

JUGRAJ
v.
STATE OF PUNJAB
(Criminal Appeal No. 594 of 2005)

JANUARY 27, 2010*

[Harjit Singh Bedi and A.K. Patnaik, JJ.]

2010 (4) SCR 895

The following Order of the Court was delivered

O R D E R

Criminal Appeal No. 594 of 2005

1. This appeal is directed against the judgment and order of the High Court of Punjab and Haryana dated 7th December, 2004 whereby the High Court has allowed the appeal of three of the co-accused but has dismissed the appeal of the appellant.

2. The facts of the case are as under:

2.1. At about 9:00p.m. on the night of December, 1, 1996, Bachhitter Singh, a former member of the Punjab Legislative Assembly representing Kharar constituency was travelling in his jeep on the Landran-Kharar Road along with Sadhu Singh - P.W. 2, Narinder Singh P.W. 5, Gurmail Singh and one Ajit Singh Padiala. As they were passing by the warehouses at Landran, Bachhitter Singh told Narinder Singh P.W. 5 that as the bonnet of the jeep was loose, it should be properly fastened. On this Narinder Singh stopped the jeep and locked the bonnet and then returned to his seat when a Maruti car carrying four persons reached there. The driver of the car remained seated in the car with the engine on but the three passengers, all Sikh boys 20-25 years of age got out. Of the three persons one of them was armed with a .12 bore gun and the other two were armed with naked kripans. One of the boys who was armed with naked kripa got hold of Narinder Singh P.W. by his

neck and thereafter gave two blows to Bachhitter Singh on his right flank. The second person started grappling with Bachhitter Singh on which the latter stumbled and fell down. The third person who was armed with a shot gun then fired a shot into the chest and arm of Bachhitter Singh. The assailants then broke the headlights of the jeep and drove away in their Maruti car. Sadhu Singh P.W. 2 accompanied by Ajit Singh left the site of the incident leaving Narinder Singh and Gurmail Singh to guard the dead body and made their way towards Kharar Police Station about 8 kms. away but as they reached close to Swaraj Tractor Factory just short of Kharar they came across a police Gypsy with S.H.O. Sub-Inspector Rajinder Singh on patrol duty. The Inspector along with Sadhu Singh and Ajit Singh returned to the place of incident and saw Bachhitter Singh lying dead on which they picked up his body and removed it to the Kharar Hospital. Sadhu Singh thereafter recorded the First Information Report at about 11:15p.m. the same night i.e. on the 1st of December, 1996 in which he did not name any of the assailants although he gave their physical description. A Special Report was allegedly despatched through Constable Jaspal Singh to the Magistrate shortly after midnight which was received by P.W. 9 - Gurmeet Kaur, Judicial Magistrate, Kharar at 9:15a.m. on 2nd December, 1996. The Sub Inspector also returned to the place of incident on the morning of the 2nd December, 1996 to carry out further investigations and amongst other items picked up two empty .12 bore shells and a piece of a broken sling of a shot gun and these were duly deposited in the Malkhana and subsequently despatched to the Forensic Science Laboratory. He also recorded the statements of the eye witnesses including Narinder Singh -P.W. 5. In the meanwhile, it appears that the accused made extra judicial confessions to P.W. 6 and P.W. 7 Kuljeet Singh and Kuldip Singh respectively and Jugraj Singh appellant also made a disclosure statement which led to the recovery of the .12. bore gun allegedly used in the murder. It transpired after investigation that this weapon belonged to Gurmail Singh, Jugraj Singh's first cousin and he too was prosecuted for

offences punishable under Sections 29 and 30 of Arms Act and was duly convicted and has already undergone the sentence as of now. The Forensic Science Laboratory in its Report opined that the two spent cartridges recovered from the place of incident had been fired from the gun in question. The trial court in its judgment dated 13th August, 2002, held that the statements of Sadhu Singh P.W. 2 and Narinder Singh P.W. 5 inspired confidence, that there was no delay in the lodging of the FIR and if there was any it had been explained by the prosecution, that the refusal of the accused to join the identification parade was a point to be taken against them as there was no evidence to suggest that they had been shown to the witnesses prior to the proposed identification parade and that the extra judicial confessions made to P.W. 6 and P.W. 7 further corroborated the prosecution story. The trial court accordingly convicted and sentenced the accused as under:-

(i) Jugraj Singh, Kulwinder Singh, Kuljit Singh and Inderpreet Singh were sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each for the offence under Section 302/34 and in default of payment of fine to further undergo rigorous imprisonment for a period of four years each.

