

PETITIONER:
NIRANJAN SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 26/04/1996

BENCH:
KURDUKAR S.P. (J)
BENCH:
KURDUKAR S.P. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1996 (5) 582 1996 SCALE (3)774

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This Criminal Appeal is preferred by Niranjana Singh s/o Bhan Singh, the accused No. 3 challenging the legality and correctness of the judgment and order of conviction dated January 7, 1983 passed by Punjab & Haryana High Court at Chandigarh.

2. At the outset it may be stated that originally five accused persons were tried in Sessions Case No.16/81 for various offence punishable under Sections 120-B, 148, 302 read with 149 and 201 IPC. The Sessions Judge, Sangrur vide judgment and order dated July 31, 1982, convicted accused No. 1, Amrik Singh, Bawa Singh and Niranjana Singh, the appellant before us, for offences punishable under Sections 120-B, 302/34 and 201 IPC and sentenced each one of them on all these three counts for various terms of imprisonments including life imprisonment. The learned trial Judge, however, acquitted the accused No.4, Gobind Singh and accused No.5, Sainsi Singh.

3. The convicted accused preferred Criminal Appeal No.531-DB of 1982 to the High Court of Punjab & Haryana against the order of conviction and sentence passed by the Sessions Judge, Sangrur. The State of Punjab also filed Criminal Appeal No. 690-DBA of 1982 challenging the order of acquittal in respect of two other acquitted accused. Both these appeals were heard together and the High Court vide its Judgment and order dated January 7, 1983 dismissed both the appeals. The result, therefore, is that the order of conviction and sentence passed by the trial court and also the order of acquittal came to be confirmed.

4. The appellant alone has filed this appeal in this Court challenging the legality and correctness of the order of conviction and sentence passed by the court below.

5. The entire prosecution case rests on the evidence of Gurjant Singh (P.W.3) who is an approver to the actual assault on Harnek Singh (since deceased). The prosecution

has also relied upon the evidence of other witnesses to prove several other incriminating circumstances to prove the guilt of the accused the prosecution story as disclosed at the trial is as under:

6. Harnek Singh (since deceased) was said to be an Akali worker and a Member of village Panchayat. He held some status in his political party. He was also said to be popular in the village and was becoming more and more popular leader in the political field. This popularity of Harnek Singh, was a matter of concern to the rival group headed by Amrik Singh, the original accused No.1 and Niranjan Singh, the appellant before us. In the previous Panchayat election Harnek Singh got elected to the Panchayat whereas Niranjan Singh was defeated. Amrik Singh was then elected Sarpanch of village Panchayat. It is the case of the prosecution that Amrik Singh received an information that his office as a Sarpanch is in danger because of Harnek Singh. It is this suspicion which provided motive to the accused persons to hatch a conspiracy to commit the murder of Harnek Singh. This conspiracy, according to the prosecution, was hatched by Amrik Singh, Niranjan Singh, Bawa Singh, Sainsi Singh and Gurjant Singh, the approver.

7. It is alleged by the prosecution that the accused persons were waiting for an opportunity to put their conspiracy into action. The Bhog ceremony to mourn the death of mother of one Harnek Singh, the Jathedar gave an opportunity to work out the said conspiracy. The said Bhog ceremony was to be performed at village Balran. Harnek Singh obviously was not aware of this conspiracy. Amrik Singh, the accused then requested Harnek Singh (deceased) to join him in distributing the cards of the said Bhog ceremony to various invites. It is the case of the prosecution that Amrik Singh and Harnek Singh (deceased) went to Niranjan Singh (P.W.12) Sarpanch of Bhutal Kalan and delivered a card of Bhog ceremony to him on 7.12.1980 and borrowed his Motor cycle No.C.H.O 5023, Both of them thus left the house of Niranjan Singh (P.W.12) on the motor cycle and came to the house of Amrik Singh. By that time it was already decided that there would be a wet dinner party at the house of Amrik Singh. Amrik Singh then asked Harnek to stay with him for a night and have a dinner, In meantime other accused persons including Gurjant Singh (P.W.3) The approver also Joined the said wet party. All these persons consumed the liquor and had their meals at the house of Amrik Singh. While Harnek Singh was asleep, it is alleged by the prosecution that Amrik Singh, Niranjan Singh (appellant) and the approver caused various injuries on the person of Harnek Singh and thereafter as planned earlier by Niranjan Singh (the appellant) Harnek Singh was taken on a tractor-trolley to the railway crossing at the village Chotian. Harnek Singh (deceased) and the motor cycle was placed on the railway track whereupon a train crushed Harnek Singh to death. It is alleged by the prosecution that the bedding and the cot on which Harnek Singh was removed, were then amount by the approver and the accused persons other than Amrik Singh and Niranjan Singh.

