PETITIONER:
BHUPENDRA SINGH

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT:
05/03/1968

BENCH:
BHARGAVA, VISHISHTHA
BENCH:
BHARGAVA, VISHISHTHA
SIKRI, S.M.
SHELAT, J.M.

CITATION:
1968 AIR 1438 1968 SCR (3) 404
CITATOR INFO :
F 1974 SC2165 (69)
F 1975 SC 246 (16)
F 1975 SC1501 (8)
R 1976 SC1924 (6)

ACT:
Code of Criminal Procedure, 1898, ss. 375, 376 and 423--Duty of appellate Court to examine entire record in proceedings for confirmation of death sentence--if court can accept defence admission of its case having no substance or should examine record for itself.
Sentence--appeal against--when Supreme Court may interfere.

HEADNOTE:
The appellant lived with his father A in a house adjoining that of the deceased G who lived there with his two sons and a daughter. An argument developed one evening between the appellant and one of the sons of G. When G intervened, the appellant's father A raised a 'lalkara' asking the appellant to finish him off. Thereupon the appellant shot and killed G. By this time G's two sons, his daughter and one M who lived nearby had arrived and witnessed the occurrence. At the trial the appellant's defence was a pica of alibi but the Trial Court rejected the defence and convicted the appellant of G's murder and sentenced him to death. in appeal, the High Court did not go into the defence evidence because the counsel appearing for the appellant admitted that there was no substance in it. The High Court accordingly dismissed the appeal and confirmed the sentence of death.
In appeal to this Court against the conviction and the sentence it was contended that the High Court in not examining the defence evidence for itself, committed an error and did not properly discharge its duties.
HELD : (i) Although ordinarily, in a criminal appeal against conviction, the appellate Court, under s. 423 of the Code of Criminal Procedure, can dismiss the appeal if the Court is of the opinion that there is no sufficient ground for interference and it is not necessary for the appellate Court to examine the entire record for the purpose of arriving at an independent decision, the position is different where the

appeal is by an accused who is sentenced to death, so that the High Court dealing with the appeal has before it, simultaneously with the appeal,a reference for .confirmation of the capital sentence under s. 374 of the Code. On a reference for confirmation of sentence of death, the High Court is required to proceed in accordance with sections 375 and 376 of the Code of Criminal Procedure and the provisions of these sections make it clear that the duty of the High Court, in dealing with the reference, is not only to see whether the order passed by the Sessions Judge Is correct but to examine the case for itself and even direct a further enquiry or the taking of additional evidence if the Court considers it desirable in order to ascertain the guilt or the innocence of the convicted person. [407 D-G]
Jumman and Others v. The State of Punjab, A.I.R. 1957, S.C. 469; Ram Shanker Singh & Ors. v. State of West Bengal, [1962] Supp. 1 S.C.R. 49 at p. 59; applied.
(ii)(Upon an examination of the entire evidence by the Court) : No s had been made out- for interference with, the appellants con[409 D-E]
405
Maaslti v. State of U.P., [1964] 8 S.C.R. 133 at p. 144; referred to.
(iii) The sentence of death must be set aside and instead the appellant sentenced to imprisonment for life
Although ordinarily this Court, in exercise of its power under Art 136, does not interfere with a sentence, in the present case there were some special features which had to be taken into account : even according to the prosecution, the murder of G by the appellant was not premeditated; the act of firing at him a to-be that of a hot-headed person who was incited to do so by his father; the murder was not in any way cruel or brutal. In all these circumstances, the ends of justice would be met if the lesser penalty prescribed by law was awarded to the appellant. [413 G-H]

