

CASE NO.:
Appeal (crl.) 181-182 of 1996

PETITIONER:
State of Punjab

RESPONDENT:
Harbans Singh & Anr.

DATE OF JUDGMENT: 10/04/2003

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:

J U D G M E N T

SANTOSH HEGDE, J.

State of Punjab has preferred these appeals against the judgment of the High Court of Punjab and Haryana at Chandigarh dated 13th July, 1994 made in Criminal Appeal No.206-DB of 1992 whereby the High Court allowed the appeal filed by the respondents herein and set aside the judgment and conviction imposed on the respondents by the Learned Sessions Judge, Bhatinda.

The brief facts necessary for the disposal of these appeals are as follows :

The respondent Jit Singh in these cases was son of Chanan Singh the deceased and the brother of Bhol Singh the other deceased who is also known as Gurbachan Singh. It is the prosecution case that in view of certain misunderstanding arising out of financial transaction respondent Jit Singh along with his brother-in-law Harbans Singh who is also respondent in these appeals had decided to eliminate Chanan Singh and Bhol Singh. With this view in mind, it is stated that on 26th of September, 1990 the respondents were in search of these two persons. Having come to know of the motives of the respondents herein in searching for them, the said Chanan Singh and Bhol Singh went to the house of PW-4 Natha Singh who happened to be the Lambardar of the village and complained to him that the respondents herein were searching for them in the village with the intention of eliminating them, therefore, sought his help. The said PW-4 Natha Singh took Chanan Singh and Bhol Singh to the house of Gurnam Singh (PW-11) who was the Sarpanch of the village around 6.30 p.m. The said Sarpanch Gurnam Singh told these people that he will look into the matter and bring about a settlement the next day morning. Then while coming out of the house of PW-4, Chanan Singh was walking ahead of Bhol Singh and immediately behind them were PWs.4 and 11 who were following them near the gate of the house of Gurnam Singh (PW-11). At that time it is stated that the respondents herein confronted them. The prosecution further alleges that at that time respondent Jit Singh was carrying a DBBL gun while respondent Harbans Singh was carrying Kassia. On seeing, Chanan Singh the respondents herein raised lalkara that they would teach a lesson for making a demand for return of money so saying the respondent Jit Singh aimed his DBBL gun at Chanan Singh and fired a shot which hit Chanan Singh on the right side of his chest and he fell down. The respondent Jit Singh then allegedly aimed at Bhol Singh who was standing behind Chanan Singh but noticing the said attempt of Jit Singh, Bhol Singh laid down on the ground because of which the shot aimed at Bhol Singh hit the wall of the house of PW-11. The further case of the

prosecution is that at the point of time, respondent Harbans Singh carrying the Kassia attacked Bhol Singh on the right back side of his head and continued to assault said Bhol Singh on the other parts of the body like his chin, right ankle, left eye brow. After the said attack, the prosecution alleges that both the accused persons ran away from the place.

The prosecution also alleges that the incident in question was noticed by one Darshan Singh the other neighbour and after the accused ran away from the place of incident PWs. 4 and 11 alongwith Darshan Singh arranged for private vehicle and took the injured persons for Primary Health Centre which is about 1 Kms. away from the place of incident and on the way it is stated that Chanan Singh succumbed to the injuries. At the Primary Health Centre, the doctor Randhir Singh (PW-1) attended to the injured Bhol Singh and sent a message to the Police Outpost which is hardly one furlong away from the place of incident. He referred Bhol Singh to C.M.C Hospital, Ludhiana. But on the way, it is stated that even Bhol Singh succumbed to his injuries.

It is the prosecution case that after the completion of the investigation, the respondents herein were put up for trial before the learned Sessions Judge, Bhatinda who accepting the evidence of PWs. 4 and 11 as eye-witnesses and other supporting evidences produced by the prosecution convicted the appellants for offences punishable under Section 302 as also under Section 302 read with Section 34 IPC and sentenced them to undergo imprisonment for life. The respondent Jit Singh was also sentenced under Section 27 of the Arms Act to undergo RI for one year and a fine of Rs.1000/- was imposed on each of the appellants for the murder of Chanan Singh and Bhol Singh in default of payment to undergo RI for a further period of one year.

