

PETITIONER:
THE STATE OF RAJASTHAN

Vs.

RESPONDENT:
MOJOR SINGH AND OTHERS

DATE OF JUDGMENT: 17/02/1999

BENCH:
G B Pattanaik, M BmShah

JUDGMENT:

Shah. J.

In Sessions Case No. 63 of 1982 decided on 3rd Sept., 1983, the Additional Sessions Judge, Hanumangarh in all convicted the seven accused, namely, Major Singh, Modan Singh, Darshan Singh, Mithu Singh, Atma Singh, Balwant Singh and Ukar Singh for the offences punishable under Sections 302, 148, 149, 307 I.P.C. However, he acquitted Sadhu Singh and Gurdayal Singh for the offences for which they were charged. Convicted accused were sentenced to undergo R.I. for life and fine as stated in the Order. Against that order, the convicted accused preferred Criminal Appeal Nos. 345/83 and 346/83. The Division Bench of the High Court of Judicature for Rajasthan at Jodhpur acquitted all the accused by Judgment and Order dated 21st July, 1989. Against that order, the State has preferred this appeal by special leave.

Learned Counsel for the Appellant submitted that the Judgment and Order passed by the High Court is based on mere conjectures without appreciating the evidence of injured witness and other eye-witness in proper perspective. He submitted that the reasons given are totally erroneous and extraneous to the matter. As against this, learned Counsel appearing on behalf of the accused submitted that the order passed by the High Court is justified and High Court has rightly not relied upon the evidence of P.W.1, injured eye witness and P.W.2.

For appreciating the said contentions, it would be just and necessary to narrate a few facts. It is the prosecution version that on 3rd July, 1982 at about 8.30 p.m., Bakshish singh (Jat Sikh) resident of Chak Dhola had gone to the mohalla of Harijans to find out labour. At that time, informant his son, Baljeet Singh was taking bath at his residence and he heard the noise of 'Marta' 'Marta' coming from near the house of Mal Singh. Hearing the said noise, his mother Basant Kaur and Jeeto alias Jeet Kaur p.w.1 who were standing outside the house ran towards the scene of offence. After putting on clothes, he too went out of the house and he saw that in the lane near the house of Mal Singh, Modan Singh (accused no. 1), darshan Singh (accused no. 3), Major Singh (accused no. 5), Atma singh (accused no. 6), Balwant Singh (accused no. 8), Ukar Singh (accused no.9) who were having gandasi were assaulting his

father (deceased Bakshish Singh) and to his mother (deceased Basant Kaur). Mithu Singh (accused No.4) armed with sword was also present. His sister was crying it is his say that Sadhu Singh (accused no.2) who was armed with the gun and Gurdayal Singh (accused no. 7) who was armed with Gandasi were also standing and telling that no one should be spared today. When he reached near his father and mother, Sadhu Singh fired from his gun but the fire did not hit him. At that time also accused were assaulting his mother and father who fell down on the earth. He saw also his sister Jeet Kaur lying nearby in injured condition. Looking to him, other accused chased to kill him but he ran away and reached at the house of Mithu Singh alias Sukhdev Singh and stated the story to Mithu Singh. Thereafter, both went at the house of Kaka Singh and narrated the story to Kaka Singh upon which all of them reached at the place of occurrence and challenged the accused persons upon which they ran away. He said that his parents breathed their last when they reached at the scene of occurrence. His sister was lying in an injured condition. F.I.R. was lodged and investigation started. After completing the investigation, accused were charged for the offences under Section 302 read with Sections 148, 149, 307 and Section 307 read with Section 149, I.P.C. For proving the prosecution version, prosecution examined injured Jeet Kaur, p.w. 1, Baljeet Singh P.W.2 and Sukhdev Singh P.W.3. Prosecution also examined Dr. Kailash P.W.4 and Dr. Sri Nath P.W.5 for the injuries suffered by P.W.1 Jeet Kaur. P.W.5 Dr. Sri Nath had also carried out post-mortem examination of Mrs. Basant Kaur and had found five injuries caused by sharp edged weapon and five injuries caused by blunt weapon. He also carried out post-mortem examination of the dead body of Bakshish Singh and found eight injuries caused by sharp edged weapon and seven injuries caused by blunt weapon. The Additional Sessions Judge, after considering the evidence against the accused Sadhu Singh and Gurdayal Singh arrived at the conclusion that prosecution had failed to prove beyond reasonable doubt that they were members of unlawful assembly or that they had provoked other accused persons in performance of common object of murder of Bakshish Singh and Basant Kaur or for inflicting injuries to Jeet Kaur. He, therefore, acquitted the said accused for the offence for which they were charged. With regard to the other accused, the learned Judge arrived at the conclusion that there was no reason to disbelieve injured witness Jeet Kaur and the evidence of her brother Baljeet Singh and Sukhdev Singh who arrived at the scene of offence within a short time. After appreciating the evidence in detail and dealing with the contentions raised by the Counsel for the accused, the learned Sessions Judge convicted the accused as stated above. In appeal, the aforesaid findings given by the Additional Sessions Judge are reversed by the High Court.