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal 185of 1967.
Appeal by special leave from the judgment and order dated May 18, 1967 of the Punjab and Haryana High Court in Criminal Appeal No. 247 of 1967 and Murder Reference No. 23 of 1967.
A.S.R. Charl, B. A. Desai, S. C. Agarwal, A. K. Gupta, Shiva Pujan Singh and Virendra Verma, for the appellant.
Hans Rai Khanna and R. N. Sachthey, for the respondent.
The Judgment of the Court was delivered by
Bhargava, J. Bhupendra Singh has come up to this Court in appeal by special leave against a judgment of the High Court of Punjab and Haryana confirming the sentence of death awarded to him by the Sessions Judge of Jullundur for an offence, under section 302 of the Indian Penal Code and dismissing his appeal against the conviction and sentence. The conviction of the appellant was recorded for committing the murder of one Gurdarshan Singh who was living in the same. village Birpind as the appellant in the house adjoining the appellant’s house. The- appellant’s father, Ajit Singh, also lived with the appellant, while, with Gurdarshan Singh, were living his sons, Gurdial Singh and Sarvjit Singh, and his daughter Gian Kaur. According to the prosecution, on the 6th November, 1965, at about 7.45 p.m., the two brothers, Gurdial Singh and Sarvjit Singh, happened to be standing in front of their house talking to each other, when the appellant came out of his house and asked

them what they were talking about. Gurdial Singh replied that he and Sarvjit Singh were brothers and were talking between themselves and it was no business of the appellant to interfere. The appellant, thereupon, abused the two-brothers and also slapped Sarvjit Singh on the face. Gurdial Singh asked the appellant why he had beaten his brother and used abusive language against the appellant. The appellant got enraged, ran into his house abusing the two boys, and return-
406
ed with a double-barrel 12 bore gun. When he came out of his house this time, he was accompanied by his father, Ajit Singh. Gurdial Singh and Sarvjit Singh then ran into the 'deorhi' of their house. In the meantime, their father, Gurdarshan Singh, and their sister, Gian Kaur, returned to the house from their fields. When Gurdarshan Singh saw the appellant carrying the gun, he enquired what the matter was. Thereupon, Ajit Singh raised a 'lalkara' asking his son, the appellant, to finish off Gurdarshan Singh. The appellant then fired two shots in quick succession from his gun hitting Gurdarshan Singh on vital parts of his body. Gurdarshan Singh fell down dead on the ground. One Malkiat Singh, who lived in a house nearby, had arrived and saw this occurrence, so that the four persons, who witnessed the occurrence. were Malkiat Singh, Gurdial Singh, Sarvjit Singh and Gian Kaur. Gurdial Singh, leaving others to look after the dead body of his father, went with Lal Singh, Lambardar, to the Police Station which was situated at a distance of about three miles and lodge the First Information Report at about 9.30 p.m. on the same day. The ,case was then investigated. A post mortem examination on the corpse of Gurdarshan Singh was performed and articles like pellets, blood-stained cardboard pieces lying near the scene of occurrence were taken into their possession by the Police. Both the appellant and his father, Ajit Singh, were thereafter prosecuted for this murder. The appellant was charged with being the principal offender in committing the murder, while his father, Ajit Singh, was prosecuted for having participated in the murder with the common intention that Gurdarshan Singh should be killed. However, before the trial could take place in the Court of Sessions, Ajit Singh was murdered and, for that murder, Gurdial Singh was prosecuted.

In the case, at the first stage before the Court of the Committing Magistrate, both Ajit Singh and the appellant took the plea that neither of them was responsible for committing the murder of Gurdarshan Singh and contented themselves with denying the correctness of the prosecution case. In the Court of Sessions, when the appellant was examined under section 342 of the Code of Criminal Procedure, he came forward with the plea that it was his father, Ajit Singh, who actually fired and killed Gurdarshan Singh. He pleaded that he himself was not present in this -village at all and was, in fact, that day staying at Phillaur. He, thus, put forward the plea of alibi.

The Sessions Judge believed the evidence of the four prosecution witnesses mentioned above, and, after discussing the defence evidence given on behalf of the appellant in support of his pleas. rejected that evidence. He did not accept the defence evidence that Gurdarshan Singh was fired at by Ajit Singh and he also, held that the evidence given on behalf of the appellant to prove
407
his alibi could not be relied upon. On these findings, the Sessions Judge convicted the appellant and sentenced him to

death for committing the murder of Gurdarshan Singh. When the case came up before the High Court, the High Court briefly examined the evidence of the prosecution witnesses and held that their evidence was reliable. The High Court did not, however, go into the defence evidence, because the counsel appearing for the appellant, according to the High Court, frankly admitted that there was no substance in it. On this view, the High Court dismissed the appeal of the appellant and confirmed his sentence of death.

