

PETITIONER:
SURJIT SINGH ALIAS GURMIT SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 28/04/1992

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
JEEVAN REDDY, B.P. (J)

CITATION:
1992 AIR 1389 1992 SCR (2) 786
1993 SCC Supl. (1) 208 JT 1992 (4) 131
1992 SCALE (1) 1020

ACT:

Indian Penal Code, 1860:

Sections 34, 302, 326, 449-Accused setting up plea of alibi-Burden of proof-Misdescriptions/omissions in FIR-Effect of-Eye-witnesses account-Taking of-High Court setting aside acquittal and recording conviction-Validity of.

HEADNOTE:

The appellant, who was in military service, his two brothers and two others were charged with the offences of criminal trespass, murdering the Sarpanch of the Village Panchayat and causing grievous hurts to PW2. Two more accused were charged for having burnt the wheat bundles belonging to the deceased. The Trial Court acquitted the appellant and two others extending to them the benefit of doubt. Appellant's two brothers were convicted for offences under Sections 149, 302/34 IPC and 326/34 IPC. The remaining two accused were convicted for an offence under section 435 IPC.

On appeal, the High Court acquitted the two accused convicted under Section 435 IPC and convicted the appellant and his two brothers for offences under sections 449, 302/34 IPC and 326/34 IPC. The appellant has preferred the present appeal, against his conviction and sentence of life imprisonment as also the fine imposed on him.

The appellant contended that he was falsely implicated in the case; that there was confusion about the names of the accused; that he left the village in the evening at 4.00 p.m. prior to the alleged commission of offence which took place at about 10.30 p.m. in the night. Thus the appellant set up a plea of alibi, stating that he left the village much prior to the alleged offence in order to join his unit in the Military he was serving.

Dismissing the appeal, this Courts,

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HELD : 1. The evidence of the defence witnesses did not even remotely touch the alibi of the appellant. With regard to the confusion about the name, the High Court observed that it would be uncommon and unreasonable for two brothers to be having the same name. PW2 had deposed that the appellant had read only up to 4th or 5th class whereas his broth-

er was a Matriculate and that when the appellant sought recruitment in the Army he gave his brother's name and utilised the matriculation certificate of his brother. He also deposed that later when papers for verification had come to the village the appellant had approached the deceased that he should help him by telling the Enquiry Officer that he was a Matriculate. This evidence was totally overlooked by the Trial Judge. The High Court used this evidence against the appellant. The appellant went with the assumed name of his brother for the reasons explained by the prosecution in the statement of PW 2. It is noticeable that in the appeal against his acquittal, service of the appellant was effected in the name of S alias G through the Military authorities. The High Court observed that this was suggestive that in the force he was known as S. The appellant having taken up a positive plea of alibi, he could prove it from his travel papers which must have been checked and suitably endorsed upon by the railway authorities and/or the Army authorities on his joining his unit. The Appellant miserably failed to discharge that burden. [792 A-F]

2. The misdescriptions/omissions in the FIR about the number of shots fired and the absence of injuries on PW2 or the appellant being not described as a military man is of lesser importance. First Information Report is not an encyclopaedia of the entire case and is even not a substantive piece of evidence. It has value, no doubt, but only for the purpose of corroborating or contradicting the maker. Here the maker was a young woman who had lost her husband before her very eyes. The omission or misdescription of these details in the FIR which was recorded most promptly, within three hours of the occurrence, would not tell on the prosecution case or the statements of the eye-witnesses with regard to the participation of the appellant in the crime. He had taken a leading and prominent part in spearheading and committing it. The High Court was right in convicting the appellant on giving cogent reasons to demolish the reasoning of the Trial Judge and adding thereto reasons of its own.

