

CASE NO.:
Appeal (crl.) 465 of 2006

PETITIONER:
Ram Pal & Anr.

RESPONDENT:
State of U.P.

DATE OF JUDGMENT: 14/12/2007

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

HARJIT SINGH BEDI, J.

1. This appeal by special leave arises out of the following facts.

2. One Lal Singh had three sons, Hari Singh, Jaswant Singh and Birbal Singh. Brij Pal Singh PW 1, Ved Pal and Gajender Singh are the sons of Birbal Singh whereas Suraj Bhan, Netar Pal and Satbir Singh are the sons of Jaswant Singh and Ram Pal and Ram Saran, the accused are the sons of Hari Singh. Hari Singh predeceased his father Lal Singh whereafter the joint land holding was partitioned by Lal Singh between his sons Jaswant Singh and Birbal Singh and the sons of Hari Singh deceased in equal shares retaining 18 bighas for himself. About 2-3 years prior to the incident Ram Pal Singh staked a claim that the tube well on the land was his exclusive property on the plea that the electricity connection was in his father's name. Several civil and criminal litigations followed on account of this dispute and certain other matters with the result that the relations between the accused and Birbal Singh degenerated to an all time low and about two days prior to the occurrence, an altercation had taken place between Birbal Singh and his son Brij Pal Singh on the one side and the accused on the other, relating to the use of the tubewell water. At about 8.30 A.M. on 20th June 1991, Birbal Singh accompanied by his brother Jaswant Singh and his son Brij Pal Singh left the village to go to Muzaffarnagar for purchase of house-hold articles when they were accosted by the two accused, Ram Pal carrying his licensed DBBL .12 bore shotgun, and Ram Saran armed with a country made pistol and the accused fired a shot each in quick succession hitting Birbal Singh killing him instantaneously Jaswant Singh and Brij Pal Singh saved themselves by lying prone on the ground. The incident was also witnessed by several other persons who were passing by amongst them being Harvir Singh PW 2, Tejvir Singh PW 3, Amar Singh and Matroo Singh and on their challenge the assailants ran away. Brij Pal Singh PW 1 thereafter rushed to the village, wrote out a report and then went to police station Tetawi six kilometers away from the place of incident in a tractor and handed over the written complaint at 10.30 a.m. leading to the registration of the FIR. SHO Brij Mohan Mishra accompanied by SI Rajinder Singh then reached the place of occurrence whereafter the SI recorded the inquest proceedings relating to the murder. He also picked up a spent cartridge case and wads of a shotgun cartridge and dispatched the dead body for the post mortem examination. He also conducted a

search of the house of Ram Pal and Ram Saran on 21st June, 1981 and recovered a DBBL gun and 10 live cartridges licensed to the former therefrom. The weapon and the cartridge case were sent to the Forensic Laboratory and its report revealed that the cartridge had been fired from the right barrel of the gun in question. On the completion of investigation, the accused were charged for offences punishable under Sections 302/149 I.P.C and they pleaded not guilty and claimed trial.

3. The Trial Court held that though the relations between the parties were strained on account of several factors yet these differences did not constitute a sufficient reason for the murder of Birbal, the uncle of the accused, and on the other hand Brij Pal Singh PW 1 had the motive to implicate the accused in a false case and as such it was appropriate that the eye witness account be examined minutely. The Trial Court then examined the evidence of the eye witnesses PW1 Brij Pal Singh, PW 2 Harvir Singh and PW 3 Tejvir Singh and taking up of the case of PW 1 Brij Pal Singh first, observed that he was the most important witness being the son of the deceased but his testimony was not trustworthy as he and his brother had picked up a woman in the year 1979 for which a criminal case was pending and that another case relating to the murder of one Nirmal was also pending against him, his brother and their father. The Court also observed that Brij Pal Singh had attempted to cheat his brother Ved Pal and Gajender Singh and his relatives of the 18 bighas of land left by his grand father Lal Singh and was therefore a man of such abysmally low character and mentality that he could not be trusted. The Court then examined the statement of Harvir Singh and found that he was chance and stock witness and as he had earlier been an eye witness in the case of the murder of one Pradhan. The Trial Court (on this aspect) observed thus:

