

CASE NO.:
Appeal (crl.) 257-259 of 2001

PETITIONER:
HARDEEP

Vs.

RESPONDENT:
STATE OF HARYANA & ANR

DATE OF JUDGMENT: 16/08/2002

BENCH:
R.C. Lahoti & Brijesh Kumar.

JUDGMENT:

BRIJESH KUMAR, J.

Maha Singh and the appellant Hardeep, father and son respectively, have been prosecuted for murder of one Rajinder Singh. The Sessions Court on trial of the case acquitted Maha Singh but convicted the present appellant Hardeep under Section 304 Part-I IPC and sentenced him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.200/-, in default whereof further to undergo rigorous imprisonment for two months.

Aggrieved by the said order, Hardeep filed an appeal to the High Court against his conviction and sentence and the State of Punjab filed an appeal against the acquittal of Maha Singh as well as against acquittal of Hardeep under Section 302 IPC in place whereof he had been convicted under Section 304 Part-I IPC as indicated earlier. A revision was also preferred by Baljeet Sing against the said order passed by the Sessions Court. The High Court by order dated September 20, 2000 allowed the appeal of the State and convicted the appellant Hardeep under Section 302 IPC and sentenced him to imprisonment for life and imposed a fine of Rs.500/- and in default whereof a further period of two months rigorous imprisonment. The appeal preferred by the State against the acquittal of Maha Singh and one preferred by the present appellant against his conviction, both have been dismissed. The order of the High Court also observed that Criminal Revision No.680 of 1992 also stood disposed of. The appellant Hardeep challenges the above said order of his conviction in this appeal.

We have heard the learned counsel for the appellant Mrs. Avinish Ahlawat, and also Mr. Jai Prakash Dhanda appearing for the State as well as Mr. Ravindra Bana appearing for respondent no.2. We have also perused the record of the case.

The prosecution case is that the appellant Hardeep had taken a loan of Rs.250/- from the deceased Rajinder Singh. On 28.2.1991 while celebrating the festival of Holi, Rajinder Singh asked Hardeep to repay the loan amount. Hardeep is said to have taken ill of it resulting in a quarrel between Hardeep and Rajinder Singh, which, however, subsided on intervention of PW-8 Shamsher Singh. The prosecution case further is that Hardeep said that he would clear the account within three or four days. According to PW-3 Baljit Singh, the deceased Rajinder Singh told him about the quarrel that had taken place on the Holi day upon which Baljit Singh approached Maha Singh, the father of Hardeep and told him that Hardeep should pay back the amount of Rs.250/- to Rajinder Singh. Maha Singh, however, is said to have sided with his son. According to PW-3 Baljit Singh, he had also informed Maha Singh about the quarrel which had taken place between Rajinder Singh and Hardeep a few days earlier in the presence of Shamsher Singh. This constitutes the motive for Hardeep to commit the murder of Rajinder Singh as per the prosecution case.

The incident in question took place on 4.3.1991 at about 8.30 in the morning in village Mehmoodpur, police station Gohana, District Sonapat. According to PW-3 Baljit Singh, the brother of the deceased, he was returning to his bethak after answering the call of nature, as he reached near the house of Maha Singh, he saw his brother going towards Johar taking his cattle when Maha Singh and Hardeep came from their cattle shed and pounced upon Rajinder Singh. Maha Singh is alleged to have caught hold of Rajinder Singh from behind and Hardeep gave knife blows on the left side of the flank of Rajinder Singh. The accused persons ran away after striking the knife blows and Rajinder Singh fell down and died on the spot. On the alarm raised by Rajinder Singh "Mar Dia Mar Dia" PW-5 Bijender and PW-6 Azad Singh had also arrived and seen the occurrence.

PW-3 Baljeet Singh, leaving PW-5 Bijender and PW-6 Azad Singh at the spot with the dead body of Rajinder Singh, proceeded to police station Gohana to lodge the report. He went by a three wheeler. On way, however, he met PW-10 Kali Ram ASI of police station Gohana at Mehmoodpur crossing at about 10.00 a.m. PW-10 Kali Ram ASI recorded the statement of PW-3 Baljit Singh at Mehmoodpur turning itself and sent the written report to the police station at about 10.45 a.m., whereafter he proceeded to the spot. Before leaving Mehmoodpur, he left instructions to call the photographer at the spot for taking photographs of the dead body. After interrogating witnesses under Section 161 Cr.P.C., PW-10 Kali Ram ASI completed the other formalities of the investigation and filed the charge-sheet against Hardeep and Maha Singh. It may be mentioned here that a special report was made available to the SDM, Gohana around 2.25 p.m. though he was available in Gohana itself.