[792 F; 793 A, B]

3. Had the presence of the two witnesses, that is, the wife and nephew

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of the deceased at the scene of the occurrence been doubted, the recovery of the weapon of offence and its connection with the empty shells recovered at the spot would have assumed some significance. When the two eye-witnesses are natural witnesses of the crime, one being the wife of the deceased, and the other being the nephew of the deceased who had suffered grievous injuries in the occurrence and was thus a stamped witness, not much importance is to be attached to this aspect of the case. [793 D, E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 809 of 1981.

From the Judgment and Order dated 26.3.1981 of the Punjab and Haryana High Court in Criminal Appeal No. 1289 of 1979.

A.P. Mohanty and S.K. Sabharwal for the Appellant.
Mrs. Amita Gupta and R.S. Suri for the Respondents.

The Judgment of the Court was delivered by

PUNCHHI, J. This appeal is directed against the judgment and order dated 26.3.1981 of the High Court of Punjab and

Haryana in Criminal Appeal No. 1289 of 1979 whereby the acquittal of the appellant was set aside and his conviction recorded under Section 302/34 IPC for which he was sentenced to life imprisonment and to pay a fine of Rs. 2000 in default whereof further rigorous imprisonment for six months. Besides, conviction was also recorded under Section 449 IPC and under Section 326/34 IPC for which he was sentenced to rigorous imprisonment for four years and three years, respectively, and to pay fine of Rs. 500 and 200 respectively with default sentences. The sentences were ordered to run concurrently and the entire fine was ordered to be paid to Jaswinder Kaur, the widow of the deceased.

The appellant was in military service. On the day of occurrence, that is, on 13.5.78 he was in his village, Tut Sher Singh. The prosecution case is that on that day at 10.30 p.m. he along with his brothers Gurmit Singh and Mohan Singh and two others Sukhraj Pal Singh alias Laddi and Kulwant Singh alias Kanti of another village scaled over the wall of the house of Mohinder Singh, deceased, and climbed to the roof where the deceased and his wife were lying on their cots. The deceased was an important man of the village being the Sarpanch of the Village Panchayat as well as being a Director of Cooperative Bank, Jullundur. The appellant's

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brothers and two others were said to be idle loafers, jealous of the position of the deceased. The deceased was an eyesore for the accused persons, for off and on he had prevented them from indulging in their mischievous activities. At the time of the trespass, the appellant was said to be armed with a pistol, his brothers armed with Kirpans and their two companion with gandasis. They jointly raised voices towards the deceased daring him to run away if he could as he was not to be left alive that day. The deceased got up from his cot and stood on his legs. Immediately the appellant fired two shots from his pistol in quick succession which hit the deceased. The two brothers and the two companion gave kirpan and gandasa injuries to the deceased with their respective weapons. Jaswinder Kaur PW 5, the widow of the deceased, who dared not come forward by the instinct of self-preservation, saw the occurrence and raised alarm. Thereupon the nephew of the deceased Taljil Singh PW 2 and mother of the deceased Kartar Kaur came on the roof. Taljit Singh PW 2 was also given injuries by the accused persons other than the appellant. After Taljit Singh and Kartar Kaur had come to the roof the appellant along with his companion left the scene of the occurrence. While the deceased was being taken care of by his family members, they also saw in a closeby field their wheat bundles valued about Rs.20,000 to 21,000 burning. In this wheat burning two others that is Jagdish Nahar and Mohinder Ram from two different villages Mudh and kakar Kalan, respectively, unconnected with the other 5 accused, were accused of having committed the mischief to burning wheat at the instance of the accused persons.

After the occurrence, the deceased was taken on a tractor trolley to civil hospital, Shahkot, but he was found dead by the time he reached there. Thereupon Jaswinder kaur PW5 accompanied by her father-in-law Lal Singh came to the police station Shahkot and gave First Information Report at 1.30 a.m. the following day. Thereupon the investigation, as was expected, commenced and after completion thereof the appellant and six others afore-referred to were sent for trial before the Additional Sessions judge, Jullundur.

