

CASE NO.:
Appeal (crl.) 283 of 2001

PETITIONER:
GURMIT SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 19/10/2001

BENCH:
R.C. Lahoti & P. Venkatarama Reddi

JUDGMENT:

R.C. Lahoti, J.

Ajit Singh and his three sons Kulwant Singh, Gurmit Singh and Mangal Singh were tried on charges under Sections 302, 326, 324 read with Section 34 and Section 452 IPC. On trial, Ajit Singh and Mangal Singh have been acquitted. Kulwant Singh was held guilty under Sections 302, 326/34, 324 and 452 IPC and sentenced to various terms of imprisonment. He has chosen not to file an appeal against his conviction and sentences passed and, therefore, to that extent, the matter has achieved a finality. Gurmit Singh, accused-appellant before us, has been held guilty under Section 302/34, 326, 324 and 452 IPC. He has been sentenced to life imprisonment with a fine of Rs.1000/-, in default to further undergo R.I. for six months, under Section 302/34 IPC, to R.I. for three years and pay a fine of Rs.500/-, in default to further undergo R.I. for a period of three months, under Section 326 IPC, to R.I. for a period of two years and a fine of Rs.200/-, in default to further undergo R.I. for one month, under Section 452 IPC, and to R.I. for a period of one year under Section 324 IPC. All the sentences have been directed to run concurrently.

Kulwant Singh and Gurmit Singh, both filed a common appeal in the High Court which has been dismissed. Accused Gurmit Singh alone has filed this appeal by special leave. Briefly stated, the prosecution case is that on 24.5.1989, Kashmir Singh and his son Nishan Singh were sitting in their house while Jagir Kaur, wife of Kashmir Singh and his daughter Veero were cooking chapattis on tandoor. Accused Kulwant Singh came and stood outside their house. This was objected to by Jagir Kaur who asked Kulwant Singh not to stand in front of her house. Kulwant Singh went away. After sometime Kulwant Singh armed with a kirpan, Gurmit Singh armed with a gandasi, Mangal Singh armed with a takua and Ajit Singh armed with a dang came to the house of Kashmir Singh and entered in the house. Ajit Singh gave an exhortation that Jagir Kaur had objected to Kulwant Singh standing in front of the house and so she should be taught a lesson. Kashmir Singh intervened. On this, accused Kulwant Singh gave a kirpan blow on the head and neck of Kashmir Singh. Nishan Singh tried to rescue his father on which Gurmit Singh gave a gandasi blow which hit on his right arm. Kulwant Singh accused gave another kirpan blow which hit Nishan Singh on the right side of his head. Jagir Kaur and Veero raised an

alarm shouting Mar Ditta, Mar Ditta whereupon the accused left the place of occurrence alongwith their weapons. Kashmir Singh and Nishan Singh were taken to Civil Hospital, Patti wherefrom they were referred to Amritsar Hospital. A message was given from Amritsar Hospital to the police whereupon S.I. Charan Singh alongwith other police officials reached the hospital and enquired if Kashmir Singh was in a position to make any statement. On being opined that the injured Kashmir Singh was fit to make a statement, S.I. Charan Singh recorded the statement of Kashmir Singh which was sent to police station on the basis of which an FIR was registered. Thereafter investigation followed and on being charge-sheeted, the accused were put up for trial. Kashmir Singh died on 3.6.1989. The factum of his death was brought to the notice of the police whereupon cognizance under Section 302 IPC was also taken. Post-mortem on the dead body of Kashmir Singh was performed.

Dr. N.K. Aggarwal, PW9 had medically examined Kashmir Singh on 25.5.1989. He was found to have sustained the following injuries:-

1. An incised wound 6 cms x 1 cm present on the dorsum and lower third of the left fore-arm 3 cms above the left wrist joint. Bleeds on examination. Depth not probed. Semi-lunar in shape.
2. An incised wound 22 cms x 1 cm, semi-lunar in shape, starting from the right side of neck extending upto the occipital region of the head. Bleeds on examination. Depth not probed. Both the injuries were caused by sharp edged weapon. The duration of the injuries was opined to be at about 12 hours before the time of examination.

In the post mortem examination conducted on the dead body of Kashmir Singh by Dr. Jagdish Gargi on 4.6.1989 at 11 a.m., the abovesaid two injuries were confirmed. On internal examination it was found that a sub-dural haematoma was present in the occipital region. Injuries were ante-mortem. Dr. Gargi opined that the cause of death was intra-cranial haemorrhage leading to asphyxia as a result of injury no.1 which was sufficient in the ordinary course of nature to cause death.