8. The tractor in which Harnek Singh was carried to the railway crossing belonged to Amrik Singh. It caused some trouble at the railway crossing Chotian. Amrik Singh thereafter contacted Ranjit Singh (P.W.5) for arranging another tractor so as to tow-chain his tractor. Ranjit Singh agreed for the said help and the tractor and trolley were tow-chained to the house of Gandur Singh. On the next morning Gandur Singh noticed blood on the tractor-trolley and had asked Ranjit Singh to get the same removed

immediately. On the same evening Niranjana Singh, the appellant and Amrik Singh came to the village Chotian and removed the tractor-trolley.

9. As stated earlier Harnek Singh (deceased) was crushed to death during the night intervening between 7th & 8th December, 1980. On December 8, 1980 Jagiru Ram, Assistant Station Master, Jakhal received an information from Ram Sarup, key-man of Gang No. 17 about there being a dead body lying in the track. Assistant Station Master then sent a message to G.R.P. Sangrur and the Chief Controller, Ferozepur about the dead body. Head constable, Bachan Singh (P.W.18) visited the place of incident and brought the dead body and the pieces of motor cycle to the police station. On 9.12.1980 the dead body was identified by Shri Sukhwant Singh, Shri Balwant Singh and Shri Ajmer Singh, Advocates. The necessary investigation then commenced. The dead body was sent for postmortem examination. At that stage no foul play was suspected by Sukhwant Singh and others and, Therefore, the case was treated to be one of railway accident.

10. It is then alleged by the prosecution that on 16.12.1980 Shri P.C. Verma (P.W.20) D.S.P. (D) received an information from a reliable source and on that basis an F.I.R. EX.P0 was recorded wherein the accused were named as persons who had committed the murder of Harnek Singh. The investigation was entrusted to Inspector Tek Chand. It is alleged by the prosecution that Amrik Singh made an extra-judicial confession about the commission of offence by him and his co-accused to Ex-Chairman of Ladal. At that time it is alleged by the prosecution that Gurjant Singh (P.W.3) the approver and Bawa Singh were present and they confirmed the fact of murder of Harnek Singh. The said Niranjana Singh then produced these three persons before Inspector Tek Chand and they came to be arrested. During interrogation Amrik Singh made certain disclosure statements which led to the recovery of certain incriminating articles including turban and shoes of deceased Harnek Singh which were identified by Jaswant, widow of Harnek Singh On 22.12.1980 Gobind Singh. and Sainsi Singh came to be arrested Niranjana Singh (appellant) despite police efforts was not available and ultimately he came to be arrested on 21.1.1981, in the Court-compound at Sunam.

11. Dr. K.C. Goel (P.W.1) the Medical officer carried out postmortem, examination on the dead body of Harnek Singh. Dr. K.C. Goel had noticed as many as 7 injuries on the dead body of Harnek Singh out of which six were lacerated wounds, Dr. K.C. Goel opined that all these injuries were antemortem and death was due to shock and haemorrhage, due to injuries. These injuries were sufficient to cause death in the ordinary course of nature. The duration between the injuries and death was immediate and duration between the death and the postmortem was 24 to 72 hrs. After completing the investigation the accused were put up for trial. As stated earlier accused Gurjant Singh (P.W.3) was granted pardon and he was examined by the prosecution as P.W.3.