As stated above, the High Court has reversed the judgment of the learned Sessions Judge and disagreed with the learned Sessions Judge that a conviction could be based on the evidence of PWs.4 and 11 which the High Court thought was not safe to do so. While doing so, the High Court came to the conclusion that the evidence of PWs 4 and 11 cannot be believed primarily because of the fact that they are stock witnesses who on their own admission had been appearing for the prosecution in large number of cases and against them there were criminal cases also. The High Court also came to the conclusion that these witnesses were closely connected with the deceased persons and belonged to the same political faction while the respondents herein belonged to the opposite faction. It also found discrepancies between the medical evidence and the oral evidence and also held that the motive projected by the prosecution was very weak and from the narration of the evidence of PWs.4 and 11 it is doubtful the incident had actually taken place in the manner projected by the prosecution. It is on this basis the High Court allowed the appeal.

Shri Bimal Roy Jad, learned counsel appearing for the appellant-State very strenuously contended that the High Court has seriously erred in rejecting the evidence of PWs.4 and 11 on very flimsy grounds. He contended that the fact that these witnesses have appeared for the prosecution in earlier cases is not so relevant as to reject their evidence because they being holders of village office will, in the normal course, be called upon to be witnesses in criminal cases which is nothing unnatural. His further contention is that the High Court erroneously came to the conclusion that there was delay in sending certain special report to the Jurisdictional Magistrate because the complaint in question was lodged only about 11.30 p.m. by PW-4 which reached the Jurisdictional Magistrate at 7 a.m. next day and the distance between the Police Station where FIR was lodged and the place of residence of Jurisdictional Magistrate was about 27 kms. and taking into consideration the law and order situation prevailing in Punjab at the relevant point of time there is nothing unusual in the time taken

by the police to send the special report. He also contended that the High Court ought not to have interfered with the considered judgment of the trial court merely because another view was possible.

Shri R.K.Talwar learned counsel appearing for the respondents per contra contended that the evidence of PWs.4 and 11 is so artificial that it cannot be accepted by any reasonable person. He contended that in view of the positioning of these two witnesses they could not have escaped the bullet injuries if they were really present at the time of incident. He contended even though there were independent witnesses like Darshan Singh and other neighbours the prosecution for no good reasons has chosen not to examine them which also throws suspicion on the prosecution case.

We have heard learned counsel for the parties and perused the records. It is an admitted fact that PWs.4 and 11 and the respondents belonged to different political factions, therefore, they were not on friendly terms. There is also evidence to show that PW-4 was closely connected with the deceased and he was also an attester to the pronote which, according to the prosecution, was the cause of fight which led to the death of two persons. Though the High Court has found the fact that PWs.4 and 11 have been prosecution witnesses in many cases is ground to reject their evidence, we do not think merely because some of the prosecution witnesses have appeared in large number of cases earlier for prosecution, ipso facto their evidence becomes liable to be rejected, but we think certainly such evidence will have to be considered with great caution. If in this background, we examine the evidence of PWs.4 and 11, we notice that there is evidence to show PWs.4 and 11 are partisan witnesses with an antecedent of appearing as frequent prosecution witnesses coupled with the fact that independent witnesses were not examined, this certainly throws considerable doubt on the veracity of their evidence.

It is the prosecution case itself that Darshan Singh who was one of the witnesses to the incident who also helped PWs.4 and 11 to carry the injured to the hospital and remained with them almost right through has not been examined by the prosecution. The explanation given is that he has been won over by the accused. But then it is also to be noted that there were many neighbours also who came to the place of incident but none of them have been examined as witnesses leaving only PWs 4 and 11 as the sole eye-witnesses in this case. Further it is to be noticed that these two witnesses along with Darshan Singh carried both the injured persons in the vehicle and thereafter helped in carrying the injured persons to the Primary Health Centre but no blood stained clothes were recovered from the possession of these witnesses which also throws considerable doubt about the presence of these witnesses at the time of incident. PW-11 though says that there was a little blood stain on his cloth, he washed the same in the hospital which explanation, in our opinion, is highly artificial.

As contended by the respondents, if the topography of the place of incident is examined in conjunction with the oral evidence then it shows that Chanan Singh, Bhol Singh and PWs 4 and 5 were standing behind each other and even though Bhol Singh escaped from the firing range of the DBBL gun of Jit Singh by falling on the ground. PW-4 and 11 did not do any such thing to evade the bullets, still they were not injured. This also causes doubt in our mind as to the presence of these witnesses at the place of incident. There is also discrepancy between the oral evidence and the medical evidence inasmuch as the injury on Chanan Singh indicates that the bullets were discharged from very close range from his body, while the prosecution evidence in this regard shows that the assailants were standing at a considerable distance away from the deceased Chanan Singh. For all these reasons, we agree with the finding of the High Court. Therefore, we find no merit in

these appeals and the same are dismissed.

JUDIS