In this appeal, the principal question that was canvassed before us on behalf of the appellant was that the High Court, in not examining the defence evidence for itself on the simple ground that counsel for the appellant admitted that there was no substance in it, committed an error and did not properly discharge its duty. It appears that there is substance in the submission made on behalf of the appellant. Ordinarily, in a criminal appeal against conviction, the appellate Court, under s. 423 of the Code of Criminal Procedure, can dismiss the appeal, if the Court is of the opinion that there is no sufficient ground for interference, after examining all the grounds urged before it for challenging the correctness of the decision given by the trial Court. It is not necessary for the appellate -Court to examine the entire record for the purpose of arriving at an independent decision of its own whether the conviction of the appellant is fully justified. The position is, however, different where the appeal is by an accused who is sentenced to death, so that the High Court dealing with the appeal has before it, simultaneously with the appeal, a reference for confirmation of the capital sentence under s. 374 of the Code of Criminal Procedure. On a reference for confirmation of sentence of death, the High Court is required to proceed in accordance with sections 375 and 376 of the Code of Criminal Procedure and the provisions of these sections make it clear that the duty of the High Court, in dealing with the reference, is not only to see whether the order passed by the Sessions Judge is correct, but to examine the case for itself and even direct a further enquiry or the taking of additional evidence if the Court considers it desirable in order to ascertain the guilt or the innocence of the convicted person It is true that, under the proviso to s. 376, no order of confirmation is to be made until the period allowed for preferring the appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of, so that, if an appeal is filed by a condemned prisoner that appeal has to be disposed of - before any order is made in the reference confirming the sentence of death. In disposing of such an appeal, however, it is necessary that the High Court should keep in view its duty under s. 375 of the Code of Criminal Procedure and, consequently, the Court must examine the appeal record for itself,.

408

arrive at a view Whether a further enquiry or taking of additional evidence is desirable or not, and then come to its own conclusion on the entire material on record whether conviction of the condemned prisoner is justified and the sentence of death should be confirmed. In Jumman and Others v. The State of Punjab(’), this Court explained this position in the following words:-

> "..... but there is a difference when a reference is made under s.. 374, Criminal Procedure Code, and when, disposing of an appeal under s. 423, Criminal Procedure Code, and that is that the High Court has to satisfy

itself as to whether a case beyond reasonable doubt has been made out against the accused persons for the infliction of the penalty of death. In fact the proceedings before' the High Court are a reappraisal and the reassessment of the entire facts and law in order that the High Court should be satisfied on the materials about the guilt or innocence of the accused persons. Such being the case, it is the duty of the High Court to consider the proceedings in all their aspects and come to an independent conclusion on the materials, apart from the view expressed by the Sessions -Judge. In so doing, the High Court will be assisted by the opinion expressed by the Sessions Judge, but under the provisions of the law above-mentioned it is for the High Court to come to an independent conclusion of its own."

The same principle was recognised in Ram Shankar Singh Others, v.State of West Bengal (2) :-

"..... The High Court had also to consider what order should be passed on the reference under s. 374, and to decide on an appraisal of the evidence, whether the order of conviction for the offences for which the accused were convicted was justified and whether, having regard to the circumstances, the sentence of death was the appropriate sentence."

In Masalti V. State of U.p.(3) this Court was dealing with an appeal under Article 136 of the Constitution and, in that appeal, on behalf of the persons who; were under sentence of death, a point was sought to be urged which was taken before the trial Court and was, rejected by it, but wits not repeated before the -High Court. This Court held:-

".....it may, in a proper case, be permissible to the appellants to ask this Court to consider

(1) A.I.R. 1957 S.C. 469.
(2) [1962] Supp. I S.C.R. 49 at p. 59.
(3) [1964] 8 S.C.R. 133 at P. 144.

