

PETITIONER:
G.S.WALIA

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 19/03/1998

BENCH:
G.T. NANAVALI, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

G.S. Walia, a close relative of deceased Balwant Singh has filed this appeal after obtaining leave of this Court. It is directed against acquittal of the respondent nos. 2 to 6 (hereinafter referred to as 'accused') by the High Court. The trial court had convicted them under section 148 and section 302 read with section 149 IPC.

The trial court accepted the prosecution case that Gurbachan Singh, Harbans Singh, Harjeet Singh, Balwinder Singh, and Avtar Singh had assaulted Balwant Singh on 29.5.1986 at 7.30 p.m. with iron rods, a tyre lever and an axe and that Balwant Singh subsequently died on 16.6.1986 as a result of those injuries. The conviction by the trial court was based mainly upon the evidence of Kesar Singh, PW 4 and the statement of Balwant Singh himself to the police on the basis of which an offence was registered against the accused.

The High Court disbelieved the evidence of Kesar Singh on the grounds that he was a chance witness, that he was closely connected with the deceased, that his statement was recorded after 6-7 days and that his subsequent conduct was so unnatural as to create a doubt regarding his presence at the time of the incident. He was regarded as a chance witness because he had failed to explain his presence at the place of offence which was 10 kms. away from the place of his residence. He was not considered an independent witness because he was friendly and on visiting terms with the deceased. He was also a co-accused with the deceased in a case which was filed against them 3 to 4 years before the date of the incident. His conduct was considered unnatural because after taking the deceased to the hospital he had not remained there to help him nor he had gone to the nearby police station to lodge a complaint nor he had talked about the incident to anyone till his police statement was recorded. The High Court discarded the dying declaration (Ex.PN) on the ground that not being a statement relating to cause of death it was not admissible under section 32 of the Indian Evidence Act. The High Court held that the injuries inflicted were not the cause of death as Balwant Singh died

because of Pulmonary Embolism which was the result of prolonged bed rest and the complications arising therefrom. It also held that statement was untrue because it stood contradicted by the medical evidence which ruled out the possibility of any blow having been given by 'Kulhari'.

The learned counsel for the appellant contended that the High Court has committed a grave error of law in holding the statement of Balwant Singh inadmissible under section 32 of the Indian Evidence Act and that it has committed a further error in holding that it was not true. Learned counsel also submitted that the High Court has rejected the evidence of witness Kesar Singh, PW-4 on grounds which are not tenable. It was submitted that the erroneous view taken by the High Court has led to failure of justice.

Before dealing with these contentions, certain undisputed facts emerging from the evidence may be stated. Respondents Gurbachan Singh and Harbans Singh are the brothers of the deceased. Respondent Harjit Singh is the nephew of the deceased. The remaining two respondents, namely, Balwinder Singh and Avtar Singh were closely related to him. Though the deceased was serving as a driver he was also having his own car. On the date of the incident he had returned to Khanna after completing his work and when he was about to sit in his car which was parked near hotel of one Hari Singh situated at Samrala Chowk, he was assaulted. He was thereafter taken to the Civil Hospital at Khanna. He was conscious till he was admitted in the hospital. The hospital authorities informed the police but by the time they came his condition became worse, and, therefore, his statement could not be recorded either on that day or on the next day. The doctors attending the deceased had told the police that the deceased was not in a fit condition to make a statement. The deceased was then removed from the Civil Hospital at Khanna to the Civil Hospital at Ludhiana. He was reported fit to give a statement on 31.5.1986 and thus his statement came to be recorded by the police on that day. The police officer not finding any grievous injury or an injury caused by sharp-edged weapon did not register any offence and preferred to wait till further report was received from the doctor as regards the nature of injuries received by the deceased. On 6.6.1986 he received the report that the deceased had three fractures; and, therefore, registered a case against the accused under section 326 IPC and started the investigation. On 7.6.1986 he went to the place of incident, prepared the site plan and recorded statement of Kesar Singh, PW-4. Balwant Singh died on 16.6.1986. After obtaining an opinion regarding the cause of death from Dr. H.S.Aneja, (PW-2) the Investigating Officer made the necessary change with respect to the nature of offence disclosed to have been committed by the accused. The accused were then charge-sheeted and tried for committing murder of Balwant Singh.

