

PETITIONER:
SAIL SINGH STATE OF PUNJAB

Vs.

RESPONDENT:
MOHINDER PAL

DATE OF JUDGMENT: 17/10/1997

BENCH:
G.T. NANAVALI, M. JAGANNADHA RAO.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M. JAGANNADHA RAO. J

Criminal appeal No. 738 of 1983 is preferred by the informant Sail Singh questing the judgment of the High Court in so far as the High Court set aside the judgment of the learned sessions Judge and acquitted Mohinder Pal. Criminal Appeal No. 731 of 1983 is by the State of Punjab for the same reason.

In fact, before the Session Court, there were three accused, all brothers. - Mohinder Pal. Devinder Pal and Surinder Pal an were charged under section 302 I.P.C. for the murder of one Dilbagh Singh (brother of Sail Singh, PW9). The learned Sessions Judge acquitted Surinder Pal are convected mohinder Pal respondent herein) and his Brother Devinder all and sentence be to of them to life imprisonment. The High Court confirmed the conviction of Devinder Pal about acquitted Mohinder Pal.

The following relations of the parties is relevant. The deceased Dilbagh Singh was a Veterinary Surgeon posted in the village Rihana Jattan, at the material time. His first wife was Pritam Kaur and a son, Narinder Singh was born to them. For some reasons, Pritam Kaur was not living with Dilbagh Singh our was living with her brothers. Of course, Narinder Singh was living with his father. Dilbagn Singh married Manjit Kaur (PW10) as his second wife and she gave birth to two sons. Sukhjinder Singh and Balwinder Singh. (It is in evidence that Manjit Kaur's first husband Shish Singh died and her son Amarjit Singh, by her first husband, lives abroad), PW9, Sail Singh, appellant in Criminal Appeal No. 738 of 1982 is the brother of deceased Dilbagh Singh.

The prosecution case is as follows:

Narinder Singh, son of Dilbagh Singh by his first wife Pritam Kaur was in love with Satwant Kaur, sister of the three accused, Much to the dislike of the said brothers, these two were exchanging love letters, Narinder Singh had studied only upto 4th or 5th class while Satwant Kaur was graduate. It is said that Sail Singh, PW9 (brother of Dilbagh Singh) and was posted as Assistant Sub-Inspector at fullhour, had come down to village Rihma Jattan on 11.6.1981

on a four day leave. On 12.6.1982. PW9, deceased Dilbagh Singh, his wife Manjit Kaur (PW10) and Narinder Singh the first wife's son of Dilag Singh) went out for a stroll in the evening and were coming pack home around 8.00 P.M. when they were intercepted by the accused near the house of one Atma Singh. At that time, Mohnder Pal was armed with a Kirpan, Devinder Pal was armed with a knife while their brother Surinder Pal was empty handed. It is said that Surinder Pal shouted a lalkara that Dilbagh Singh should be taught a lesson because he was not stopping his son Narinder Singh from teasing his sister Satwant Kaur, At once, kirpan blow was administered on the right shoulder near the armpit of Dilbagh Singh, by Mohinder Pal and he gave a second blow again with the Kirpan to Dilbagh Singh on the chest and the latter fall down. Therefore, Devinder Pal hit Dilbagh Singh with the knife. On the alarm, raised by the witnesses PW9 and PW10, Surjit Singh and Jit Singh and others were attracted to the spot during the course of the assault on the deceased and the three accused ran away with their weapons.

Dilbagh Singh was carried to Phagwara in a tempo by his son Narinder Singh and by PW9 put was found dead by the time they could reach the hospital at 9.15 P.M. The Doctor PW1 sent intimation to the local police when Veer Singh (ASI) (PW1) went to the Hospital and recorded statement of PW9 on the basis of which the FIR was registered. Inquest report Ex.PD/1-8 was prepared and post mortem was conducted on 13.6.1981 by Dr. Ramesh Chaudhary (PW2) in the Civil Hospital at Phagwara. We shall refer to his report, in detail later.