409

that point in an appeal under Article 136 of the Constitution; after aft in criminal proceedings of this character where sentences of death are imposed on the appellants, it may not be appropriate to refuse to consider relevant and material pleas of fact and law only on the ground that they were not urged before the High Court. If it is shown that the pleas were actually urged before the High Court and had not been considered by it, then, of course the party is entitled as a matter of right to obtain a decision on those pleas from this Court. But even otherwise no hard and fast rule can be laid down prohibiting such pleas being raised in appeals under Art. 136."

In view of these principles indicated by us above, and in view of the fact that, in this case, the' High Court did not properly examine the defence evidence on the ground that the counsel for the appellant in that Court admitted that there was no substance in it, we permitted learned counsel for the appellant in this appeal to take us through the entire evidence on the record given by the prosecution and the defence so as to enable us to form our own judgment about

the correctness of the conviction and sentence of the appellant. We, however, find that, after examining the entire evidence, we are unable to hold that any grounds are made out for interference with the conviction.

The prosecution case, as already mentioned by us above, is supported by the evidence of four eye-witnesses, Gurdial Singh, Sarvjit Singh, Gian Kaur and Malkiat Singh. Three of these witnesses, Gurdial Singh, Sarvjit Singh and Gian Kaur are the sons and daughter of the deceased Gurdarshan Singh, but this circumstance, in our opinion, does not detract from the value to be attached to their evidence, because, naturally enough, they are interested in seeing that the real murderer of their father is convicted of the offence and they cannot be expected to adopt a course by which some innocent person would be substituted for the person really guilty of the murder. None of these witnesses had any such enmity with the appellant as could induce him to give false evidence and to substitute him as the murderer in place of the person really guilty. In fact, their feelings. would be strongest against the real culprit and, consequently, their evidence cannot be discarded on the mere ground of their close interest in the deceased. Malkiat Singh has been held both by the Sessions Judge and the High Court to be an independent witness and we find no reason to differ from the view taken by the two Courts. On behalf of the appellant, it- was sought to be. urged that Malkiat Singh bore a grudge against Ajit Singh, because Ajit Singh had been instrumental in the adoption of a son by Malkiat Singh's real uncle, Veer Singh, with the result that Malkiat Singh was

410

deprived of the succession to the property of his uncle. Malkiat Singh denied that he had any grievance against Ajit Singh on such a ground. In support of the plea put forward on behalf of the appellant, one defence witness, Niranjan Singh was examined who claimed to be the son of another real uncle of Malkiat Singh. Niranjan Singh came to depose that his son, Sadhu Singh, had been adopted by Veer Singh and this adoption took place because Ajit Singh had asked Veer Singh to take Sadhu Singh in adoption. Niranjan Singh had, however, to admit that, in the deed of adoption, the person adopted is described as Mukhtiar Singh and not Sadhu Singh. To explain this discrepancy, Niranjan Singh came forward with the assertion that his son, Sadhu Singh, bore an alias Mukhtiar Singh. If Sadhu Singh was the real and principal name of the boy adopted by Veer Singh, there is no reason why that name was not mentioned in the deed of adoption and why the person adopted was described only as Mukhtiar Singh. There is further the circumstance that, even according to Niranjan Singh, Malkiat Singh, witness, did not try to challenge the adoption, even though the adoption had taken place in April 1965, seven months before this incident. Malkiat Singh had stated that he had no grievance against Ajit Singh and was in fact not interested in challenging the adoption. In these circumstances, we do not think that Malkiat Singh can be said to be an interested witness and must hold that his evidence has been rightly relied upon.

The time of the murder was not only proved by the evidence of these four witnesses, but is also borne out by the circumstance that the First Information Report was lodged at the Police station three miles away at about 9.30 p.m. without any undue delay. On behalf of the appellant, it was urged that the First lnformation Report was in fact recorded much later and not at 9.30 p.m. the same day, on the basis that the copy of that report sent to the Ilaqa Magistrate was received by him at 10.30 a.m. on 8th November, 1965.

