

PETITIONER:
DALIP SINGH

Vs.

RESPONDENT:
THE STATE OF PUNJAB

DATE OF JUDGMENT: 08/07/1997

BENCH:
M. K. MUKHERJEE, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

MUKHERJEE, J.

1. Dalip Singh the appellant before us and five others, namely Arjan Singh Shabeg Singh Manjit Singh Rachhpal Singh and Gurdev Singh were tried by the Special Court, Ferozepur for rioting, murder and other related offences. The trial ended in conviction of the appellant under Sections 148 and 302 IPC and of the others under Sections 148, 323 and 324 IPC. Aggrieved thereby, only the appellant has moved this Court by filing this statutory appeal.

2. (a) The case of the prosecution is that in the morning of February 13, 1984 Shabeg Singh (P.W.6), Bagicha Singh (P.W.7) and Mohinder Singh (the deceased) went to their field to see the water outlet when the six accused arrived there armed with various weapons. Dalip Singh gave out that they would not permit the flow of water from the outlet. When Mohinder Singh retorted to his such threat, dalip singh gave two blows on the head of Mohinder Singh with a gandasa as a result of which he fell down. When Bagicha singh (P.W.7) tried to intervene, Shabeg Singh gave a takwa blow on his head. Rachhpal Singh then gave a takwa blow on his back and Manjit Singh a dang blow on his right arm. When Shabeg Singh (P.W.6) raised an alarm, Baldev Singh gave a kassia blow on his head and Arjan singh two dang blows on his left arm. To defend themselves when the complainant party assaulted Rachhpal Singh, the accused persons left the place.

(b) The three injured were then taken to the local primary Health centre where Dr. Pratap Singh (P.W 1) examined them. On the person of Mohinder Singh he found incised wound 7-1/2" x 1/6" x bone deep with profuse bleeding on the left side of his forehead with brain matter coming out of the wound in its middle 3-1/2" where the bone was cut through and through. He next examined Bagicha Singh and found the following injuries:

1. A bleeding incised wound 2" x 1/6" x bone deep on the right side of the head.
2. Incised wound 1" x 1/4" x muscle deep on the back of the

upper part of the right chest 2" from shoulder joint.

3. Reddish contusion with swelling 3" x 2" on the back of the right wrist joint.

P.W.1 also examined Shabeg Singh (P.W.6) who had the following injuries on his person:

1. A bleeding incised wound 1-1/4" x 1/6" x bone deep on the left side of the head, bleeding on examination,

2. Reddish contusion with swelling 2" x 1" on the back and upper third of the left forearm.

3. Reddish contusion 1" x 1" on the back and lower part of the left forearm.

Later, in the night, P.W.1 examined Rachhpal Singh and found the following injuries on his person:

1. A bleeding incised wound 1" x 1/16" x bone deep on the midline of the head.

2. Reddish contusion 3" x 1" on the left lateral surface of the chest.

3. Abraded contusion 3" x 1-1/2" on the posterior lateral surface of middle of right thigh.

4. Abraded contusion 3" x 1-1/2" over posterior surface on middle of the left thigh.

5. Abrasion 1/2" x 1/6" on the dorsum of the left hand.

Earlier Mohinder Singh was referred to and admitted in Frances Newton Hospital, Ferozepur, where he succumbed to his injuries on February 17, 1984.

(c) On getting information from the Hospital about admission of Mohinder Singh, A.S.I. Iqbal Singh (P.W.8), of Ghal Khurd Police Station went there and enquired about the fitness of Mohinder Singh to make a statement. As the doctor opined that Mohinder Singh was unfit to make any statement he (P.W.8) recorded the statement of Shabeg Singh (Ex.P12) at 2.30 P.M. and sent it to the police station for registration of a case. On its basis formal F.I.R Ex.P 12/B was drawn up and a case registered. S.I. Harbhajan Singh (P.W.9) took up investigation and went to the spot. He prepared a rough site plan and collected some blood stained earth and wheat plants from the spot. He prepared sealed parcels in respect of those articles and sent them to Forensic Science Laboratory (F.S.L.) for examination.

(d) Consequent upon death of Mohinder Singh on February 17, 1984, ASI Iqbal Singh, (P.W.8) prepared inquest report and sent the dead body for post-mortem examination which was held by Dr. Ajaib Singh Mann (P.W.4), Emergency Medical Officers Civil Hospitals Ferozepur, on February 18, 1984. On receipt of the report of the Serologist (Ext.P. 18) that the earth and the wheat plants were stained with human blood and after completion of investigation Police submitted charge sheet against the six accused.