The prosecution had examined PW-3 Baljit Singh, PW-5 Bijender and PW-6 Azad Singh as three eye-

witnesses to the incident. Baljit Singh is the real brother of the deceased Rajinder Singh, Azad Singh is their Bhanja, Bijender is their cousin being the son of their real uncle Mansa Ram as per the statement of PW-3 Baljit Singh. PW-8 Shamsher Singh is witness of motive in whose presence the dispute is said to have taken place between Rajinder Singh and Hardeep. Shamsher Singh is also nephew of Baljit Singh being son of his another real brother Karan Singh. PW-10 is the investigating Officer, namely, Kali Ram ASI, Gohana. PW-4 Dr. C.D. Sharma, Medical Officer, Civil Hospital, Gohana conducted the post-mortem examination of the dead body of Rajinder Singh and found an incised wound 4.9 cms x 1.8 cm over front of left side of chest. Its medial end was 6.1 cms from midsternal line and the lateral end was 7.2 cms inferamedial to left nipple. He found yet another incised wound 1.2 cm x .4 cm muscle deep over front of left forearm 9.6 cms above left elbow. In the opinion of the doctor injury no.1 was sufficient to cause death within 5 to 10 minutes in the normal course of the nature. PW-1 Jagdish Chander is the photographer who had taken photographs of the dead body. Apart from the above noted witnesses, some other formal witnesses were examined, who are in all eleven in number.

So far the defence is concerned, according to the statement of the accused under Section 313 Cr.P.C. and from the suggestions made to the witnesses is that he has been falsely implicated in the case due to ill-will entertained by the complainant and the members of his family and further it is their case that Rajinder Singh had many reasons to have several enemies who may have committed the murder sometime in the wee hours, which was not witnessed by anyone and the dead body having been found lying in the morning, the matter had been reported to the police after the due consultations involving the appellant and his father both. Apart from the other suggestions made, it has been suggested to PW-3 in the end of the cross-examination reply whereof is quoted below :

"It is incorrect to suggest that in the early hours of 4.3.1991 we found the dead body of Rajinder Singh lying in the street. It is also incorrect to suggest that first of all we tried to make inquiry ourselves about the murder and then I went to Gohana and consulted my brother Raj Singh and then in consultation and deliberations with him because of influence on the police, made out the case against the accused on account of . . . "

A similar suggestion was made to Bijender that murder took place sometime in the night and detected after the day break. It being a blind murder the accused persons have been falsely implicated.

The Trial Court while believing the prosecution case and the eye-witnesses, convicted the present

appellant Hardeep under Section 304 Part-I IPC but acquitted Maha Singh holding that he was falsely implicated in the case. The High Court upheld the conviction of the appellant but converted it to under Section 302 IPC. It also maintained the acquittal of Maha Singh. But we find that the High Court hardly tried to consider the merit of the case but mechanically observed that there was no reason to interfere with the findings of the lower court. Learned counsel for the appellant has inter alia vehemently urged that the evidence of the same witnesses who had equally implicated Maha Singh could not be basis of the conviction of the appellant once it was found that Maha Singh was falsely implicated in the case. In the later part of the order of the Trial Court no doubt it is observed that benefit of doubt was being given to Maha Singh but the finding as recorded by the Trial Court are to the following effect :

"So far Maha Singh accused is concerned, he was neither a party to said advance nor a guarantor of his son Hardeep. Moreover, the circumstances of the case do not show that on 4.3.1991 he should have also helped Hardeep his son in inflicting only one stab wound on the person of Rajinder Singh, which Rajinder Singh alone could do himself in twinkling of an eye. According to the prosecution Maha Singh had taken Rajinder Singh in his embrace from his back and Hardeep accused gave a knife blow on the left hand side flank of Rajinder Singh by standing in front of the deceased. If this is taken to be true for arguments sake in that eventuality Maha Singh could not escape an injury on his person when Hardeep had given a knife blow to Rajinder Singh because Rajinder Singh had also sustained one scratch i.e. superficial wound on his left arm from the knife which resulted in injury no.1 on the person of Rajinder Singh, as is evident from the medical evidence and also from the statement of Bijender Singh PW. Therefore, it appears that Maha Singh has been roped in this case falsely so that he may not pursue the case of his only son to save him in this case. It may be mentioned here that in India generally there is a tendency to rope in an innocent person also with the guilty one, and involvement of Maha Singh accused in this case appears to be the result of the tendency."