Dr. N.K. Aggarwal, PW9 also examined Nishan Singh on 25.5.1989 and found the following injuries on his person:-

1. An incised wound 7 cms x 1 cm present on the medial aspect of the right fore-arm, in its lower third, 4 cms above the wrist joint bleeds on examination. Underlying bone is fractured and peeping out through the wound.
 2. An incised wound 6 cms x 1 cm on the dorsum of the right hand in between the web space between the index finger and thumb. Bleeds on examination. Depth not probed.
 3. An incised wound 12 cms x 1 cm present on the right parietal region of the head. 8 cms above the right ear. Bleeds on examination. Depth not probed.
- All the injuries to Nishan Singh were caused by sharp edged weapon. Injury No.1 was grievous in nature.

On 25.5.1989, Gurmit Singh reached government hospital at Patti, where he was examined by Dr. Vinay Kumar Azad, PW11. He was found to have sustained the following injuries on his person:-

1. Incised wound 10 cms x 1.5 cms on the antero-lateral aspect of right leg, lower one third. Skin muscles were incised. Tibia was partially cut of. Soft clotted blood was present.
2. Incised wound on left little finger 2 cms x 0.5 cms on terminal

phalanx was partially cut. Soft clotted blood was present on the dorsum aspect.

3. Incised wound on left ring finger in its middle phalanx. Wound is muscle deep. Soft clotted blood was present. Wound was 1.5 cms x 0.25 cms on the dorsum aspect.

4. Incised wound on the left middle finger in its terminal phalanx on the dorsum aspect 1.5 cms x 0.25 cm. Injuries no. 2, 3 and 4 were corresponding to each other.

5. Incised wound 6 cms x .25 cm on the dorsum aspect of right fore-arm, 3 cms below the elbow joint. Soft clotted blood was present. Wound was muscle deep only.

6. Incised wound 5 cms x .25 cm on the dorsum aspect of right forearm in the lower one third of the forearm. Wound was muscle deep only. Clotted blood was present.

7. Reddish contusion 4 cms x 1 cm surrounded by diffused swelling on the right back elbow joint.

8. Reddish contusion with diffused swelling on the dorsum of right hand 4 cms x 3 cms. Injuries Nos. 1 and 2 were grievous while other injuries were simple. Probable duration of the injuries was opined to be six to twenty four hours before the time of examination. All the injuries were on non-vital part of the body. All the injuries of Gurmit Singh, except injuries no. 2, 3 and 4, could be caused by a friendly hand, stated Dr. Vinay Kumar.

On the side of the accused there is no report of the occurrence lodged with the police. During his statement under Section 313 Cr.P.C., the accused took a plea which in his own words translated into english is as under :-

I am innocent. I was falsely involved in this case. In fact Nishan Singh, PW1 altercated with me a day prior to the occurrence when he was under the influence of liquor. On the day of occurrence I was returning from my field after work and was having a kassi with me. On seeing me, Nishan Singh came out of his house armed with a dang and start abusing me. I returned the abuse and he assaulted me with a dang causing me injuries. I raised alarm. Nishan Singh appears to be under the influence of liquor and drank. When he gave me dang blows, I wielded my kassi causing injuries to Nishan Singh. In the meanwhile Kashmir Singh came with kirpan and started causing me injuries. I was raising shouts of Mar Ditta, Mar Ditta. My kassi fell on the ground. Kulwant Singh came running from the house with a kirpan after hearing an alarm. When he reached near me, Kashmir Singh was in the process of causing me injuries and I was defending blows with my arms and hands. In order to defend me Kulwant Singh caused injuries to Kashmir Singh. I was medically examined in the next day. As no vehicle was available during night, I remained admitted in Patti Hospital. I gave my version before the police but the police was helping the other side.

A similar plea was taken by the accused Kulwant Singh in his statement. The accused persons did not adduce any evidence in

defence. The trial Court and the High Court have believed the testimony of Nishan Singh, Veero and Jagir Kaur. The place of the incident is inside the house of the accused persons. All the three eye witnesses were naturally present there. Nishan Singh, PW1 has himself sustained injuries in the incident. All the three witnesses are consistent and corroborate each other in narrating the assault by Kulwant Singh and Gurmit Singh on the deceased Kashmir Singh and the injured Nishan Singh. We have independently, with the assistance of the learned amicus appearing for the appellant, gone through the evidence and we find no reason to take a view different from the one taken by the High Court and the trial Court, insofar as reliability of the three witnesses as eye witnesses to the incident is concerned. Agreeing with the two courts, we uphold the finding that the injuries were caused by Kulwant Singh and Gurmit Singh appellant in the manner as alleged by the prosecution and as the role is attributed to them.

Two pleas were advanced by the learned amicus appearing on behalf of the appellant. It was submitted that the FIR was lodged belatedly and the injuries on the person of the appellant Gurmit Singh have not been explained by the prosecution. The benefit of the two circumstances must be extended to the accused appellant which in her submission would be enough to demolish the case for the prosecution.