The learned Counsel for the appellant has taken us through the evidence of injured witness P.W.1 Jeet Kaur, P.W.2 Balajeet Singh, P.W.3 Sukhdev Singh and the evidence of doctors. In our view there was no reason to disbelieve the evidence of P.W.1 Jeet Kaur who received as many as 9 greivous injuries at the time of the incident and the injuries were serious as deposed by the doctor P.W.5. Her evidence is natural and according to her, after hearing the cries from her father, she along with her mother went at the scence of offence which was at a short distance from their house. As noted in cross examination of P.W.1, it is roughly 70-100 feet. After reaching at the seene of

offence, she was that her father was being assaulted by the accused. She and her mother intervened to save Bakshish Singh, deceased. At that time, accused Major Singh gave a blow on the head of her mother with a sharp edged side of gandasa and other accused also caused injuries to her mother. At that time her brother Balajeet Singh came there rushing but Sadhu Singh and Gurdayal Singh had warned him not to go ahead otherwise they will kill him. This threat did not deter Baljeet Singh from coming near. Hence, when he was at the short distance, Sadhu Singh fired at Baljeet Singh from his rifle but it did not hit him and Baljeet Singh ran away. Same is the version of Baljeet Singh who reached at the scene of offence after some time because according to him, at the relevant time, he was in the bathroom. It is further say of P.W.2 Baljeet Singh that he had also seen accused assaulting her parents and sister. He tried to intervene but Sadhu Singh and Gurdayal Singh told him not to go there, otherwise they would kill him. Subsequently, when he was proceeding ahead, sadhu Singh fired from his rifle so he ran away. Some of the accused chased him for 15 spaces but could not catch him. He went at the house of Mithu Singh alias Sukhdev Singh and narrated the story. Both of them went at the house of Kaka Singh and after narrating the incident, all of them went at the scene of offence and challenged the accused. The accused ran away. In our view, considering the medical evidence which corroborates the prosecution version, particularly, of the injured witness P.W.1 Jeet Kaur, there is no reason to disbelieve the evidence of the aforesaid two witnesses. This evidence is corroborated by the evidence given by Sukhdev Singh. However, High Court arrived at the conclusion that the evidence of the aforesaid witnesses is not reliable. It appears that the High Court started totally on a wrong premises by holding that on exhortion of Sadhu Singh and Gurdayal Singh, the appellant accused are said to have chased Baljeet Singh from some distance and when he could not be caught hold of all of them are said to have assaulted Bakshish Singh and Smt. Basant Kaur while Sadhu Singh and Gurdayal Singh kept on giving lalkaras. This finding given by the High Court is without considering the evidence of P.W.1 Jeet Kaur and P.W.2 Baljeet Singh. It is a say of Jeet Kaur that she and her mother were in the courtyard of their house and they heard their father crying "they are killing me" (Marta' 'Marta') near the house of Mal Singh in the street. They rushed outside and saw that accused carrying gandasa except Mithu Singh who was armed with Kirpan were assaulting the deceased Bakshish Singh. The other accused Sadhu Singh was armed with ritle and Gurdayal Singh with gandasa. Both of them were standing in front of the house of Sadhu Singh and giving 'lalkara' "We have been able to pin down the enemy, today don't let him go." It is her further say that when she and her mother attempted to rescue her father, Major Singh gave a blow on the head of her mother with a sharp edge side of gandasa and Atma Singh gave a blow with a sharp edge side of gandasa to her which caused injury to her. She has also stated that rest of the assailants were assaulting her partents. At that time, her brother Balijeet Singh came rushing but Gurdayal Singh and Sadhu Singh had warned him not to go ahead other wise they would kill him. As Baljeet Singh proceeded further, Sadhu Singh fired at Baljeet Singh and at that time Baljeet Singh ran away. Similar is the evidence of Baljeet Singh, p.w. 2. Without considering this part of the evidence, the High Court considered the later statement wherein the witness Jeet Kaur had stated that after Sadhu Singh fired at Baljeet

