

Non-reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1178 of 2008

Gurmit Singh and another

.... Appellants

Versus

State of Punjab

... Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. This appeal by special leave arises out of the judgment and order dated 08.01.2007 passed by the High Court of Punjab and Haryana in Criminal Appeal No.503-DB of 1997 affirming the conviction and sentence of the appellants under Section 302 read with Section 34 of IPC.

2. Appellant No.1 Gurmit Singh was married to Charanjit Kaur. However because of some differences, she was staying with her father Kulbir Singh, who was running a shop for sale of marble and chips at village Loharan in Distt. Jalandhar. On 06.02.1996 at about 4.00 pm, Appellant No.1 accompanied by his brother Harjinder Singh, i.e. Appellant No.2 allegedly came on a scooter to the shop of Kulbir Singh and asked him to permit Charanjit Kaur to stay with Appellant No.1. According to the

prosecution, Kulbir Singh asked both the appellants to sit with him so that the matter could be settled. However Appellant No.1 took out a dagger and inflicted a blow on the left side of Kulbir Singh, followed by Appellant No.2 inflicting knife blows on the right side and the neck of Kulbir Singh. Surinder Kaur wife of Kulbir Singh raised hue and cry but both the appellants fled away towards Nakodar. The incident was witnessed by Surinder Kaur and her other daughter Gurpreet Kaur. With the help of Gurdial Singh and Devinder Singh, Surinder Kaur managed to shift Kulbir Singh to Satnam Singh Memorial Charitable Hospital at Malko Tarar, where he was given first aid and then referred to Military Hospital, Jalandhar.

3. S.I. Joginder Singh, went to Satnam Singh Memorial Charitable Hospital upon coming to know about Kulbir Singh having sustained injuries but by that time he was referred to Military Hospital, Jalandhar. He therefore reached Military Hospital and found Surinder Kaur weeping. Kulbir Singh succumbed to his injuries at 9.22 pm and the statement of Surinder Kaur was recorded at 10.50 pm, pursuant to which vide DDR No.25/26 at 11.40 pm crime was registered with Police Station, Lambra, Distt. Jalandhar against the appellants under Sections 302/34 IPC. As regards actual incident, her reporting was as under:

“..... My husband asked Gurmit Singh to sit there and to have a talk (to settle the matter) but my son-in-law at once whipped out a dagger from the dub (fold) of his pant worn by him and gave blow with the same on the left flank of my husband. His brother Harjinder Singh gave a blow with the knife held by him to my husband which hit him on his right flank, Harjinder Singh gave the third blow with the knife held by him to my husband which hit on the left side of his neck. I raised an alarm of “Mar Ditta, Marditta.” (Killed, Killed) in order to save my husband. In the meantime, my younger daughter Gurpreet Kaur also came to the shop. Both Gurmit Singh and Harjinder Singh left the spot on their scooter towards Nakodar taking their sharp-edged weapons along with them. The whole incident was also witnessed by my daughter Gurpreet Kaur.”

4. After sending ruqa to the police station, Sub-Inspector Joginder Pal prepared the inquest report on the dead body of the deceased. On 07.02.1996, he prepared rough site plan and also lifted earth smeared with blood from the spot. The post mortem examination was conducted on 07.02.1996 at 12.40 pm by Dr. Pushpinder Kaur who found following injuries on the body of Kulbir Singh:

- “1. A stab wound 2 cms x ½ cm, 9 cms above and lateral to the inner border of the left clavicle. The probe went upto 7 cm.
- 2 A stab wound 2.5 cm x 1 cm; 23 cms lateral to the umbilicus on the right side. Blood was oozing out.
3. A stab wound 2.5 cms x 1 cm on the left side 20 cms below and lateral to the left nipple and 29 cms from mid-line. Blood was oozing out the wound.”

The chest cavity was found full of blood. Left lung and pleura were injured. The abdominal cavity was full of blood. The peritornium and right side of liver were injured. The cause of death was shock and hemorrhage due to injuries which were sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem in nature.

5. Sub-Inspector Joginder Pal arrested both the accused on 08.02.1996 and got recovered blood-stained dagger and knife on 10.02.1996, in pursuance of their statements Exhibit PQ and PR under Section 27 of the Evidence Act and took the same into possession vide memo Exhibit PQ/2 and Exhibit PR/2. After obtaining necessary sanction for prosecution of accused Harjinder Singh, a Constable in the Punjab Police and after completion of the investigation, a charge sheet was submitted against them.

6. During the trial, the prosecution examined nine witnesses. Dr. Pushpinder Kaur was examined as PW1, while eye-witness account was unfolded through Surinder Kaur and Gurpreet Kaur, examined as PW Nos. 2 and 3 respectively. Constable Sukhdev Singh (PW4) and Avtar Singh (PW8) were formal witnesses who deposed by way of affidavits Ext. PG and PT respectively. Capt. Miss Minu Sabharwal (PW5) proved the death report of deceased Kulbir Singh. Sub-Inspector Joginder Pal (PW6) and Assistant

Sub-Inspector Hans Raj (PW7) were the investigating officers. Milkha Singh Pardesi (PW9) identified the signature of M.S. Chahal, the then Principal Secretary, Home Affairs and Justice, Punjab on the sanction letter. After tendering in evidence the affidavits of head constables Gian Singh Ext. PH, constable Nasib Chand Ext. PJ and the report of the Forensic Science Laboratory Ext. PX, the prosecution closed its case.