The learned Trial Judge acquitted the appellant extending to him the benefit of doubt. The learned Trial Judge convicted the appellant's two brothers, namely, Gurmit

Singh and Mohan Singh for offences under Section 449 IPC for committing house trespass, 302/34 IPC for committing the murder of Mohinder Singh deceased and under Section 326/34 IPC for causing grievous hurts to Taljit Singh PW 2. For these charges he acquitted

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Laddi and Kanti accused. He convicted Mohinder Ram and Jagdish Nahar accused for offence under Section 435 IPC for burning the wheat bundles belonging to the deceased. Suitable sentences were awarded to these two sets of accused. Whereas the four convicts preferred appeals to the High Court of Punjab and Haryana, the state of Punjab correspondingly filed appeals against the acquitted ones including the appellant. The High Court on reappraisal of the evidence allowed the state appeal against the appellant maintaining the conviction of his brothers Gurmit Singh and Mohan Singh. The High Court also maintained the acquittal of Laddi and Kanti, co-accused. The High court acquitted, however, Jagdish Nahar and Mohinder Ram of the charges under Section 435 IPC. The end result was that the appellant and his two brothers stood convicted for offences under Section 449, 302/34 IPC and 326/34 IPC. It is the appeal of the appellant alone which is before us.

The case of appellant at the trial was that he had no cause to share the grudge of his brothers and other accused vis-a-vis Mohinder Singh deceased. He pleaded that he was falsely implicated and was innocent. The appellant's brother Gurmit Singh pleaded that he had no brother with the name of Surjit Singh. The appellant too pleaded that he was not Surjit Singh but was Gurmit Singh. Keeping that apart he set upon alibi and made the following statement under Section 313 Cr. P.C.:-

"I was on leave from 8.5.78 to 16.5.78. I left the village at 4 p.m. on 13.5.78. I boarded Janta Express train from Jullundur for old Delhi and reached there in the morning time. From there, I went to New Delhi and I boarded Assam Mail which left New Delhi at about 9.30 a.m. I reached Dinapur on 16.5.78 at 12 noon. From there I went by road to my unit which is at a distance of 100 k.m. and reaching there in the evening my presence was marked there in the Military records. As my leave was to expire on 16.5.78, I could not stay in the village and could not have reached my unit in time, unless I had boarded the Assam Mail, which is the only train for that side and in order to catch Assam Mail I was bound to catch Janta Express from Jullundur on 13.5.78 in the evening. I am in the Army for the last 8-9 years and visit my village, on rare occasions only for about a month during the entire year. I do not mix up in the village party. As I was in the village on day preceding the

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night of occurrence, I was falsely implicated in this case. I am never known as Surjit Singh and my name since my childhood is Gurmit Singh".

The Trial Judge as also the High Court had placed implicit reliance on the statements of Jaswinder Kaur and Taljit Singh PWs. The learned Trial Judge acquitted the appellant on the following grounds:

- (i) In the First Information Report Ex. PD Surjit Singh appellant is not described as a military man;
- (ii) The appellant had no specific grudge or enmity with the deceased as he was living outside the village;

(iii) There was confusion about the names. The investigation and the appellant had at one time or the other named him as Gurmit Singh.

(iv) The prosecution evidence disclosed that there were three fire shots but Jaswinder kaur PW 5 in FIR statement Ex.PD had not mentioned about the third fire;

(v) In the FIR hurts of Taljit Singh are not mentioned.

(vi) The recovery of the crime pistol and cartridges had been effected from Gurmit Singh, the brother of the appellant and not from the appellant.

On these particulars the Trial Judge held that there was great doubt about the participation of the appellant in the occurrence and held him entitled to the benefit of doubt.