In the Sessions Court, the prosecution examined various witnesses. PW9 and PW10 were examined as ever-witnesses. On the basis of their evidence, the learned Sessions Judge came to the conclusion that the prosecution had proved beyond reasonable doubt, the guilt of Mohinder Pal and Devinder Pal. Of course, so far as Surinder Pal was concerned, the learned Sessions judge gave him benefit of doubt. It was argued for the defence before the Session Court that the medical evidence, in particular, the post mortem report prepared by PW2 together with the evidence of PW2 was contrary to the evidence of the eye-witnesses, PWs 9 and 10. This contention of the defence counsel was rejected by the learned Sessions Judge and Mohinder Pal was also found guilty along with his brother Devendra Pal. On the other hand, the High Court analysed the opinion of the doctor, PW2, as given in his deposition before the Sessions Court and came to the conclusion that it did not support the evidence of PWs 9 and 10 and therefore their evidence could not form the basis for convicting Mohinder Pal. The entire issue before us, therefore, revolves round the evidence of the Doctor PW2 and the post mortem report given by him and the question is whether the view taken by the High Court can be said to be so unreasonable as to be interfered with by this Court.

As already set out the prosecution case is that Mohinder Pal the deceased with a Kirpan twice and that Devinder pal made one hit with a knife on the deceased. We shall now refer to the medical evidence.

The post-mortem report prepared by PW2 read as follows:

"1. Incised wound 3 cm x 1/2 cm on the front of right shoulder 4 cm above the arm bit fold. Wound was transverse in Direction. Outer angle was share and inner was round, Fresh bleeding was present.

2. Incised would 2 1/2 cm x 1/2 cm on the right side of the chest, transverse in direction. Outer angle share, inner angle rounded with out of abrasion around the medical third of wound 7 cm below and medical to the right nipple, over the fifth costal cartilage. Evidence of bleeding was present.

3. Incised wound 1 cm x 1/2 cm on the right side of the chest vertical in direction, upper angle sharp, lower rounded circular puff of abrasion present. It was 10 cm below the nipple. Evidence of bleeding was present.

4. Abrasion 2 1/2 cm x 2 on the front of left knee.

5. Abrasion 4 cm x 1/4 cm, on the right supra spinal region.

5. Vertical abrasion 2 1/2 cm x 1/4 cm on the inter scapular region.

7. Lacerated wound 1 cm x 1/2 on the inferior angle of the left scapular. It is subcutaneous deep. Evidence of bleeding was present".

In the opinion of the doctor death was due to shock and heamorrhage on account of injuries Nos. 1 and 2 which were sufficient to cause death in the ordinary course of nature.

The doctor, when examined as PW2 said initially in chief examination, as follows:

"Injuries Nos. 1 and 2 individually were sufficient to cause death in the ordinary course of nature.

He then stated:

"Injury No.1 can be caused by a sword, but not injury No.3. similarly injury No.2 can be caused by a sword.....

Injury No.3 can be caused with the knife Ext.P22 just now shown to me. Injuries No. 4 to 7 could be possibly by fall."

Even injury No.3 could result in death". When he was cross-examined by the defence counsel he went on to say:

"Injury No.1 would not have been caused from the front side, there is more probability of injury No.1 being caused when the victim was lying, though the possibility of rte same having been caused, while the victim was standing cannot be ruled out. The width of injury No.2 is 1/12 cm. Its death is about 4 to 5 cm. But it may be even more in case of fatty person. The injury No.2. appears to be a said injury. The fact that the inner angle was found to be rounded with puff of abrasion, in the case of injury No.2. shows that the weapon used was blunt from the side. I have seen the Kirpan Ex. P1. It is share from both sides from its front position upto more than

inches."

Finally the doctor stayed, and this is what appealed to the High Court most.

"All the three injuries i.e. to 3 could be caused by a similar weapon, with its one side blunt.