At another place the Trial Court observed, on his attention being drawn to the fact that photographer had reached the spot at 9.00 a.m. whereas according to the Investigating Officer ASI Kali Ram, the photographer was sent for at 10.30 a.m., it cannot be a ground to believe the defence version that the crime was committed in the dark hours and the accused persons were implicated after consultation and in so far it related to the submission regarding delay in lodging the FIR, it

has been observed that only requirement would be to scrutinise the evidence of prosecution witnesses with care and caution.

In the background of what has been indicated above, we may now proceed to consider the submissions made by learned counsel for the appellant Mrs. Avinish Ahlawat on merit. In this connection it may be observed, in the criminal cases the Court cannot proceed to consider the evidence of the prosecution witnesses in a mechanical way. The broad features of the prosecution case, the probabilities and normal course of human conduct of a prudent person are some of the factors which are always kept in mind while evaluating the merit of the case. No fixed formula can be adopted that in case some of the accused persons implicated by the eye-witnesses have been acquitted, therefore, others must also be necessarily acquitted nor that whatever be the facts and circumstances of the case but in case an eye-witness states to have seen the occurrence sans contradictions in his own statement, must always be believed and acted upon. More particularly, where the circumstances warrant application of due care and caution in appreciating the statements of the witnesses, as in this case observed by the Trial Court itself, coupled with the fact that all the witnesses with no exception are related inter-se and to the deceased.

For the purposes of proving the motive to commit the crime, the episode which occurred on 28.2.1991, the only witness which the prosecution could get hold of is none-else but PW-8 Shamsher Singh, who happens to be the son of brother of the deceased and the complainant Baljit Singh. Normally, at the time the Holi is being celebrated, quite a good number of people will be available. Next, the Trial Court has rightly observed that father of the appellant would hardly have any occasion to join his son in commission of murder of Rajinder Singh for the reason that Hardeep did not want to pay back the amount borrowed by him from Rajinder Singh. It is not that father and son could never join in commission of crimes but normally those would be the cases where there may be some family property disputes or any kind of party bandi between two rival groups or rioting or the incident of like nature. It appears highly improbable that Maha Singh would catch hold of the deceased from behind to facilitate his son to stab him right on the chest, for the only reason that Rajinder Singh wanted repayment of Rs.250/- advanced by him to Hardeep. Nothing seems to have taken place between 28.2.1991 when quarrel taken place between Hardeep and Rajinder Singh and 4.3.1991 when the incident occurred. It does not appeal to the reason that for this kind of a dispute the father will allow his son to commit murder at the young age when he has only passed out high school and get his son condemned for whole life. We then find that all the three eye-witnesses are closely related as indicated earlier.

We find that according to the PW-5 Bijender, he was talking to Azad Singh at about 8.30 a.m. when

they heard the alarm raised by Rajinder Singh "Mar Diya Mar Diya". They were about 200/250 feet away from the place of incident. He further states that at the time Maha Singh had caught hold of Rajinder Singh from behind, they were about 20 feet away from them. This statement makes their presence at the crucial time, doubtful. According to the medical report virtually there is only one injury on chest, besides other on the palm, which would not take any time to be inflicted and it has rightly been observed by the Trial Court that injury may have been caused in twinkling of an eye. The victim had raised an alarm "Mar Diya Mar Diya" that is to say after the assault had taken place, it at least casts serious doubt about the presence of the witnesses at the time of the assault. It is to be kept in mind that their testimony is to be scrutinised with caution due to the background indicated earlier particular for roping in of the father of the appellant, Maha Singh who has been acquitted.

