

PETITIONER:
SUBA SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 09/11/1994

BENCH:
MUKHERJEE M.K. (J)
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MUKHERJEE M.K. (J)
AHMADI, A.M. (J)

CITATION:
1995 SCC Supl. (1) 269 JT 1995 (1) 8
1994 SCALE (4) 870

ACT:

HEADNOTE:

JUDGMENT:

M.K. MUKHERJEE, J.

1. This appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984 is directed against the judgment and order dated February 28, 1985 rendered by the Special Court, Ferozpur convicting the appellant under Section 302 of the Indian Penal Code and sentencing him to undergo imprisonment for life.

2. Shorn of details, the case of the prosecution is as under:

On April 18, 1984 the betrothal ceremony of Jagtar Singh brother of Pritam Singh (the deceased) was to take place in village Takhtupura. Amongst others, the appellant was an invite thereto. After the ceremony was over in the evening food and drinks were served to the guests. At or about 11 P.M. Pritam Singh requested the appellant to leave as he, by then, had his food and drink. The appellant took serious exception to such solicitation of Pritam Singh and restored that the guests should not be treated in that manner. To avoid any further untoward incident Pritam Singh, Jagtar Singh, Lahora Singh and others took the appellant aside to escort him to his place of work in the village. After they had proceeded a little distance, the appellant again took Pritam Singh to task for insulting and humiliating him. He then brought out a pistol from the fold of his loin cloth, fired at Pritam Singh hitting him on the abdomen and ran away. Pritam Singh, while being taken to the hospital, succumbed to his injuries. In the meantime Jagtar Singh went to Nihalsinghwala Police Station and lodged an information about the incident. On that information a case registered and ASI Prithi Singh (PW 7) took up the investigation. He went to the place of occurrence, collected blood stained earth from the spot and sent the same to the Chemical Examiner for examination. After completion of investigation he submitted charge sheet against the appellant and in due course the case was

committed to the Court of Session.

3. The appellant pleaded not guilty to the charge levelled against him and asserted that he did not participate in the betrothal ceremony. According to him, he was falsely implicated by Jagtar Singh owing to enmity.

4. To prove its case the prosecution relied primarily upon the ocular version of the incident as given out by Jagtar Singh (PW 3) and Lahora Singh (PW 5). Both of them stated that the appellant had participated in the betrothal and there after consumed food and liquor. They next stated that at or about 11 PM., Pritam Singh asked the appellant to leave the place and that the appellant felt insulted thereby. They then stated about the subsequent conduct of the appellant which culminated in

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his firing at Pritam Singh with a pistol. In their cross examination an attempt was made on behalf of the appellant to prove that there was no light at the scene of occurrence so as to enable them to identify the miscreant but such attempt failed. On the contrary, through the site plan prepared by the Investigating Officer and exhibited during the trial (Ex.P.3) the prosecution established that there was an electric post there. This apart, considering the sequence of vents and the fact that the parties were known to each other from bfor, there could not be any scope for mistaken identity. Having carefully gone through the evidence of PW 3 and PW 5-we do not find any reason whatsoever to disbelieve them, particularly when nothing could be elicited in cross examination to discredit them. Then again, the evidence of PW 3 finds ample corroboration from the FIR which was promptly lodged within three hours of the incident and contains the substratum of the prosecution case.

5. The next corroboration of their evidence is furnished by Dr. B.K. Goel (PW 1), who conducted autopsy on the body of the deceased- His uncontroverted testimony shows that the deceased had the following injuries on his person:

"1 .A lacerated punctured wound 1 cm x 11 cm with inverted margins on the frontal surface of the abdomen midway between costophrenic angle and umbilicus 1 cm away from midline towards left. The wound was surrounded by marked blackening.

2. Lacerated punctured would 1.5 cm x 1.5 cm with averted margins on the left flank of the abdomen just below anterior superior iliac spine (left).

The direction of the wound was downwards and outwards. Both the wounds communicated with each other. The stomach, the parts of small intestines were lacerated and the abdominal cavity was full of clotten blood."

According to PW 1 the death was due to shock and haemorrhage caused by the aforesaid injuries and that the injuries were sufficient in the ordinary course of nature to cause death. From the testimony of the Investigating Officer (PW 7) we get that he seized some earth from the spot under seizure memo (Ex.P. 15) and sent the same to the Chemical Examiner for examination. The report of the Asstt. Chemical Examiner (Ex.p.7) indicates that blood was found thereupon and the report of the Asstt. Serologist (Ex.P.6) indicates that the same was stained with human blood. The above reports also to some extent corroborate the evidence of the two eye witnesses regarding the place where the incident had taken place.

6. Relying upon the finding of Dr. Goel (PW 1) that the stomach of the deceased was empty, it was strenuously argued before Us that the case of the prosecution that after the betrothal ceremony food and liquor were served stood completely belied. We do not find any substance in this contention in absence of any question put to either PW 3 or PW 5 as to whether the deceased had consumed food or drink. While on this point we cannot also lose sight of the fact that since the betrothal was of his own brother, the deceased as the host was expected to wait for his dinner and drink, (if not a teetotaler) till the guests had left. In any view of the matter, the mere absence of drink or food in the deceased's stomach cannot make the case of the prosecution untrustworthy.

7. As has already been noticed, the

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appellant's defence was that he did not participate in the betrothal ceremony; and in support of this contention he examined one Gurjant Singh (DW 1). He stated that while he had participated in that ceremony the appellant did not. He further stated that after the ceremony was over by 5 P.M. he and all the other guests left. He also spoke about an altercation that took place between the appellant and Jagtar Singh a few days before the incident. In cross examination he admitted that even though he appeared before the police, he did not make any such statement before them. We are in complete agreement with the learned trial Judge that this conduct of DW1 in not disclosing as to what happened in the ceremony when the Police came to investigate into the case makes his evidence unworthy of credit.

8. On the conclusions as above we uphold the impugned judgment and order of the trial Court and dismiss the appeal. The appellant, who is on bail, will now surrender to his bail bond to serve out the sentence.