3. The accused pleaded not guilty to the charges levelled against them and their version of the incident was that in the morning of the fateful day when Kala Singh (D.W.3) Jusbir Singh and Balkar Singh were Constructing a water channel beyond the field of Mohinder Singh and others in terms of an agreement with Tubewell Corporations Mohinder Singh, Shabeg Singh (P.W.6) and Bagicha Singh (P.W.7) came

there armed with deadly weapons. While Mohinder Singh had a gandasa with him, the other two had a takwa and a kasouli respectively. Reaching there they gave out that an outlet should be kept for their field before any other construction was made to which Kala Singh replied that he could not oblige them unless directed by their overseer. Then they started demolishing the water channel and, when Kala Singh and his men objected, Mohinder Singh gave a gandasa blow to Rachhpal Singh. To defend himself Rachhpal Singh then gave a kasouli blow to Mohinder Singh. According to the defence accused Dalip Singh (appellant), Arjan Singh and Shabeg Singh were not even present there.

4. In support of their respective cases the prosecution examined nine witnesses and the defense seven. After an elaborate discussion of the evidence the Special Court accepted the case of the prosecution in preference to that of the defence, and, passed the impugned order of conviction and sentence.

5. That Mohinder Singh died as a result of injuries sustained by him, as testified by Dr. Pratap Singh (P.W.1) and Dr. Ajaib Singh (P.W.4), admits of no doubt. Indeed, homicidal death of Mohinder Singh and sustaining of injuries by Shabeg Singh (P.W.6) Bagicha Singh (P.W.6) and accused Rachhpal Singh in course of the incident were not challenged by the defence. We further find that the claim of the prosecution that the earth and plants seized from the place of occurrence were found to be stained, with human blood by the F.S.L. was also not contradicted. In the context of the above undisputed facts we are left with only the question whether the incident took place in the manner alleged by the prosecution or the defence.

6. To prove its version of the incident the prosecution relied upon the testimonies of Shabeg Singh (P.W.6) and Bagicha Singh (P.W.7). Shabeg Singh stated that on the day of the incident he, accompanied by Bagicha Singh (P.W.7) and Mohinder Singh (deceased), had gone to the field to see the outlet, when Dalip Singh armed with gandasa, Shabeg Singh with takwa, Gurdev Singh Baldev Singh with Kassia Arjan Singh and Manjit Singh with dags and Rachhpal Singh with takwa came there from the side of their fields. Dalip Singh raised lalkara that they would not permit the flow of the water from the outlet. When Mohinder Singh retorted Dalip Singh gave two gandasa blows to Mohinder Singh who fell down. Bagicha Singh (P.W.7) then tried to intervene and both Shabeg Singh and Rachhpal Singh gave takwa blows on him with their takwas. Manjit Singh then gave a dang blow on him and when Shabeg Singh (P.W.6) tried to intervene Baldev Singh @ Gurdev Singh gave a Kassia blow on his head. Arjan Singh then gave two dang blows on his left arm. At that stage, they (P.Ws.6 and 7) assaulted the accused to save themselves. They were then taken to the hospital at Fazilka where they were medically examined and there police recorded his statement (Ext. p. 12). When cross examined he (P.W.6) stated that they had purchased the land from Karnail Singh which had an outlet in it and that the same was near the place where Mohinder Singh was injured. A suggestion by the defence that there was no outlet and that they wanted to have an outlet forcibly was denied by him. He also denied that masons were working there. A suggestion by the defence that Balkar Singh, Kala Singh (D.W.3) and Jasbir Singh were constructing a channel on that day was refuted. In answer to another question he stated that Mohinder Singh was empty handed.

7. The testimony of Bagicha Singh (P.W.7) is on similar lines. In cross examination he stated that three sons of

Dalip Singh stood arrayed as accused; that accused Arjan Singh was brother of Dalip Singh; that they wanted the outlet from the place of occurrence; and that Karnail Singh used to take the turn of water from that very outlet which stood fixed under, the orders of the Divisional Canal Officer. The suggestion that the outlet of Karnail Singh was at a distance of 300 yards was denied by him.

8. Coming now to the defence witnesses, we find that Swaran Singh (D.W.1) and K.S. Kailey (D.W.5), Deputy Superintendent of Police and Additional Deputy Superintendent of Police respectively of Ferozepur were examined to testify that they had perused the case diary prepared by the Investigating officer and interrogated some of the accused and other persons. On their such exercise they found that three of the accused, namely Dalip Singh (appellant), Shabeg Singh and Arjan Singh were innocent. In our considered view, the Designated Court ought not to have permitted the defence to adduce the above evidence as it is not legally admissible. In *Vijender etc. vs. The State of Delhi* [1997 (3) J.T.E 131] a Bench of this Court, of which one of us was a member (M.K. Mukherjee, J.) while dealing with a similar question observed as under:

"The result of investigation under Chapter XII of the Criminal Procedure Code is a conclusion that an Investigating Officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent Court to take cognizance thereupon under Section 190 (1)(b) Cr.P.C. and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence. The trial Court is then required to base its conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation of the result thereof."