The High Court turned down all the grounds. The High court termed the reasoning given by the Trial Judge as implausible. What weighed with the High Court was the presence of Surjit Singh in the village up to 13.5.78 till 4.00 p.m., whereafter he allegedly commenced his journey to join his unit. The High Court viewed that it was for the appellant to prove that he left the village at 4.00 p.m. on May 13, 1978 so as to be absent at the time of the occurrence and then having reached his unit on May 16, 1978. The appellant had cited one Naib Subedar Waryam Singh as defence witness but gave him up. The two defence witness cited by

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the defence were merely formal with regard to the sending of certain complaints in the office of Senior Superintendent of Police, Jullundur. The evidence of these defence witnesses did not even remotely touch the alibi of the appellant. With regard to the confusion about the name, the High Court observed that it would be uncommon and unreasonable for two brothers to be having the same name. The appellant does have a brother named as Gurmit Singh and yet strangely the appellant assumes his brother's name to be Gurmit Singh. Taljit Singh PW 2 had deposed that the appellant has read only up to 4th or 5th class whereas Gurmit Singh was a Matriculate and that when the appellant sought recruitment in the Army he gave his name as Gurmit Singh and utilised the matriculation certificate of his brother Gurmit Singh. He also deposed that later when papers for verification had come to the village the appellant had approached Mohinder Singh deceased that he should help him by telling the Enquiry Officer that his name was Gurmit Singh and he was a matriculate. This evidence was totally overlooked by the Trial Judge for reasons we cannot understand. The High Court used this evidence against the appellant. The High Court had gone on to observe, and in over view rightly, that the appellant was known as Surjit Singh and was known as such even for the purpose of Army records. He went with the assumed name Gurmit Singh, for the reasons explained by the prosecution in the statement of Taljit Singh PW 2. It is noticeable that in the appeal against his acquittal, service of the appellant was effected in the name of Surjit Singh alias Gurmit Singh through the Military authorities. The High Court observed that this particular was suggestive that in the force as well he was known as Surjit Singh. The appellant having taken up a positive plea of alibi, he could prove it from his travel papers which have been checked and suitably endorsed upon by the railway authorities and/or the Army authorities on his joining his unit. The appellant miserably failed to discharge that burden. In this situation the

aforesaid misdescription/ omissions in the FIR about the number of shots fired and the absence of Taljit Singh's injuries or the appellant being not described as a military man become of lesser importance. First Information Report is not an encyclopedia of the entire case and is even not a substantive piece of evidence. It has value, no doubt, but only for the purpose of corroborating or contradicting the maker. Here the maker was a young woman who had lost her husband before her very eyes. The omission or misdescription of

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these details in the FIR which was recorded most promptly, within three hours of the occurrence, would not tell on the prosecution case or the statements of the eye-witnesses with regard to the participation of the appellant in the crime. He had taken a leading and prominent part in spearheading and committing it. For these reasons, we are of the view that the High Court was right in convicting the appellant on giving cogent reasons to demolish the reasoning of the Trial Judge and adding thereto reasons of its own.

To be fair to the learned counsel for the appellant, we may mention that he ventured to argue that the evidence regarding the matching of the crime bullet shells with the pistol recovered was not convincing, more so when the .303 pistol, the alleged crime weapon, was recovered from Gurmit Singh, co-accused. It is noteworthy that Gurmit Singh, co-accused, stands convicted under the Arms Act for being in possession of that pistol. This aspect of the case cannot be a substitute to the eye-witness account or the plea taken by the appellant. Had the presence of the two witnesses, that is, Jaswinder kaur PW-5 and Taljit Singh PW-2 at the scene of the occurrence been doubted, the recovery of the weapon of offence and its connection with the empty shells recovered at the spot would have assumed some significance. When the two eye-witness are natural witnesses of the crime, one being the young wife who would normally be in the company of the husband at 10.30 p.m. on a summer night and the other the nephew of the deceased who had suffered greivous injuries in the occurrence and was thus a stamped witness, not much importance is to be attached to this aspect of the case. The venture is futile.

The end result is that this appeal fails and is hereby dismissed.

G.N.

Appeal dismissed

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