\023It is a very rare chance (sic) a man to be witness of two murders in his life time. In that case Id. District & Sessions Judge did not relied (sic) upon the testimony of Harbir and the accused persons were discharged. The photocopy of the judgment dated 16.1.1973 passed by Id. District & Sessions Judge is available on record. As it is stated above that Harbir is very close to the complainant, deceased and other witnesses. Harbir stood surety against the complainant in the case of girl kidnapping. He stood surety against Vedpal, brother of the complainant and also stood surety against Jaswant, uncle of the complainant in a case under Section 107/116. In brief whenever either complainant or his family members were in need of surety, Harbir provided his services. Such a person who has already been a witness in a murder case and he was not relied upon and who is a permanent surety for the party of the complainant could not be relied upon easily\024.

4. The Trial Court then examined the statement of Tejvir Singh and observed that he too had been closely associated with Brij Pal as he had been in college with him in Muzaffarnagar and that when Tejvir\022s uncle Karan Singh had been murdered; Jaswant Singh had been one of the witnesses and that there was no reason whatsoever as to why Tejvir Singh should have been present in that area at the relevant

time as he had no field or land in that direction. The court then examined the plausibility of the prosecution story and held that Birbal Singh who was statedly on his way to Muzaffarnagar for purposes of shopping for household goods was a story which could not be believed as he had not been wearing shoes or a cap on his head or a vest under his shirt or an underwear under his dhoti and though there was a tonga service available from the village to Muzaffarnagar he along with the others had still chosen to walk to that place. The Trial Court accordingly concluded that it appeared that the deceased had been shot while easing himself and the body had thereafter been taken out by the murderer(s) and put on the boundary of the field. The Court also examined the Forensic evidence and opined that there was no explanation for the presence of an empty cartridge at the spot as only one shot had been fired from each of the two weapons and there was no need for a re-loading of the weapons in that situation. The Trial Court also observed that the time of recovery of weapon being 26 hours after the incident, the Inspector's note about the smell of the gun powder from the right barrel of the gun could not be believed as the smell could not have been present after such a long time. Having held as above the Trial Court acquitted the accused.

5. The State thereafter preferred an appeal before the Allahabad High Court. The Division Bench Court reversed the findings and convicted the accused under Sections 302/34 I.P.C and sentenced each of them to imprisonment for life. It is in these circumstances that the present appeal is before us by way of special leave.

6. We have heard learned counsel for the parties very carefully. We are conscious of the oft repeated principle that the High Court should be slow to interfere on a finding of acquittal recorded by the trial court and if the view taken by that Court is possible on the evidence, the High Court should not set it aside on the premise that it was of a different opinion though it is permissible for it to re-evaluate the entire evidence. It is in this background that we must examine the findings of the High Court in the light of the arguments which have been addressed before us by the learned counsel for the parties.

7. Concededly, the facts of the case show that the parties are very closely related and on account of the dispute relating to the tubewell and the 18 bighas of land which had been left by Lal Singh, the relations between them were extremely strained. The High Court accordingly re-assessed the ocular evidence and held as under:

"However the trial judge has doubted the testimony of all the three eye witnesses on one ground or the other for no substantial reasons. He doubted the testimony of PW 1 Brij Pal Singh mainly on threefold grounds (i) he was involved in an abduction case of a lady and that case was still pending at that time, (ii) he along with his father and brothers assaulted Nirmal and that case was also pending against him at the time of the occurrence and (iii) he along with his cousin Satvir son of his Tau Jaswant Singh fabricated the agreement of sale regarding 18 bighas land of his grand father Lal Singh debarring his real brothers, cousins and sons of his deceased uncle Hari Singh from that property observing that he was a man of such character and mentality that he