It is next necessary to refer to the Judgment of the High Court which was based more on the opinion of PW2. as set out in the underlined portion set out above. This is what the High Court stated, no doubt, after prima facie accepting the evidences of the eye-witnesses, PW9 and PW10.

"Had the matter rested here, we would have found do difficulty in rejecting the appeal in toto, but a reference to the statement made by Dr. Ramesh Chaudhary PW2 who conducted the post-mortem examination on the dead body of the deceased indicates that injury No.1 said to have been caused with Kirpan by Mohinder Pal appellant could possibly have been caused with a knife also. The was sharp and the inner angle was rounded. That being so, we feel that Mohinder Pal appellant should be given the benefit of doubt as a measure of abundant. That being so, we feel that Mohinder Pal appellant should be given the benefit of doubt as a measure of abundant caution. We order accordingly. The appeal cua him succeeds and he stands acquitted of the charges. The medical evidence is consistent with the ocular version cua the part played by Devinder Pal appellant. The appeal cua him is dismissed.

In other words, the High Court was of the view that the last part of the evidence of the doctor. PW2 (extracted and underlined above) was not consistent with the evidence of eye-witnesses that injuries No. 1 & 2 were caused by Mohinder Pal by a Kirpan while the evidence of PWS9 and 10 was consistent with the evidence of PW2 so far as the guilt of accused Devinder Pal was concerned.

Before us, it was contended by the learned counsel for the appellant in both the appeals that the view taken by the High Court so far as Mohinder Pal was concerned is liable to be set aside as being unreasonable and inconsistent with the direct evidence of PWS9 and 10. The opinion given by the doctor. PW2 towards the and of his deposition was, as pointed by the Sessions Court, more due to confusion or a misconception as to the proper inference to the drawn from the juries recorded by him in the post-mortem report.

On the other hand, the learned counsel for the respondent (accused Mohindar Pal). contended that the opinion of the doctor, PW2, cannot be said to be the result of any misconception or confusion, and was an opinion which could be one of the reasonable inferences that could be drawn from the nature of injury No.1 and when the High Court, on an assessment of the evidence of PWS 7 and 10 or the one hand and the evidence of PW2 on the other, came to one particular conclusion. It is neither incumbent nor necessary or this Court to interfere unless of course some

serious infirmities could be shown in the said conclusion drawn by the High Court.

We have been taken through the evidence of PWs 9 and 10 as well as the post-mortem report and the oral evidence of the doctor, PW2. We have considered the various submission of the counsel. After giving out anxious consideration to the material, and the inference drawn by the High Court from the said material, we are unable to say that the view taken by the High Court is so unreasonable as requiring interference. It is true that PWs 9 and 10 have given evidence that two blows by a Kirpan were given by Mohinder Pal to the deceased and the blow by a knife by Devinder Pal. At the same time if the High Court felt on the basis of the opinion expressed by PW2 in his evidence - namely that (1) all the three injuries i.e. 1 to 3 could be caused by a similar weapon, with its one side blunt and (2) that the Kirpan Ex.p1 was sharo from both sides from its front portion upto more than 6 inches - that there was the possibility of all three injuries having been inflicted by a and none by Kirpan, we cannot say that the view of the High Court was so unreasonable as to warrant interference. Obviously, though the High Court felt it safe to rely on the evidence of PWs 9 and 10 as corroborated by the evidence of the doctor, PW2 so far the Devinder Pal was concerned, the High Court at the same time felt that the same medical evidence created a reasonable doubt as to whether any Kirpan was used and hence it would not be safe to go by the oral evidence of PWs 9 and 10 in so far as the guilt of Mohinder Pal was concerned. We are of the opinion that the above view of the High Court cannot be said to be unreasonable or vitiated by non-consideration of any material piece of evidence or the taking into account of any inadmissible evidence. Nor can we say that the view taken by the High Court was otherwise perverse. Therefore we do not think it is a fit case for interference. The appeals are dismissed and the acquittal granted by the High Court to Mohinder Pal is confirmed.