12. The important question that arises for our consideration is whether there is sufficient evidence in this case to arrive at a conclusion that the approver and the appellant were the persons respective for causing the murder of Harnek Singh (deceased). It is also equally important to find out as to whether evidence of Gurjant Singh (P.W.3) the approver is trustworthy and can be relied upon to sustain the conviction of the appellant before us. It is well settled that the approver's evidence must pass the double test of reliability and corroboration in material particulars. It is said, that the approver is a most

unworthy friend and he having arraigned for his immunity must prove his worthiness for credibility in Court. Firstly, we will have the evidence of Gurjant Singh (P.W.3), approver carefully to find out as to whether his evidence can be accepted as trustworthy. Secondly, once that hurdle is crossed the story given by an approver so far as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt. Ordinarily, combined effect of Sections 133 and 114 of the evidence Act is that conviction can be based on uncorroborated testimony of an approver but as a rule of prudence it is unsafe to place reliance on the uncorroborated testimony of an approver. Section 114 illustration (b) incorporates a rule of caution to which the courts should have regard. See Suresh Chandra Bahri vs. State of Bihar 1995 Supp (1) SCC 80.

13. Applying the law laid down by this Court as regards approver's evidence we are of the opinion that having regard to the facts and circumstances of this case the evidence of Gurjant Singh (P.W.3) the approver needs corroboration in material particulars bridging closely the distance between the crime and the criminal. Certain clinching features disclosed by Gurjant Singh (P.W.3) involving, the appellant directly in the assault on Harnek Singh (deceased) if found trustworthy and credible one and corroborated in material particulars from the evidence on the record, the appellant's conviction under challenge can be upheld.

14. The High Court in its impugned judgment has referred to several circumstances relating to the murder of Harnek Singh that are deposed to by Gurjant Singh (P.W.3) the approver and for which the High Court sought corroboration from other evidence of independent and disinterested witnesses examined by the prosecution, After going through the judgment of the High Court and the record of the case we are of the opinion that an important circumstance, namely, the fact of actual assault on Harnek Singh (deceased) by the accused although deposed to by Gurjant Singh (P.W.3) the approver remained uncorroborated in material particulars.

15. Reverting back to the evidence of Gurjant Singh (P.W.3) the approver, on the issue of conspiracy to eliminate Harnek Singh (deceased) the approver has stated that all the accused were to meet at the house of Amrik Singh (accused) where he was to bring Harnek Singh for dinner, The evidence of the approver further shows that Amrik Singh and deceased Harnek Singh went to Niranjana Singh (P.W.12) to deliver the Bhog ceremony card, Niranjana Singh (P.W.12) then stated that at the request of Amrik Singh he gave his motor cycle to him on which both of them went away. To this extent this part of the story deposed to by Gurjant Singh (P.W.3) the approver can be accepted as it finds corroboration from the evidence of Niranjana Singh (P.W.12). What happened the thereafter at the house of Amrik Singh (accused) lacks corroboration to the evidence of Gurjant Singh (P.W.3) the approver. According to the evidence of Gurjant Singh (P.W. 3) the approver, the accused Amrik Singh insisted upon Harnek Singh (deceased) to have the dinner at his place and stay during that night, It is further the evidence of the approver that Harnek Singh (deceased) agreed to the said suggestion. They all had liquor and dinner thereafter. The High Court in paragraph 18 of the judgment has set out the evidence of Gurjant Singh, (P.W. 3) the approver in this behalf and it reads thus:

"Under the influence of liquor
Harnek Singh deceased opted to
stay at the place of the Amrik

Sing, the appellant where he was given some injuries on the upper portion of his body".

16. In paragraph 19 the High Court has referred to the evidence of Gurjant Singh (P.W. 3) the approver as under:

"The injuries caused by the accused were on his head and neck. The cumulative effect of liquor as well as the injuries could be and actually was the cause for his unconsciousness".

17. Apart from the aforesaid finding recorded by the High Court we have also gone through the evidence of Gurjant Singh (P.W.3) the approver and what we find from his evidence is an omnibus statement that Amrik Singh, the accused and the other accused also assaulted Harnek Singh (deceased). Only from this omnibus statement, in the absence of any corroboration to the evidence of Gurjant Singh (P.W.3) on record we are unable to sustain the conviction of the appellant under Section 302 IPC. The High Court did refer to the law on this topic but, however, this circumstance does not appear to have been well projected before the High Court and, therefore, there is no discussion on this aspect of the case in the impugned judgment. In these circumstances we are unable to sustain the conviction of the appellant for an offence punishable under Section 302 IPC and consequently the conviction and sentence of the appellant on that count is set aside.