could do anything for his self interest. The trial judge also observed that inspite of the fact that civil suit of perpetual injunction filed by Ram Pal was pending against him in the civil court he used to irrigate his land from the tubewell owned by Ram Pal and his brothers forcibly. We have given our anxious consideration to all these grounds and we are of the view that neither of these grounds aforesaid got any substance so as to render this witness Brij Pal Singh an unreliable person. If a person was involved in an abduction case it can not be said that in fact he was guilty of that offence. There may be so many reasons for involving a person in a case falsely. Further, admittedly Brij Pal Singh alongwith his father and brothers were being prosecuted for assaulting Nirmal but admittedly there was a cross-case also against Nirmal and others initiated at the instance of Birbal Singh, the deceased against Mahabir, father of Nirmal and others. Regarding the alleged agreement of sale, without being adjudicated upon by a court of law it can not be said that it was fabricated one. Admittedly those proceedings ended in compromise and after the compromise 18 bighas of land owned by Lal Singh was mutated in the names of all his legal representatives. No doubt, Brij Pal Singh and Jaswant Singh mentioned in the alleged compromise that they had not given Rs. 40,000.00 as part payment to Lal Singh; but in the family there are so many matters and on what terms the compromise was reached between the parties are not known. Hence any adverse inference can not be drawn therefrom as PW 1 Brij Pal Singh stated that whatever he was directed to write in the compromise he got the same mentioned therein for getting the objections rejected. Regarding irrigation of their land by Brij Pal Singh and his brother from the tubewell, it appears that the field in which the tubewell was situate fell to the share of Ram Pal and his brothers but that tubewell was joint family property as it was installed in the life time of Hari Singh and Lal Singh before consolidation and partition in the family and therefore Brij Pal Singh and his father Birbal claimed their right for irrigation of their land adjoining thereto from that tubewell. Hence for the above, it can not be said that the character of Brij Pal Singh was such that he could not be said to be a responsible person whose sworn testimony could not be relied upon.

The trial judge further mentioned that PW 2 Harvir Singh and PW 3 Tejvir Singh were their own persons as whenever Brij Pal Singh or any member of his family or

the family of Jaswant Singh got involved in any case Harvir Singh and Tejvir Singh stood surety for them. We have considered these facts carefully and cautiously and we are of the view that there is nothing wrong because if a person gets involved in some criminal proceedings and sureties have to be furnished for his bail the persons acquainted with him only would stand surety for him. It is a matter of common experience and knowledge that in villages generally there are party factions due to one reason or the other and the persons acquainted with each other share the problems of each other mutually. This is the way rural life goes on.

The trial judge also doubted the credibility of PW 2 Harvir Singh as admittedly he was an eye witness in the murder case of the village pradhan who was murdered in the year 1974 and again he appeared as an eye witness in the instant murder case. It may be just by chance that a person resident of the same village witnesses two murders. As a man of conscience and character he should appear as a witness in the murder case if he witnessed the murder or was acquainted with any fact relating thereto. If a murder case in which he had appeared as a witness ended in acquittal and he appeared as an eye witness after 6-7 years in another murder case it would not be justified to draw a presumption that he is not a reliable person and his testimony should be disbelieved only for that reason.

The trial judge disbelieved the testimony of PW 3 Tejvir Singh on the ground that admittedly Satvir Singh son of Jaswant Singh and this witness Tejvir Singh studied together in S.D.L College Muzaffar Nagar and they were class fellows in B.A. and Brij Pal Singh also used to study in that very college. He also observed that Karan Singh, uncle of Tejvir Singh (PW 3) had quarrel with one Bhim and Pratap and in that case Jaswant Singh father of Satvir Singh stood as a witness in favour of Karan Singh and therefore Tejvir Singh appeared as a witness in that case against Ram Pal and Ram Saran prosecuted for the murder of Birbal Singh, brother of Jaswant Singh. In our view we can not go by these considerations in believing or disbelieving the testimony of a witness. By these facts we conclude only this much that this witness should be treated as a partisan witness whose testimony has to be scrutinized with care and caution.