We may further add that if the result of investigation was to be made the basis of a Court's verdict regarding guilt or innocence of an accused, there would be no need of a trial in a police case for, relying on the report submitted under Section 173 (2) Cr.P.C. a Court would be entitled to decide the fate of the person arraigned. The evidence of D.Ws.1 and 5 must, therefore, be left out of our consideration. Incidentally, we may mention that in spite of the opinion expressed by the above two superior officers charge-sheet was submitted by the Investigating Officer against the above-mentioned three accused.

9. Kirpal Singh, a Patwari of Canal Department, was examined as D.W.2 to prove that a water channel was under construction across the site of the incident on the day in question. Besides, he testified that there was earlier an outlet at a distance of one killa from the field of Mohinder Singh but there was no outlet in that field.

10. The next witness was Kala Singh (D.W.3) who gave the defence version of the incident as detailed earlier. In cross examination he admitted that he did not make any complaint about the demolition of the channel by Mohinder Singh, Shabeg Singh and Bagicha Singh; that there was no document to show that they had obtained the contract; and that he did not lodge any complaint with the police

regarding the incident.

11. Avtar Singh (D.W.4), a Junior Engineer of the Tubewell Corporation claimed that he was in-charge of outlet RB 25000 R of Golewal in the district of Faridkot. According to him location of an outlet is decided by the Canal Department and turn of its water is fixed under Section 68 of the Canal Drainage act. He averred that the Canal Department had not given any location for outlet in killa numbers 2/2, 3, 4 and 5/1 out of Rectangle No. 83 which was purchased by Mohinder Singh.

12. Jagdish Raj (D.W.6) was examined to say that a contract for construction of an outlet near the plot in question was sanctioned in favour of Yash Pal (D.W.7) but in cross examination he admitted that he had no document in support of his statement.

13. The last witness examined by the defence was Yash Pal (D.W.7). His testimony is that big tender for construction of pucca khal (channel) in village Kailas was sanctioned in his name and he had deputed Kala Singh Balkar Singh and Jagbir Singh to complete the same. He further testified that on the Sankranti days Kala Singh, Jasbir Singh and Balkar Singh contacted him and told that there had been quarrel and the channel demolished. In cross examination he stated that there were measurement books to show that Kala Singh and others worked as masons and the volume of work they did on a particular day. He, however, admitted that he could not give the date when they started the work.

14. Having given our anxious consideration to the evidence adduced by the parties we do not see any reason to differ from the views expressed by the Special Court. the presence of the two eye witnesses (P.Ws.6 and 7) at the spot at the material time cannot be abutted in view of the injuries found on their persons. Besides the defence also admitted their presence there. From their evidence we find that inspite of a searching cross examination the defence could not elicit any answer to discredit or contradict them. On the contrary, their testimonies as to the manner in which the assault took place stands corroborated by the medical evidence. The defence version of the incident regarding the actual assaults as given out by Kala Singh (D.W.3), cannot be accepted because he did not testify as to how P.Ws 6 and 7 sustained the injuries nor does his version of the incident fits in even with the nature and number of injuries sustained by accused Rachhpal Singh. The other reason which inhibits us from accepting the defence version of the assault is that it is a belated ones in that neither any suggestion was put to P.W.6 and 7 in cross examination nor did early of the accused including the appellants make any statement relating thereto when examined under Section 313 Cr.P.C. As regards the origin of the trouble, we also feel inclined to reject the defence version. If construction of the channel by Kala Singh and his two companions was the cause of the incident, it was expected, in the fitness of things, that the complainant party could attack him (D.W.3) and the other two masons, for it is they who refused to accept their demand to keep an outlet for their field. To put it differently, in the context of the dispute that led to the assault as testified by D.W.3 - the complainant party would have no axe to grind against accused Rachhpal Singh, who was in no way concerned or connected with the alleged construction work. Since no credence can be given to the testimony of D.W.3 the related evidence of the other three witnesses, namely D.Ws.4, 6 and 7 does not further the cause of the defence nor weaken the prosecution.

15. For the foregoing discussion, we do not find any merit

in this appeal and it is accordingly dismissed. The appellant, who is on bail, will now surrender to his bail bonds to serve out the sentence.

JUDIS