

PETITIONER:
TEJA SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB AND OTHERS

DATE OF JUDGMENT: 24/01/1997

BENCH:
MADAN MOHAN PUNCHHI, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Thomas J.

This appeal is by special leave granted to the appellant Teja Singh who is the maternal uncle of Balwant Singh who died of injuries on 9.4.1987. Police challaned three paternal uncles of Balwant Singh (Kehar Singh, Bachan Singh and Jit Singh) besides some others. The Sessions Court convicted those three uncles of Balwant Singh under section 302 read with Section 34 and under section 201 read with section 34 of the Indian Penal Code. They were sentenced to undergo imprisonment for life and a fine of Rs.500/- (Rupees five hundred only) each on the first count and rigorous imprisonment for six months and a fine of Rs. 200/- (Rupees two hundred only) each on the second count. But the High Court allowed their appeal and acquitted them.

The incident which led to the death of Balwant Singh son of Didar Singh took place during the early hours of 9.4.1987. Didar Singh and appellant Teja Singh and the three respondents herein are the sons of one Bhagwan Singh. After his death disputes arose between Didar Singh and one other respondent Bachan Singh in respect of a landed property. On the previous day of death of Balwant Singh there was an altercation and a brawl between Bachan Singh and Didar Singh over construction of a structure made by Bachan Singh. A Police complaint was made by Didar Singh thereon and a case was registered against the accused persons.

Prosecution case is that Balwant Singh went to their tubewell on his scooter during the early hours of 9.4.1987 as per his usual practice. When he reached there, the three respondents and their companions confronted him and forcibly took him and his scooter in a tractor trolley and decoyed him to a far away place. On the way, they killed Balwant Singh and threw his dead body on the side of Patiala Sarhind Road, about 12 kms. away from the tubewell.

The main items of evidence which prosecution adduced against the accused against the following: (1) Balwant Singh died of injuries inflicted on him during the early hours of 9.4.1987; (2) Narinder Singh (PW6) brother of Balwant Singh saw the accused persons forcibly taking the deceased in a tractor trolley. PW6 conveyed the said information to his

uncle PW2 who, in turn, informed the local Panchayat Member (PW5) Mohinder Singh; (3) dead body of Balwant Singh was found lying on the roadside near which his scooter was also lying; (4) Labh Singh (PW7) saw the accused throwing a dead body on the road side during the early hours of the occurrence day; (5) Amar Singh (PW9) saw the tractor trolley at about 4.30 a.m. near the place (where the dead body was later found) and all the accused were sitting inside the trolley; (6) The extra-judicial confession made by the accused to Bhajan Singh (PW8).

Sessions court did not accept the evidence of PW7-Labh Singh, PW8-Bhajan Singh and PW9-Amar Singh. However, learned Sessions Judge relied on the evidence of Narinder Singh (PW6) as corroborated by Teja Singh (PW2) and Mohinder Singh (PW5). Even so, benefit of doubt was given to the accused persons except Kehar Singh, Bachan Singh and Jit Singh. Accordingly, those three were convicted and sentenced as aforesaid.

The Division Bench of the High Court of Punjab and Haryana while acquitting the convicted accused, totally rejected the evidence of PW7-Labh Singh and the testimony of PW8-Bhajan Singh (who spoke about the extra-judicial confession). But nothing was said about the evidence of PW2, PW6 and PW9 for acquitting the accused. The Division Bench highlighted three features of this case, which are: (1) there were over 10 injuries on the dead body which in the opinion of the doctor could have been caused in a motor accident; (2) accused had no reason to anticipate that Balwant Singh would go to the tubewell during the untimely hours; (3) No blood was noticed on the tractor trolley of the accused when it was seized by the police. These three features persuaded the Division Bench to reach the conclusion that the accused would not have committed the murder of Balwant Singh.

Autopsy on the dead body of Balwant Singh was conducted by Dr. Om Prakash Goyal (PW1). As the ante-mortem injuries noticed by the doctor on the dead body have some implications as to the conclusions to be drawn, we reproduce them below:

"Swelling 9 cms x 9 cms on the left temporal region extending to left parietal margin. On dissection there was extensive hematoma underneath. Muscles were contused. There was irregular horizontal line of fracture on left temporal bone going downwards and towards the base of the skull. The fracture was turning transversely, through both the anterior cranial fossa extending to the right zygomatic bone. There was extensive collection of blood in cranial cavity and corresponding there tissue was contused.

2. Abrasion 3 cms x 1 cm at the base of neck left side, 8 cms medial to the tip of the shoulder joint. On dissection clavicle was found fractured.

3. Multiple abrasions on back of left fore-arm.

4. Multiple abrasions in an area of 9 cms in diameter on right lateral side of abdomen, 4 cms above the

right iliac crest.

5. Multiple abrasions on an area of 4 cms in diameter on right lateral side of abdomen, 4 cms above the right iliac crest.