The trial judge also doubted the presence of PW 3 Tejvir Singh at the scene of occurrence as he stated that at that time he was going to the field situate at a short distance from the scene of occurrence for cutting fodder as he had taken that field from Nain Singh on batai whereas DW 1 Nain Singh stated that he had never given that field to Tejvir Singh on batai. However this witness Nain Singh was given a suggestion in his cross-examination that daughter of his cousin brother and real sister of accused Ram Pal got married in one and the same family at village Narsan, District Saharanpur which he could not deny. He only expressed ignorance stating that he did not know if daughter of his cousin brother and real sister of accused Ram Pal were married in one and the same family at village Narsan, District Saharanpur. It may be noted here that no question regarding this fact was put up by the defence counsel to PW 3 Tejvir Singh in his cross-examination. Hence the testimony of DW1 Nain Singh is no better than a got up witness as he might be denying having given that field to Tejvir Singh on batai under the influence of accused Ram Pal. Moreover, the presence of a witness at the scene of occurrence can well be tested in his cross-examination. If he has withstood the test of cross-examination firmly and his credibility has not been impaired in his cross-examination his statement will have corroborative value otherwise not\024.

8. The findings aforesaid have been challenged by Mr. Mahabir Singh, the learned senior counsel appearing for the accused/appellants.

9. He has first argued that the eye witnesses\022 account suffered from serious infirmities. He has pointed out that all the witnesses were either related to the deceased or were members of his group and as such their evidence had to be accepted with care and caution. He has also urged that the character of the three witnesses did little to enhance their credibility and that the High Court had not really met the reasons given by the trial judge in refusing to accept Harvir Singh\022s presence at the place of incident. He has in addition submitted that the High Court had found corroboration from the forensic evidence in the case but the facts which had come on the record, belied this evidence as well. The learned State counsel has however supported the judgment of the High Court.

10. It would be apparent that the fate of the appeal would primarily rest on the statements of the eye witnesses. We first take up the case of Brij Pal Singh PW-1. Concededly, he is the son of the deceased. It is clear from his testimony that the relations between the parties were acrimonious and that there had been several bouts of litigation between them. Brij Pal Singh has clearly stated as to the manner in which the incident had happened. His statement finds full support from

PW Tejvir Singh. The trial judge had disbelieved Tejvir Singh on the ground that he was a friend of Brij Pal Singh and had also been a witness to another murder. We find that the matter has been dealt with by the High Court in extenso and as per the portion quoted above, we find no reason whatsoever to differ from the opinion expressed with regard to the presence of Brij Pal Singh and Tejvir Singh.

11. We however do feel that there is some doubt with regard to the presence of Harvir Singh. Concededly, his statement under 161 of the Code of Criminal Procedure had been recorded by the police about 22 days after the incident. The justification for this delay given by PW 10 SHO Brij Mohan Mishra who stated that Harvir Singh could not be traced earlier is perhaps not believable. Even assuming therefore that there is some doubt as to the presence of Harvir Singh, we find absolutely no reason to disbelieve the presence of the other two eye witnesses, the more so as the FIR had been lodged within two hours of the incident in the police station at a distance of six miles from the place of incident.

12. Mr. Mahavir Singh has also seriously challenged the Forensic evidence in this case by arguing that though the spent cartridge case had been picked up from the spot on 20th June, 1981 and the gun recovered the next day, both these items had been sent to the laboratory only on 17th September, 1981 and as the 22 pellets recovered from the dead body had not been sent to the laboratory there was no justification in holding that the weapon had in fact been used in the murder. In support of his case Mr. Mahabir Singh has relied on *Palia vs. State of Punjab*, 1997 SCC CrL. 383, *Baldev Singh vs. State of Punjab* (1990) 4 SCC 692, *Santa Singh vs. State of Punjab* AIR 1956 SC 526. He has also urged that as PW 10 Brij Mohan Mishra in his cross examination had testified that there were about 7-8 small shots in a .12 bore cartridge, the recovery of 22 pellets from the dead body and the note regarding the smell of gun powder from the barrel of the gun, falsified the prosecution story.