18. It may also be stated that the evidence of Gurjant Singh (P.W.3) the approver shows that Amrik Singh, the accused was the Sarpanch of the village and his position as a Sarpanch was likely to come in danger at the instance of Harnek Singh (deceased), Naturally, therefore, Amrik Singh the accused may have an axe to grind against Harnek Singh (deceased) but there is no evidence on the record to indicate that the appellant, Niranjana Singh had any grudge against Harnek Singh. It is true that the appellant, Niranjana Singh was said to be the close associate of Amrik Singh but that by itself would not suggest any motive on the part of the appellant Niranjana Singh to commit the murder of Harnek Singh. After considering the evidence of Gurjant Singh (P. W. 3) the approver we are of the opinion that his evidence relating to the role of the appellant Niranjana Singh has remained uncorroborated in material particulars and in the absence of such corroboration we find it difficult to accept the evidence of the approver in that behalf.

19. It was urged on behalf of the State of Punjab that there is sufficient evidence on record to hold the appellant guilty and sustain the conviction under Sections 120-B and 201 IPC. Learned counsel for the State of Punjab drew our attention to the evidence of Gurjant Singh (P.W.3) the approver and the evidence of Gurnam Singh (P.W.6). The evidence of Gurjant Singh (P.W.3) the approver finds sufficient corroboration from the evidence of Gurnam Singh, (P.W.6) who saw the appellant and other accused in a tractor during the later part of the night. The tractor was driven by Amrik Singh, the accused. Gurnam Singh (P.W.6) further stated that he saw the appellant and other accused with a motor cycle and a cot on the trolley attached to the tractor, Gurnam Singh (P.W.6) seeing the tractor and the accused persons in the trolley enquired from them the reason for their presence at this odd hour, It is said that Niranjana Singh, the appellant gave a wrong explanation to

satisfy the anxiety of Gurnam Singh (P.W.6) that he was carrying, his relative who suffered from pneumonia. This explanation by the appellant Niranjana Singh was found to be untrue. The trial Court as well as the High Court has accepted the evidence of Gurjant Singh (P.W. 3) and the evidence of Gurnam Singh (P.W.6) as trustworthy and accordingly convicted the appellant for an offence punishable under, Sections 120-B and 201 IPC.

20. There is also another circumstance which supports the prosecution in this behalf, The tractor and trolley owned by Amrik Singh, the accused developed a fault and was stranded near the railway track. and thereafter Amrik Singh contacted Gandoor Singh (P.W.4) and Ranjit Singh (P.W.5) residents of village Chotian to tow-chain the said tractor and trolley bring it to the village Chotian. This all happened on 8th December, 1980 at about 5.00 a.m. Both these witnesses then brought the tractor and trolley to village Chotian. On the following day Amrik Singh and Niranjana Singh the appellant went to the said village and after knowing the suspicion entertained by Gandoor Singh (P.W.4) and Ranjit Singh (P.W.5) as regards the foul play since the blood was found on the trolley, Amrik Singh and Niranjana Singh (accused) brought the said tractor to their village. The evidence of Gandoor Singh (P.W.4) and Ranjit Singh (P.W.5) corroborates the evidence of Gurjant Singh, the approver on this issue. In these circumstances we are of the opinion that the High Court was right in upholding the conviction of the appellant under Sections 120-B, 201 of the Indian Penal Code. We accordingly uphold the conviction of the appellant for the offences punishable under Sections 120-B and 201 IPC.

21. The High Court has upheld the conviction and sentence passed by this trial court on both these counts for one year and 9 months respectively. We accordingly confirm the said conviction and sentence. Appeal is partly allowed as indicated above.

22. Niranjana Singh, the appellant has been in jail and undergoing the sentence of life imprisonment for more than five years we, therefore, direct that Niranjana Singh, the appellant (accused) be released forthwith if not required in any other case.