7. The defence of both the appellants was of false implication. Appellant Gurmit Singh in his statement under Section 313 of the Code of Criminal Procedure stated that the family of the complainant wanted him to stay as *Ghar Jamaai* which he had refused and the same led to a grudge being nursed against him. Appellant Harjinder Singh submitted that he was posted as a gunman with one Varinder Sharma, Councillor and that he was on duty at the relevant time. In support of their defence, the appellants examined Varinder Sharma, Councillor, Municipal Corporation, Jalandhar (DW1), Constable Atma Singh (DW2), MHC Kailash Chander (DW3), Dr. Gur Iqbal Singh (DW4) and Additional MHC Sukhdev Singh (DW5). By examining DW4 it was sought to be established that the left arm of Appellant No.1 was in plaster while his right palm was having stitches; the injuries being at least ten days old on the date of the incident.

8. After considering the material on record, the trial court by its judgment and order dated 28.05.1997 found that the case of the prosecution was fully established. Relying on the eye-witness account, as supported and corroborated by the medical evidence on record, as well as the recoveries of the weapons in question, the trial court found the appellants guilty under Section 302 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for life and to pay fine of Rs.1000/- each, in default whereof to undergo further rigorous imprisonment for three months. Both the appellants carried the matter further by filing Criminal Appeal No.503-DB of 1997 in the High Court. The High Court did not find any merit and dismissed the appeal. The High Court also dismissed the Criminal Revision No.862 of 1997 which was preferred by Surinder Kaur for enhancement of sentence.

9. In this appeal by special leave challenging the correctness of the decision of the High Court, Mr. K.T.S. Tulsi, learned Senior Advocate appearing for the appellants submitted inter alia:

(i) The incident in question allegedly happened around 4.00 pm but the FIR was registered at 11.40 pm and reached the Magistrate next day in the morning at 6.00 am. The delay on both counts was completely unexplained.

(ii) The Hospital record of Military Hospital, Jalandhar disclosed that Kulbir Singh was not admitted by Surinder Kaur. This established the absence of Surinder Kaur at the time the incident had happened.

(iii) The presence of both the eye-witnesses was extremely doubtful.

(iv) Apart from these two eye-witnesses, nobody else was examined though Gurdial Singh and Devinder Singh had allegedly removed Kulbir Singh to the hospital.

(v) The left arm of Appellant No.1 was in plaster while the other palm was having stitches as found by the jail doctor, soon after their arrest.

Both these injuries being at least 8 to 10 days old, it was impossible that Appellant No.1 could have dealt the blow as alleged.

(vi) The other appellant was on duty as stated by DW1 Varinder Sharma.

10. Mr. Jayant K. Sud, learned Additional Advocate General appearing for the State submitted that the reporting by Surinder Kaur was quite prompt. In his submission, the physical condition of Kulbir Singh required immediate medical attention and as such Surinder Kaur could not be expected to leave her husband and go to police station to lodge a report. He further submitted that the eye-witness account was completely corroborated by the medical

evidence on record as well as recoveries of the weapons pursuant to disclosure statements made by both the accused.

11. We have gone through the record and considered the rival submissions. The distance between the place where Kulbir Singh was assaulted and the first hospital where he was taken, was about 11 KM. There he was given medical attention and then referred to Military Hospital, Jalandhar. Considering these facts, the lodging of the FIR in the present case cannot be called to have been delayed unnecessarily. In our view, the reporting was without any delay or deliberation and sets out true account of the incident. The assertions in the reporting are well supported and corroborated by the post-mortem conducted the next day. The injuries so found in the post-mortem are possible by the weapons recovered pursuant to the disclosure statements of the accused. The eyewitness account on record through the depositions of PW 2 Surinder Kaur and PW 3 Gurpreet Kaur is cogent, consistent and trustworthy. Though DW1 Varinder Sharma stated that Appellant No.2 was attached to him as a gunman, nothing was placed on record whether at the relevant time Appellant No.2 was on duty. Furthermore neither the doctor who had put the stitches on the palm of Appellant No.1 was examined, nor was there any other medical evidence on record suggesting that it was impossible for Appellant No.2 to even hold the

dagger as alleged. In any case out of three blows suffered by the deceased Kulbir Singh only one was attributed to Appellant No.1 while the other two were dealt by Appellant No.2. The non-examination of Gurdial Singh and Devinder Singh also does not fatally affect the case of the prosecution, as they were not eye-witnesses but had merely helped Surinder Kaur in taking her husband to the hospitals.

12. We do not find any infirmity in the view taken by the High Court. We, therefore, affirm the judgment of conviction and sentence as recorded against the appellants and dismiss the present appeal. The appellants shall serve out the sentence as awarded to them.

.....J.
(Fakkir Mohamed Ibrahim Kalifulla)

.....J.
(Uday Umesh Lalit)

New Delhi,
September 30, 2015