Next we come to the question about the time of the incident and it may have to be seen as to whether it is possible to hold without any shadow of doubt that the time of incident is 8.30 a.m. as alleged by the prosecution. In this connection, it is to be noted that according to the statement of PW-3 Baljit Singh, he had proceeded for the police station Gohana from the spot where the incident had taken place at 8.30 a.m. and dead body was lying, leaving behind the PW-5 and PW-6, namely, Bijender and Azad Singh. The distance of the police station is about 6 kilometers. PW-3 Baljit Singh had gone to the police station by a three wheeler. He happened to meet PW-10 Kali Ram, ASI, police station Gohana on the way at Mehmoodpur turning. It was at about 10.00 a.m. that PW-3 and PW-10 met there. PW-10 Kali Ram, ASI had recorded his statement at 10.30 a.m. Normally, it would not take more than 15 to 20 minutes to travel the distance by a three wheeler between the place of occurrence and Mehmoodpur, which may be hardly 5 kilometers or less. But unusually it took about 1-and a half hours for PW-3 to cover the distance. It is then to be noted that PW-10 Kali Ram after writing the statement of PW-3 Baljit Singh sent the report to the police station at 10.45 a.m. leaving instructions to fetch the photographer for taking photographs of the dead body at the spot. In this way, in the normal course the photographer should have reached the spot well after or around 11.30 a.m., as he must have been informed by someone and then he would have proceeded for the place of occurrence. PW-1 Jagdish Chander, the photographer on the other hand tells a different story. According to him he got instructions to go to the spot at 8.30 a.m. A police jeep had gone to take him to the spot from his house by which he arrived there at about 9.00 a.m. On his arrival he found PW-10 Kali Ram, ASI at the spot. According to the prosecution case as put forward at the time a police vehicle was sent to bring the photographer at 8.30 a.m., at that time the incident should have been taking place in the village. Further the report was taken down at 10.30 a.m. and thereafter it was sent to the police station but before that

time the photographer was instructed to go to the spot for taking the photographs. The prosecution did not choose to cross examine the photographer, who has indicated the time of arrival of the police jeep at his place to take him to the spot as 8.30 a.m. All that emerges from the facts indicated above is that, there is an effort to make up for the time to make it appear that the incident occurred at 8.30 a.m. It is certain by the statement of the PW-3 that he had started by three wheeler at 8.30 a.m. for lodging the report and ASI had met him at Mehmoodpur turning. In the usual course, he may arrived at the police station before 9.00 a.m. as the distant is only 6 kilometers. This discrepancy lends support to the suggestions made by the defence that the incident took place sometimes in the wee hours of the darkness before the day break and nobody could see the incident, therefore, all this time was consumed and utilised to implicate the father and son both. It is true, as observed by the Trial Court every contradiction or discrepancy may not necessarily be fatal to the prosecution case but it all depends on the facts and circumstances of the case, such discrepancies and contradictions have to be seen in the background of probabilities of the prosecution story and veracity of the prosecution witnesses. In case evidence of prosecution witnesses is above board and unimpeachable and inspires confidence, in that event discrepancies and contradictions here and there may have no value at all but in the case in hand we find that there is finding of false implication of Maha Singh the father of the present appellant. This itself impairs their character as unimpeachable witnesses more so in view of glaring contradictions with the statement of PW 1 Jagdish. Again we find that none but only the brother, the nephew the bhanja and the cousin all within first degree of relationship had been examined on the points of material facts of the case. Even for the purposes of proving the fact of motive they had to rely on the evidence of a witness from their own family, namely, PW-8 Shamsheer Singh who is nephew of the complainant and the deceased. If all links and limbs of the prosecution case are weak, they cannot make out a strong case by putting them together. If one link is weak, the other stronger limbs of the prosecution case may make up for the weaknesses but not in the case like this. We have already observed in the earlier part of this judgment that margin of time for the prosecution witnesses who alleged to have arrived at the time of the incident is also very thin. In all probability they might not have arrived from a distance of 200/250 feet after the alarm was heard "Mar Diya Mar Diya" as the incident according the Trial Court, as observed and rightly, must have occurred in twinkling of an eye. The circumstances indicated above throw a serious doubt about time of occurrence and presence of witnesses at that time. On the whole the prosecution case does not inspire confidence to believe that the prosecution story must be true. Rather all facts and circumstances, discrepancies and false implication of one of the accused, who is none else but the father of the appellant and the observations in that regard made

by the Trial Court lead to the inference that prosecution case in all probability may be false. In view of the discussion held above, we allow the appeal and set aside the conviction and sentence passed against the appellant. He shall be released unless wanted in connection with any other case.

JUDIS