The argument was that, if the report had been lodged at 9.30 p.m. on 6th November 1965, the copy should have reached the Magistrate the same night or early on the 7th November and not as late as 8th November. We are unable to accept this submission. The evidence of Gurdial Singh was perfectly clear that he reached the police station and lodged the report that very night at 9.30 p.m. and there is no reason to disbelieve him. It appears that in this case, the investigating officer, Sub-Inspector Ram Saran Dass was, to some extent, negligent. In the report lodged by Gurdial Singh, the facts given clearly made out an offence of murder, and yet the Sub-Inspector chose to register the case wrongly as for an offence under section 304 read with section 34 of the Indian Penal Code. It may be that, having wrongly put down the offence as under 304 I.P.C.'instead of section 102, the Sub-Inspector did not consider it necessary to

411

send the report to the Ilaqa Magistrate the same night and delayed sending it, so that it was received at 10-30 a.m. on 8th November, 1965 by the Magistrate. It is also not clear from the evidence whether, apart from the copy of the First Information Report sent to the Ilaqa Magistrate, any special report was also sent to the Magistrate by the Sub-Inspector. In any case, we do not think that this late receipt of the copy of the First Information Report by the Magistrate can lead to the inference that Gurdial Singh is not right in saying that he had the report recorded the same night at 9.30 p.m.

The evidence of the doctor who performed the post mortem examination and of the ballistic expert clearly establish that Gurdarshan Singh had died as a result of gun shot injury received by him from a gun. The gun which the appellant possessed under a licence issued to him was examined by the ballistic expert and his evidence proved that the shots, which killed the deceased, were fired from that very gun. In these circumstances, the Sessions Judge and the High Court were right in recording the conviction of the appellant for the murder of Gurdarshan Singh on the basis of this prosecution evidence.

So far as the defence put forward on behalf of the appellant is concerned, the first point to be noticed is that the plea that the shots, which killed Gurdarshan Singh, were fired by Ajit Singh, was not taken by the appellant until his father, Ajit Singh, had already died. It seems to be clear that this plea, which was put forward for the first time in the Court of Sessions, was an afterthought which could be taken safely by the appellant after Ajit Singh had died and he could not be convicted for the murder. When the appellant was examined in the court of the Committing Magistrate while Ajit Singh was alive, he did, not make any such statement. This is an important circumstance that militates against the plea put forward in defence.

The appellant relied upon the evidence of two witnesses in support of the plea that the shots which killed Gurdarshan Singh were fired by Ajit Singh and not by the appellant. The first of these witnesses is Uggar Singh who stated that he was in his house situated opposite to the house of the appellant and, when he came out on hearing the noise, he saw Ajit Singh quarelling with Gurdarshan Singh deceased and exchanging abuses. Thereafter, Ajit Singh fired the gun shots towards Gurdarshan Singh killing him instantaneously. According to him, neither Malkiat Singh nor the sons of Gurdarshan Singh were present at that time. Even Shrimati Giano, according to him, was not there. The evidence of

this witness cannot be relied upon for several reasons. According to this witness, his statement was recorded by the Police at about 10 a.m. the next day, i.e., the 7th November, 1965; but
L7Sup.C.l.68--2
412
the investigating officer's statement is clear that no person residing in the neighbourhood had been examined by him or had come forward to give any statement to him. Uggar Singh, thus, made a wrong statement that he was examined by the Police the next day. It also appears that he was prosecuted in a murder case in which he was acquitted and Ajit Singh had assisted him in that trial. The answers given by him in the cross-examination also show that, in fact, his house is not in front of the house of the appellant but is situated in the same line as the house of the appellant and the deceased and at some distance. He tried to get over this difficulty by stating that he has another house which is opposite to the house of the appellant, but it appears that that house belongs to his cousin, Ujagar Singh, and that is how the house is described in the site plan also. In all these circumstances, the evidence of Uggar Singh cannot be accepted.