6. Abrasions 5 cms x 3 cms on front and lateral aspect of right knee.

7. Abrasion 1 cm x 1 cm on front and medial aspect of right foot, 4 cms below medial malleolus.

8. Abrasions 4 cms x 4 cms irregular in front of left leg just above knee joint.

9. Abrasion 19 cms x 9 cms on lateral aspect of left ankle joint, just above lateral malleolus. Its edge were contused.

The walls of the ribs on the left side numbering from 5 to 10 were fractured at multiple sides causing injuries to lungs. There was collection of blood on left plural cavity. The spleen was lacerated badly and there was collection of blood in the abdominal cavity."

It is true, in cross-examination PW1 Doctor said that those injuries could as well have been caused even in a motor accident. But on a closer scrutiny of the injuries impells us to rule out the possibility of motor accident to cause all these injuries e.g. fractures on the ribs 5 to 10 have no corresponding external injury. If those fractures were caused in a motor accident necessarily there should have been corresponding external injuries. But if the deceased was manhandled by the assailants with bare hands and legs (either by stamping or by hitting on the chest when the victim is lying) those fractures could have been caused without causing any corresponding external injury. That apart, the minor damage noticed on the scooter is incompatible with the theory of motor accident resulting in such number of injuries.

The doubt expressed by the High Court that accused had no cause to anticipate the visit of Balwant Singh at the tubewell site is only a conjecture. Evidence shows that deceased Balwant Singh went to the tubewell site on that morning as per his usual practice. Here the accused are none other than his father's brothers. It was quite probable that they knew the time when somebody from Didar's house hold would go to the tubewell site every morning. At any rate, absence of prosecution evidence as to the source of information for the accused regarding deceased's visit at the tubewell is too fragile a reason for disbelieving the prosecution story.

Similarly, absence of blood on the tractor trolley is of no consequence. As we have extracted the injuries above, we may point out that none of the injuries was such as to cause bleeding out, much less any profuse bleeding. Hence, it is not necessary that the tractor trolley should have contained noticeable blood. But learned judges of the High Court should have borne in mind, in that context, that when the tractor trolley was seized by the police on the next day of occurrence (as per Ex. PQ) blood stained brick pieces were found lying therein. So it is not a case of total absence of blood inside the tractor trolley.

While there is no good reason for disturbing the findings of the Division Bench of the High Court regarding

the credibility of the evidence of Labh Singh (PW7) and Bhajan Singh (PW8), we are of the view that rejection of their testimony is hardly sufficient to upset the finding of the trial court that the accused had forcibly taken the deceased and killed him and left his dead body on the roadside.

The formidable circumstance for the prosecution is the evidence of PW6 - Narinder Singh who was also at the tubewell when Balwant Singh reached by 4.00 a.m. He reported to his uncle Teja Singh (PW2) that the accused had taken Balwant Singh in the tractor trolley and was beaten up. Importance of the aforesaid piece of evidence gained strength when PW2 - Teja Singh, who is none other than the brother of accused Kehar Singh, Bachan Singh and Jit Singh, had reported the matter to the member of Panchayat (Mohinder Singh-PW5) on the same morning itself. Nothing can be said against the evidence of PW5 which shows that Teja Singh met him at about 8.00 a.m. and informed him that when Balwant Singh did not return to his house even after a long time from the tubewell Teja Singh went there to enquire about it and was told by the youngster (Narinder Singh) that the accused persons and three or four other persons had kidnapped Balwant Singh to murder him after inflicting blows on him. Sessions Judge before whom the above persons gave evidence placed complete reliance on their testimony. The High Court could not point out a single reason to sideline the said evidence.

Along with the above, we have to consider the evidence of Amar Singh (PW9) who deposed that he happened to come across a tractor trolley wherein the accused were sitting near the petrol pump and the time then was around 4.30 a.m. One scooter and a person was found lying in the trolley and to a query made by the witness to Kehar Singh the latter replied that as his nephew was seriously ill he was being taken for treatment. There can be no dispute that what PW9 has said was with reference to the date of occurrence in this case. The only reason mentioned by the Sessions Court for not placing reliance on the evidence of this witness is that he is a relative of Didar Singh. Firstly, it was only a suggestion put to him in cross-examination and it was not admitted by the witness. Secondly, even if it is so, his relationship with Didar Singh would as well be good enough for his relationship with the accused persons who are none other than the brothers of Didar Singh. Hence, it is no good ground for over-looking the telling circumstance spoken to by this witness. High Court has completely overlooked his evidence.

A scrutiny of the evidence and consideration of the arguments addressed to us lead us to the conclusion that the High Court has seriously committed error in side-stepping the important evidence of PW6-Narinder Singh, PW2-Teja Singh and PW5-Mohinder Singh, besides of PW9-Amar Singh and that the conviction and sentence passed on the three respondents should not have been lightly interfered with by the High Court.

We, therefore, allow this appeal and upset the judgment of the High Court. We restore the conviction and sentence passed by the Sessions Court on the three respondents. We direct the Sessions Judge, Patiala to take immediate steps to put the respondents - Kehar Singh, Bachan Singh and Jit Singh - who are accused in the case, back in jail for undergoing the sentence.