In order to prove that death of Balwant Singh was due to the injuries inflicted upon him by the accused, the prosecution had produced the bed-head ticket, the postmortem report and the opinion of Dr. Aneja. The prosecution had also examined Dr. B.S. Chhabra, PW-1, who had first treated Balwant Singh while he was taken to Civil Hospital, Khanna and Dr. H.S. Aneja, PW-2, who had subsequently given an opinion regarding cause of death of Balwant Singh. The medical evidence discloses that the deceased had received in all 13 injuries and three of them had resulted in fractures. The three grievous injuries were on head and the legs of Balwant Singh. In the postmortem notes the cause of death of Balwant Singh is stated in the following terms :

"In my opinion, death in this case was on account of Pulmonary Embolism which means blocking of the main artery to the lungs by piece of clot detached from any other part of the body. This is remote complication of prolonged bed rest which was in this case due to the multiple injuries. The injuries themselves were not sufficient to cause death in the ordinary course of nature and were only indirectly responsible to cause death due to a remote complication which in this case was unavoidable. The injuries were ante mortem in nature and were on account of blunt weapon."

After considering all the relevant material, Dr. Aneja, PW-2 had opined that the death of Balwant Singh was on account of Pulmonary Embolism and that the said complication had arisen due to prolonged bed rest which was necessitated by multiple injuries received by him. The medical evidence thus clearly shows that though the injuries themselves did not cause the death, they had necessitated bed rest and that led to Pulmonary Embolism. The evidence of Dr. Aneja leaves no doubt that the injuries had necessitated bed rest and the complication which had arisen was unavoidable and was the direct result of bed rest. The death was the natural consequence of the injuries caused and it was not because of any negligence or external factor. Therefore, there is no substance in the contention raised by Mr. U.R. Lalit that the injuries were only indirectly responsible for causing death of Balwant Singh and as his death cannot be said to have been caused due to the injuries caused, the statement made by him would not fall within Section 32 of the Indian Evidence Act. In view of our finding on this point, the decisions in *Imperatrix vs. Rudra* (ILR 25 Bombay 45), *Abdul Gani Bandukchi & Ors. Vs. Emperor* (AIR 1943 Calcutta 465), in *Re. Mallappa Shivlingappa Chanagi* (AIR 1962 Mysore 82) and *Moti Singh and Anr. Vs. State of U.P.* (AIR 1964 SC 900), relied upon by Mr. Lalit are of no help to him. In all these cases, the Court had held that there was no evidence or that the evidence led was insufficient to prove that the deceased had died as a result of injuries caused to him. As the statement of Balwant Singh related to the cause of his death it was admissible in evidence under Section 32 and the High Court was in error in holding otherwise.

It was next contended by Mr. Lalit that the statement (Ex. PN) made by Balwant Singh is not a true statement because he has stated therein that two blows were given on his leg by right side of the axe. It was submitted by him that right side would mean the sharp side. Yet not a single incised injury was found on his legs. Though factually correct, this contention does not deserve to be accepted. Apart from other injuries found on his legs two abrasions were also noticed by the doctor. Moreover, a blow given by an axe with its sharp side pointing towards the victim may not always result in causing an incised wound. What type of injury it will cause would depend upon various factors like the position of the assailant and the victim, angle at which it hits the body, the part of the body where it lands, the force with which it hits the body etc. To reject the evidence as untrue in such circumstances, considering it as inconsistent with medical evidence, without considering the

relevant factors would mean mechanical appreciation of such evidence. The High Court considered the statement (Ex. PN) as untrue only on the ground that it stood contradicted by the medical evidence. In our opinion, such mechanical rejection of the dying declaration was not proper. The accused were five in number. All had mounted the attack simultaneously. The evidence discloses that Balwant Singh had tried to avoid and ward off some blows. If under these circumstances the two blows given with an axe did not cause incised injuries it cannot be said that in fact no blows were given with an axe.