13. We have considered these arguments very carefully. We first note that the facts that the cartridge case had been left by assailants at the spot and that the shots had been fired from a shotgun and a pistol find mention in the FIR. Interestingly also, there is a suggestion by the defence in the cross-examination as to whether the spent cartridge had been found near the dead body or at some distance therefrom. It is also clear from the statement of Ram Pal recorded under Section 313 Cr.P.C. that the gun which was licensed to him had been recovered from his house along with 11 cartridges. We have also perused the statement of PW 7 HC Rameshwar Prasad who stated that the weapon and other articles have been sent to the Muzafarnagar city Malkhana on 2nd July, 1981 but had been returned to the police station as there was no place for storage and had been returned to the Malkhana on 13th July, 1981 awaiting re-transmission to the laboratory. We also note from the statement of PW 9 Randhir Singh a retired constable who was at the relevant time the moharrir of the Malkhana at Muzafarnagar in the police station that the weapon and cartridge in a sealed condition had been deposited with him on 2nd July, 1981 and had not been tampered with till their dispatch to the Forensic Science Laboratory. We have also gone through the statement of Om Prakash Tripathi PW 8, the expert in the Forensic Science Laboratory who had examined the KF .12 bore fired cartridge case and DBBL gun No.7902082 and had found that the said cartridge had been fired from the right barrel of the gun.

14. Seizing on the fact that 22 pellets had been recovered from the dead body and that PW 10 SHO Brij Mohan Mishra

had deposed that a .12 bore cartridge contained only seven to eight pellets, Mr. Mahabir Singh has submitted that the prosecution story was on the face of it unacceptable. We find absolutely no merit in this plea. It has come in the evidence of PW-8 Om Parkash Tripathi that the cartridge used was of KF make (KF stands for Kirkee Factory). It is therefore a cartridge manufactured by the Indian Ordnance Factory, at Kirkee, which has, off and on, been manufacturing cartridges of shot sizes BB to 9 only (this information has been reconfirmed from the Secretary, National Rifle Association of India, New Delhi). A 12 bore shotgun cartridge carries a shot charge of twenty-five to thirty-five grams in weight and varying number of pellets based on several factors such as the length of the cartridge as would be clear from the following chart taken from Forensic Science in Criminal Investigation and Trials by Dr. B.R.Sharma (4th Edition) at page 416:

Projectile charge of Cartridges					
Number	No. of pellets	Pellets diameter	Pellet weight		
	Per 28.35 gs.	mm.		in gs.	
LG	6		9.14		4.54
SG	8		8.43		3.54
Special SG	11	7.57		2.58	
SSG	15		6.83		1.89
AAA	35		5.16		0.81
BB	70		4.09		0.40
1	100		3.63	(.16\024)	0.28
2	120		3.41	(.15\024)	0.24
3	140		3.25		0.20
4	170		3.05	(.13\024)	0.17
5	220		2.79	(.12\024)	0.13
6	270		2.59	(.11\024)	0.10
7	340		2.41	(.10\024)	0.08
8	450		2.21	(.09\024)	0.06
9	580		2.03	(.08\024)	0.05
Dust	2770		1.2192	0.0109	

N.B. The equivalent in inches of the pellet size shown in brackets in the third column has been taken from Lyons Medical Jurisprudence and Toxicology 11th Edition Page 913 and superimposed in the chart.

15. From the above table it can be concluded that KF manufactured cartridges can contain between 70 (BB) to 580 (9) pellets per cartridge. The 7-8 pellets that have been referred to by PW Brij Mohan Mishra would be pellets of buck shot such as SG/LG which are not manufactured by the Kirkee Factory. The post-mortem report also shows that there were multiple wounds of entry 1/8th of an inch over the whole of the chest and upper half of abdomen in an area of 14\024 x 12\024, which confirms Brij Pal\022s statement that the two shots had been fired from a distance of about 40 or 50 feet. We are of the opinion that on account of dispersal of the pellets at that range, not all would have struck home. The recovery of 22 pellets therefore fits in with the prosecution story. The argument based on the gun powder smell from the barrel is equally without substance. In Modi\022s Medical Jurisprudence and Toxicology, 23rd Edition (Page 723) while dealing with the topic as to \023the time when the weapon was fired\024 it has been

observed that \023it is never possible to ascertain with any scientific accuracy the time when a weapon or cartridge was fired.\024 In this situation, the judgments cited, which are based on their special facts, have no relevance to the facts of the present case.

16. We are therefore of the opinion that no fault can be found with the judgment of the High Court. We accordingly dismiss the appeal.

JUDIS