So far as delay in lodging the FIR is concerned, we agree with the High Court that there has been no unexplained delay in lodging the FIR. Immediately on occurrence the first anxiety on the part of the family members of the deceased was to take the injured to the hospital for treatment. Then the complainant party was approached by brother of Ajit Singh for compromise. Jagir Kaur, PW-3 has stated that respectable persons of the village had tried to settle the dispute and effect compromise between the parties so that the matter was not reported to police. The compromise failed because the condition of Kashmir Singh was serious. We have no reason to disbelieve this explanation which has been also accepted by the Trial Court and the High Court.

Gurmit Singh did have injuries on his person. The plea taken by him in his statement under Section 313 Cr.P.C. is that of self-defence. According to him he was assaulted by Nishan Singh with a dang and in order to save himself he wielded his kassi which resulted in injuries to Nishan Singh. When he had fallen down then also Kashmir Singh persisted in causing injuries to him and he was defending himself. To defend him Kulwant Singh caused injuries to Kashmir Singh. It was submitted that for failure of prosecution to explain injuries caused to Gurmit Singh, an adverse inference should be drawn against prosecution and prosecution case discarded.

The law as to failure of prosecution to explain injuries sustained by accused has been so stated in a recent decision by this Court in Takhaji Hiraji Vs. Thakore Kubersing Chamansing & Ors., (2001) 6 SCC 145.

It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so the prosecution case should be disbelieved. Before non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the court has to be satisfied of the existence of two conditions: (i) that the injury on the person of the accused was of a serious nature; and (ii) that such injuries must have been caused at the time of

the occurrence in question. Non-explanation of injuries assumes greater significance when the evidence consists of interested or partisan witnesses or where the defence gives a version which competes in probability with that of the prosecution. Where the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case.

There is no material brought on record to hold that the injuries sustained by Gurmit Singh were so sustained at the same time and place at which Nishan Singh and Kashmir Singh sustained injuries, that is to say, to hold that the injuries to both the sides were caused during the course of the same incident. There is no report of the incident lodged by Gurmit Singh or anyone on the side of the defence. The Investigating Officer has stated that during investigation it did not come to his knowledge that Gurmit Singh had sustained injuries in the course of the same incident. The question of investigating the injuries on the person of Gurmit Singh did not, therefore, arise. Secondly, the injuries caused on the person of Gurmit Singh are of a minor nature excepting two injuries Injury No.1 and 2. Even these two injuries (Injury No.1 & 2) are on non-vital parts of the body. The doctor who examined Gurmit Singh stated that three of his injuries were corresponding to each other, that is, could have been result of a single blow, and five of his injuries could be caused by a friendly hand, that is, could be self-inflicted. Under section 105 of Evidence Act burden of proving that the act of the accused was protected as being one done in exercise of right of private defence lay on the accused. It is not necessary for the accused to have adduced any positive defence evidence to substantiate his plea if the same is highly probablised by prosecution evidence itself or by other material brought on record. In the present case excepting the statement of accused himself there is no other evidence or material available on record to hold the availability of right of private defence to the accused-appellant and his having caused injuries to Kashmir Singh and Nishan Singh in exercise of such right. The prosecution witnesses, were no confronted with the injuries caused to Gurmit Singh and called upon to explain the same. In the totality of these circumstances, we are of the opinion, that no dent is caused to the prosecution case by the factum of there being injuries on the person of accused Gurmit Singh.

On the other hand we find the prosecution case consistent and convincing. The testimony of Nishan Singh, Jagir Kaur and Veero has been believed by the Trial Court and by the High Court. We too have found nothing to disbelieve or doubt their testimony. The place of the incident is inside the house of the victims where the accused persons had reached armed with weapons. The genesis of the incident is known. The standing of Kulwant Singh outside their house was objected by Jagir Kaur and feeling enraged thereby the accused persons came armed with lethal weapons to teach the lady a lesson. On the cogent and reliable evidence coming from the mouth of three eye witnesses, the two accused were aggressors. They reached and trespassed into the house of complainant and opened assault. They cannot claim any right of self-defence. They simultaneously assaulted the victim and in that process caused injuries. On a hue and cry being raised, they ran away together. Their coming together to the place of the incident, fleeing away together therefrom, being armed and simultaneously dealing blows spell out their common intention. No fault can, therefore, be found with the findings arrived at by the Trial Court and maintained by the High Court.

The appeal is held devoid of any merit and is dismissed.

We place on record our appreciation of Ms. Revathy Raghavan, Advocate, the learned amicus, for her able assistance to the Court.

.J.
(R.C. LAHOTI)

.J.
(P. VENKATARAMA REDDI)

October 19, 2001

JUDIS