Singh and when Baljeet Singh ran away, Sadhu Singh and Gurdayal Singh shouted that son has run away go and catch him, he should be killed. At this stage, assailants ran after Baljeet Singh but they could not catch him. Thereafter, again the assailants started assaulting her parents. After a while, her brother came with Sukhdev Singh and they challenged the assailants at the juncture, assailants ran away. Subsequent part of the evidence of the witness Baljeet Singh and Jeet Kaur is corroborated by evidence of p.w.3 Sukhdev Singh. Sukhdev Singh has stated that Baljeet Singh informed him that his parents and his sister Jeet Kaur were assaulted by the accused and as Sadhu Singh had fired at him he escaped and rushed at his house. Thereafter, along with Baljeet Singh, he went to the house of Kaka Singh and informed him about the incident. Hence, he, Baljeet Singh and Kaka Singh went at the place of occurrence immediately and found that Sadhu Singh and Gurdayal Singh were raising 'lalkara'. And at that place, they saw the accused with their weapons assaulting the deceased Bakshish Singh and Basant Kaur and injured Jeet Kaur. It is apparent that High Court has totally ignored first part of the evidence given by Jeet Kaur that she and her mother reached first at the scene of offence and at that time, they saw accused assaulting her father. As they intervened, accused assaulted her and her mother and inflicted injuries. The High Court has further not accepted the evidence of P.W. 1 and P.W. 2 by observing that some of the accused were Mazabi Sikhs by caste and there was apparently nothing to connect them with accused Sadhu Singh and Gurdayal Singh or for that matter with Kulwant Singh and Ukar Singh and that they were not having any relationship with the accused. In our view, this consideration is totally irrelevant and extraneous. The Court also dealt with the aspect that prosecution has failed to prove how the incident started. In our view, in the facts of the case, this consideration was not relevant because there is nothing on record to suggest that the deceased Bakshish Singh started the attack or assaulted any one of the accused as according to prosecution evidence all the accused were armed with deadly weapons. In the present case the prosecution evidence began with P.W.1, who after hearing shouts of her father reached at the scene of offence along with her mother and saw that accused were assaulting her father. It is to be noted that P.W.2 Baljeet Singh has specifically stated that there was previous enmity between the parties as Onkar Singh and Kulwant Singh had picked up a quarrel with his father and had assaulted his father before a year and for that incident, a case was pending. Hence accused wanted to wipe off their family. The High Court has further taken into consideration that prosecution witnesses have not stated exactly whether the accused inflicted injuries by a sharp or blunt side of the weapon and therefore they have not explained how the deceased as well as injured witness got incised injuries as well contusions. In our view, in holding that prosecution witnesses have not exactly stated whether the accused inflicted injury by sharp or blunt side of the weapon, the High Court has ignored the reality of such occurrences. It would be practically impossible for any injured witness to exactly notice and memorise that which accused was assaulting by blunt side of the weapon and which accused was causing injuries by sharp edged weapon. Even if such statement is made, it may amount to an exaggeration because when number of assailants are there, injuries are not inflicted in a manner which could be exactly noted by the witness. If one or two injuries are

caused and if it is broad daylight, it is quite possible that some witnesses may be in a position to note it. But at about 8.30 p.m., when the witness herself was receiving injuries, it would not be possible to note and narrate whether the accused were causing injuries to her parents by the blunt or sharp side of the weapon. The other reason which is given by the High Court is that injured witness Jeet Kaur has not stated a single specific injury on a person which could be attributed to Ukar Singh or Kulwant Singh except by vaguely stating that they assaulted her parents and had also given gandasas blows to her and, therefore, it creates a good deal of suspicion regarding participation of the Ukar Singh and Kulwant Singh in the incident. Here also High Court ignored the fact that once the presence of the Ukar Singh or Kulwant Singh is established at the scene of offence and their participation is alleged, there was no reason to doubt the evidence of the witness.

Hence, the appreciation of the evidence of this injured witness and p.w.2 Baljeet Singh by the High Court is totally erroneous ignoring the ground realities and fact situation which has resulted in miscarriage of justice. In our view, the Sessions Judge has rightly appreciated the evidence of p.w. 1, 2, & 3 in arriving at the conclusion that the prosecution has proved beyond reasonable doubt that accused assaulted deceased Bakshish Singh and Bassant Kaur and also inflicted injuries to the witness Jeet Kaur. There is no reason to doubt the presence of the injured witness at the scene of occurrence. Her presence is established beyond doubt. Similarly with regard to the evidence of P.W. 2 also it is but natural for the son of the deceased to rush at the scene of offence after hearing the shouts of his father. The distance between the scene of offence and the house of the witnesses is hardly 70 to 100 ft. The assailants were known to the witnesses. The evidence of P.Ws 1 & 2 is corroborated by P.W 3 who rushed at the scene of offence after getting information from P.W.2. Medical evidence also corroborates the say of P.W.1. In our view, therefore, there is no reason to disbelieve the evidence of the aforesaid three witnesses, i.e., P.W. 1, 2, & 3 and the Additional Sessions Judge has rightly convicted the accused for the offence for which they were charged.

In the result, appeals are allowed, Judgment and Order dated 21.7.89 passed by the High Court in Criminal Appeal No. 345/83 and 346/83 is set aside and the Order passed by the Additional Sessions Judge, Hanumangarh in Sessions Case No. 63 of 82 is restored. Bail bonds stand cancelled. Accused are directed to surrender.