-the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g., when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event. Memory researchers study how memory works using a variety of techniques. A common technique is to try to identify circumstances under which memory is inaccurate versus circumstances under which memory is accurate.

These efforts have revealed four major sets of circumstances under which memory tends to be inaccurate. The first two sets of circumstances involve what is happening at the time the to-be-remembered event is originally experienced, while the second two sets of circumstances involve things that happen after the event has ended. The first set of circumstances involves the state of the *environment* at the time the event is experienced. Examples of poor environmental conditions include poor lighting, obscured or interrupted vision, and long viewing distance. To the degree that environmental conditions are poor, there is relatively poor information on which to base an initial perception and the memory that it engenders to begin with. This will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted. The second set of circumstances involves the state of the *observer* at the time the event is experienced. Examples of suboptimal observer states include high stress, perceived or directly inflicted violence, viewing members of different races, and diverted attention. As with poor environmental factors, this will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted. The third set of circumstances involves what occurs during the *retention interval* that intervenes between the to-be-remembered

event and the time the person tries to remember aspects of the event. Examples of memory-distorting problems include a lengthy retention interval, which leads to forgetting, and inaccurate information learned by the person during the retention interval that can get incorporated into the person's memory for the original event. The fourth set of circumstances involves errors introduced at the time of *retrieval*, i.e., at the time the person is trying to remember what he or she experienced. Such problems include biased tests and leading questions. They can lead to a biased report of the person's memory and can also potentially change and bias the memory itself.

16. While discussing the present case, it is to be borne in mind that the manner in which the incident occurred and description thereof as narrated by PW-2, has not been questioned on the ground that narration should not be believed because of lapse of time. Instead, the appellants have joined issue on a very limited aspects viz. their identification on the ground that faces of the culprits could not have been remembered after 7½ years of the occurrence as memory fades by that time.
17. We are of the opinion that under the given circumstances and keeping in view the nature of incident, 90 seconds was too long a period which could enable the eye-witness (PW-2) to watch the accused persons and such a horrible experience would not be easily forgotten. Death

of a friend and near death experience by the witness himself would be etched in the memory for long. Therefore, faces of accused persons would not have been forgotten even after 7½ years.

18. Whether a particular event or the faces of a person could be remembered would depend upon the circumstances under which those faces are seen. One cannot lose sight of the fact that here is a case where the two accused persons are the assailants who had shot dead Varun Kumar, companion of PW-2. Thereafter, they had fired at PW-2 as well. For PW-2, it was clearly a horror scene resulting into traumatic experience. In a case like this, even when these two assailants had remained before his face for 90 seconds, these 90 seconds was sufficiently long time to observe them closely and the person encountering such an event would not forget those faces even for a life time, what to talk for 7½ years that have elapsed in between. We would like to support our hypothesis with an anecdote. Once a friend of Einstein, the renowned scientist who invented the theory of relativity, asked him to explain that theory. Mr. Newton explained it in a simple manner for common man's understanding as under: If a boy is sitting with his girlfriend/lover, he would feel the time fly away and 60 minutes would seem as 60 seconds. On the other hand, if a person puts his finger in a hot boiling water, 60 seconds would feel like 60 minutes. This is the theory of relativity.

19. In the present case, the circumstances on which the PW-2 seen the accused persons even for 90 seconds, that was sufficient to absorb their faces. In contrast, things would be different if it is a case of some large get together where two unknown persons have a chance meeting for 90 seconds. Therefore, we reject the argument of learned counsel for the appellants that PW-2 could not recollect the face of the appellants after 7½ years and thus, he was not telling the truth. We have to keep in mind that PW-2 suffered serious injury because of the shot fired at him by the assailants and seriousness of the injury has resulted into conviction under Section 307 IPC as well. The testimony of an injured witness requires a higher degree of credibility and there have to be strong reasons to describe the same. The appellants have not been able to demonstrate that the courts below unreasonably reached the conclusion as to the admissibility of the testimony of PW-2. Apart from a very feeble submission that this witness identified the appellants 7½ years after the incident, their arguments do not address the issue of whether testimony of PW-2 was false. We are, thus, not at all impressed by this argument of the learned counsel for the appellants. Except that PW-3 is not an injured eye-witness, he has also seen the occurrence and the reasons given in support of attaching credibility to the statement of PW-2 would apply in his case as well.

20. We also do not find any merit in the argument of the appellants *qua* their refusal to participate in the Test Identification Parade. The argument that PW-2 was shown the faces of the appellants in Police Station after their arrest is raised for the first time before us and that too at the hearing of the case. No reason was given as to why the appellants refused to participate in Test Identification Parade before the trial court at the time of refusal or even in their statements recorded under Section 313 of the Cr.P.C. It was not an argument raised at the time of hearing before the trial court or even before the High Court when we examine the matter in the aforesaid prospective, the argument advanced by the learned counsel for the appellants to discredit the testimony of PW-1, also pales into insignificance.
21. In any case, we are of the opinion that both the courts below have believed the statement of PW-1 who was the Pradhan of his Mohalla and not only a respectable person and had no axe to grind. We see no reason to differ with the conclusions of the two courts below accepting the statement of PW-1 to the effect that these two appellants had made extra-judicial confession before him. More so, we find that his version is corroborated by the two eye-witnesses namely PW-1 and PW-2. We are conscious of the fact that extra-judicial confession by its very nature is rather a weak type of evidence

and requires appreciation with great deal of care and caution. Where an extra-judicial confession is warranted by suspicious circumstances, its credibility becomes doubtful and it loses its importance. It is for this reason that Courts generally look for independent reliable corroboration before placing any reliance upon such a confession. (See **Balwinder Singh v. State of Punjab**, (1995) Supp (4) SCC 259, which was cited by the counsel for the appellants). However, we find that his statement is corroborated not by any circumstantial evidence but cast iron evidence in the form of two eye-witnesses. Furthermore, even if for the sake of arguments, we discard the testimony of PW-1, the evidence of two eye-witnesses who are found to be credible, is sufficient to uphold the conviction of the appellants.

22. For the aforesaid reasons, we are of the opinion that these appeals are bereft of any merit and are accordingly dismissed.

JUDGMENT

.....J.
(J. Chelameswar)

.....J.
(A.K. Sikri)

New Delhi;
September 05, 2014.