(ii) Jugraj Singh, Kuljit Singh, Kulwinder Singh and Inderpreet Singh were also sentenced to undergo rigorous imprisonment for a period of two years each under Section 324/34 of the IPC.

(iii) Jugraj was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1,000/- under Section 25 of the Arms Act, 1959 and in default of payment of fine to further undergo rigorous imprisonment for four months. It was also directed that all the sentences would run concurrently.

2.2. An appeal was thereafter taken to the High Court. The High Court by the impugned judgment dated 7th December, 2004 allowed the appeal of Kuldeep Singh, Kulwinder Singh and Inderpreet Singh and dismissed the

appeal filed by the present appellant Jugraj Singh. In arriving at its decision, the High Court observed that the medical evidence did not support the prosecution story inasmuch as the five incised injuries caused to the deceased were inflicted at least two hours after his death and not immediately after he had sustained the gun shot injuries and that the prosecution had not been able to explain the presence of these injuries, despite the fact that Gurmail Singh and Narinder Singh had been left behind to guard the spot after Sadhu Singh had left for the police station to report the murder. The High Court also held that the statements of Kuldip Singh, P.W. 6 with regard to the extra judicial confession of Jugraj and Kulwinder Singh and of Ajit Singh P.W. 7 with respect to Kuljit Singh and Inderpreet Singh could not be believed and the story projected by them appeared to be a concocted one. The Court, however, held that the recovery of the gun from Jugraj Singh appellant in Criminal Appeal No. 595 of 2005 which had been preceded by a disclosure statement was a material circumstance against him and the fact that the portion of the sling which had been broken off from the main part of the gun had been found by the Forensic Science Laboratory to be of the same make and quality, was positive corroboration that the person who had shot the deceased was indeed Jugraj Singh. The Court then examined the circumstances with regard to the other three accused and found that there were no corroborating evidence to supplement the statements of the two eye witnesses with regard to their involvement and in conclusion observed as under:-

“Our conclusion is irresistible that the matter was reported to the police some time at night but the case was finalized in the early hours on December 2, 1996, whereafter the special report was delivered to the Magistrate at 9:15a.m. The deceased had a gun shot injury on his chest with two corresponding exist wounds but no ante-mortem kirpan injuries. The post-mortem nature of the wounds as described by the Medical Board was such that they had been inflicted at least two hours after

Bachhitter Singh had died, not immediately after the gun shot injuries. However, the above glaring defects in the prosecution case do not compel us to hold that Sadhu Singh (P.W. 2) and Narinder Singh (P.W. 5) did not witness the occurrence. These two witnesses had accompanied the deceased in his jeep and did not witness the occurrence although their version was exaggerated and they had included Kulwinder Singh, Kuljit Singh and Inderpreet Singh also as accused. The recovery of the kirpans from Kulwinder Singh and Kuljit Singh and the car from Inderpreet Singh did not establish that they had also participated with Jugraj Singh in committing ;the murder of Bachhitter Singh.”

3. We have heard the learned counsel for the parties at length in the appeal before us.

4. We find that out of the four eye witnesses only Sadhu Singh P.W. 2 and Narinder Singh P.W. 5 had been examined. Admittedly, Sadhu Singh P.W. 2, the author of the FIR did not know the accused by name or by face and had only given general descriptions as to their identities or features. Narinder Singh, P.W. 5, was however, very clear in his evidence when he stated that he knew the names of the accused as they were calling out to each other by their pet names during the course of the entire incident. It has come in evidence that when Sadhu Singh had made his way to the Police Station to record the FIR, Narinder Singh P.W. 5 had also been present at that time. In this view of the matter, there appears to be some merit in the stand of the counsel for the appellant that had Narinder Singh been present at the place of incident or at the time of the recording of the FIR the names of the accused would have figured in the FIR itself. In this background, the delay in the lodging of the FIR and the delivery of the Special Report becomes significant. It is the admitted position that the incident happened at 9:00p.m., on the 1st of December, 1996 on the Landran-Kharar road about 8 kms. short of Kharar. Sadhu Singh had been at pains to say that he had to walk the distance of 8 kms. as the jeep had refused to start. Narinder Singh, P.W. the