It was next contended by Mr. Lalit that the dying declaration does not deserve to be accepted without independent corroboration as it was recorded two days after the incident and Balwant Singh had enough time to think over the incident and involve the accused. As pointed out earlier Balwant Singh's statement could not be recorded earlier because he was not in a fit condition to make a statement. Moreover, this was not a case where the victim was trying to involve persons with whom he was on inimical terms. Two of the deceased were his brothers, one was his nephew and two others were closely related to him. Therefore, there was no reason for Balwant Singh to involve any of them falsely. The accused did not like the deceased going away to Canada but the deceased had no grievance whatsoever against the accused. It was not even stated by the accused in their statements under Section 313 of the Criminal Procedure Code that the deceased had any reason to falsely involve them. Under these circumstances, the delay in recording his complaint which was later on treated as his dying declaration in of no consequence.

After going through the evidence of Kesar Singh, PW 4 we are of the opinion that the High Court was not right in discarding it. Though he was a chance witness in the sense that he being of a different village had no apparent reason to be near the place of incident, his evidence did not deserve to be discarded on that ground. The High Court failed to appreciate that his presence received independent corroboration from the statement of the deceased himself. The evidence discloses that Kesar Singh had not met Balwant Singh between 29.5.86 to 31.5.86 and yet we find in the statement of Balwant Singh reference to Kesar Singh as one of the persons who had taken him to the hospital. The evidence further discloses that Balwant Singh was conscious till he was taken to the hospital. Therefore, he knew who had taken him to the hospital. It seems that thereafter he was not in a fit state to make any statement because of sedative and other medicines given to him. This aspect has not been considered by the High Court. Kesar Singh had no enmity with the brothers of Balwant Singh or with the other accused. He would not have come forward to give false evidence against them if he had not really seen the incident. Though it is true that after taking Balwant Singh to the hospital he did not wait any more and did not go to the police station to lodge a complaint against the accused, what the High Court failed to consider was that the assailants of Balwant Singh were none other than the brothers and close relatives of the deceased. Balwant Singh was conscious till he was taken to the hospital. Therefore, it was quite likely that Kesar Singh had thought it fit to remain silent and return to his village. Under these circumstances his conduct cannot be regarded as so unnatural as to create a doubt regarding his having seen the incident. His statement was no doubt recorded after seven days but it cannot be said that there

was any delay in recording his statement. What the High court failed to consider was that no offence was registered till 6.6.86 as till then it was believed to be a non-cognizable case. An offence was registered only after the police received a further report that the three injuries caused to Balwant Singh had resulted into fractures. It was, therefore, not correct to say that his statement was recorded after a great delay and that the prosecution had not offered any explanation for it. The reasons given by the High Court in not accepting his evidence are thus not sustainable. Not other reasons could be suggested by the learned counsel for the respondents for not believing the presence of Kesar Singh at the place when the incident happened.

We are of the view that the trial court was right in relying upon the evidence of Kesar Singh and the dying declaration and holding the accused guilty for causing injuries to Balwant Singh. But the trial court was not right in convicting the accused under Section 302 read with Section 149 IPC. The medical evidence does not show that the injuries caused to Balwant Singh were sufficient to cause his death in the ordinary course of nature. They were not even stated to be likely to cause his death. The accused had no reason to kill Balwant Singh. In view of the facts and circumstances of the case the only inference that can reasonably be drawn is that their object was only to beat him. No attempt was made by them to cause serious injury on any vital part of his body. Therefore, the accused should have been convicted only for the offence punishable under Section 325 read with Section 149 IPC. We, therefore, allow this appeal, set aside the judgment and order passed by the High Court and hold the accused guilty under Sections 148 and 325 read with Section 149 IPC. For the offence punishable under Section 325 read with Section 149 IPC we sentence them to suffer imprisonment for the period already undergone and to pay a fine of Rs. 10,000/-. In default of payment of fine, they are ordered to suffer further rigorous imprisonment for a period of six months. If the fine is paid then the said amount shall be paid to the widow of the deceased by way of compensation. The respondents are given two months' time to pay the fine.