The second witness is Niranjan Singh, whose evidence we have noticed Above, and he also partially supported this part of the defence case by saying that he came rushing to the spot after the incident and found Gurdarshan Singh lying dead, while Ajit Singh was standing outside his house with something which appeared to be a gun. It is clear that this is art another attempt by Niranian Singh to help the appellant and on this point also reliance cannot be-,placed on his evidence.

There remains to be considered the evidence given on behalf of the appellant to establish his plea of alibi. One defence witness Kirpal Singh was examined to prove that the accused was on deputation in the Seed Corporation at Phillaur and was attached to-the Tehsildar, Phillaur and that he was not suspended until 11th November, 1965. His evidence is of no help, because it is obvious that the appellant could be suspended only after he surrendered in connection with this charge which happened on 11th November 1965. The fact that he was in service on 6th November, 1965, does not necessarily prove that he could not have been present at the place of occurrence.

The Witness, on whose evidence reliance is primarily placed is Bunta Ram, Patwari. Bunta Ram stated that on 6th Novem-ber, 1965 he had come to the office of the Corporation at Phillaur in order to collect his pay and he also brought some files from Nakodar in order to consign those files. In that connection. he remained in the office of the Corporation throughout the day. He saw the appellant also working in the said office throughout the day. According to him, at about 6.30 p.m., he and the appellant went to the house of Inderjit Singh, Patwari and spent the night at his house. It, 'however, I appears that this witness is a direct subordinate of the appellant and that is the reason why he has come forward to support the appellant's case. In this connec-
413
tion, Jagdish Rai Batta, Tehsildar in the Seed Corporation, was examined as a court witness by the Sessions Judge and his evidence shows that Bunta Ram was one of the Patwaris working as a subordinate of the appellant who was a kanoongo in the Corporation. Bunta Ram had stated that on that day he had himself appeared before the Tehsildar in connection

with the consignment of the tiles and the Tehsildar had given him some directions in that behalf. Jagdish Rai Batta stated that on that day Bunta Ram, Patwari did not appear before him nor did he produce any files. He went further and stated that he did not point out any defects to Bunta Ram Patwari either orally or in writing. Thus, Bunta Ram- is proved to be an untruthful witness by the evidence of Jagdish Rai Batta, Tehsildar. Bunta Ram, in his cross-examination, purported to state that the appellant was living in a part of the house of Inderjit Singh at Phillaur. On the face of it, it cannot be correct because the appellant did not belong to Phillaur and was not even posted there in connection with his employment. His headquarters, according to Jagdish Rai Batta, was Nakodar and not Phillaur. The evidence of Jagdish Rai Batta only shows that he saw the appellant working in his office at Phillaur on that day until about 5 p.m. Phillaur is connected with Nako-dar by a metalled road along with which there is a bus service, and village Birpind,where the murder took place, is only three miles from Nakodar. It is quite clear that the appellant could easily reach Birpind well before 7.45 p.m. even if he worked at Phillaur till 5 p.m. on that day.- It is also significant that the murder was committed with the gun belonging to the appellant. If the appellant himself had not been at Birpind and had been at Phillaur or Nakodar, the gun should have been with him. at one of these places and not at Birpind. The gun could not, therefore, have been available for use by Ajit Singh, his father in his absence. Considering all these circumstances and the nature of the evidence, we are unable to accept that there is any force in the defence plea of alibi put forward by the appellant, so that the conviction based on the prosecution evidence must be upheld.

A plea was put in for reduction of sentence. Ordinarily, this -Court, in exercise of its powers under Art. 1 36 of the Constitution, does not interfere with a sentence awarded by a Sessions Judge and upheld by the High Court; but, in this case, there are some special features which we cannot ignore. Even according to the prosecution, the murder of Gurdarshan Singh by the appellant was not pre-meditated. The act of firing at him appears to be that of a hot-headed person who was incited to do so by his father. The murder was, not in any way cruel or brutal. In all these circumstances, we think that the ends of justice would be met if the lesser penalty prescribed by law is awarded to the appellant.

414

Consequently, while upholding the conviction, we allow the appeal to the extent that the sentence of death is set aside, and, instead, the appellant is sentenced to imprisonment for life.

R.K.P.S. Appeal allowed.

415