driver of the jeep too had stated likewise but they were confronted with their police statements where they had made no such claim. We are of the opinion that the story given by Sadhu Singh was concocted to explain, to a small extent, the delay in the lodging of the FIR. Be that as it may, even on admitted facts, the SHO, Rajinder Singh had reached the place of incident at about 9:30 or 10:00p.m. and the hospital at Kharar a short time later and the party had then moved on to the police station about ½ km. away from the hospital where the FIR had been recorded at about 11:15p.m. With the Special Report being delivered within Kharar itself at 9:15a.m. the next day as per the statement of Ms. Gurmeet Kaur, the Judicial Magistrate. The prosecution, has, however, doubted the veracity of the statement of the Magistrate on the basis of the affidavit sworn by Constable Jaspal Singh who deposed that the copies of the Special Report had been handed over to him shortly after mid night and he had taken a copy first to the SSP, Ropar and to the Circle Officer Ropar about 35 kms. away and then returned to Kharar and handed over the report to the Magistrate at 3:30a.m. - a fact which has been denied by Ms. Gurmeet Kaur. It is, therefore, obvious that the best that can be said for the prosecution is that the matter had been finally determined in the early hours of 2nd December, 1996 and the FIR had thereafter been lodged and then ante timed. This appears to be the import of the judgment of the High Court as well.

5. There is another significant circumstance in the prosecution story. It is the case of the prosecution that two shots had been fired at Bachhitter Singh which caused his immediate death. The Doctor, however, found five incised post mortem injuries on the dead body as well. No explanation is forthcoming as to how these had been caused inasmuch as that the dead body had not remained unguarded even for a moment and though Sadhu Singh had left for the police station, Narinder Singh P.W. 5 and Gurmail Singh P.W. 2 had been left behind to guard the site and that the SHO Rajinder Singh had reached the spot within an hour or two as per the prosecution version. We are further of

the opinion that save for the recovery of the gun, the evidence with regard to all the accused was identical. The High Court has in its judgment clearly recognised this fact and has given clear and precise findings (quoted above), but nevertheless dismissed the appeal of Jugraj Singh while acquitting the other three accused on the identical evidence.

6. Mr. Kuldip Singh the learned counsel for the State, has however, submitted that the fact that the gun had been recovered at the instance of Jugraj Singh and that the empty shells had been found to match the gun was a circumstance in favour of the prosecution. It is true that the Report of the Forensic Science Laboratory does indicate that the cartridges had been fired from the gun. The question is as to who had fired the gun and to our mind the evidence on this is ambivalent. It must also be seen that the empty cartridges had been despatched to the Forensic Science Laboratory on the 4th December, 1996 and the gun recovered a day later on the basis of the disclosure statement made by Jugraj Singh, had been despatched to the Forensic Science Laboratory on the 12th of December. We are unable to understand as to why the gun had not been despatched more promptly. Even otherwise, a connection between Jugraj Singh and the gun could have been found had it been said that he was the owner thereof. Incidentally, this is not the case as the gun was admittedly owned by Gurdeep Singh who was prosecuted, convicted and sentenced under Sections 29 and 30 of the Arms Act and his appeal is also before us today which we are told would be infructuous in a manner as he has already undergone his sentence. We are, therefore, of the opinion that in the light of the observations of the High Court itself there seems to be uncertainty with regard to the prosecution story and the courts below had somewhat stretched its credibility beyond a point which requires that we should interfere in the matter.

7. We, accordingly, allow the appeal, set aside the judgment of the trial court as well as the High Court and acquit the appellant. He shall be released from custody forthwith if not wanted in any other case.

8. Criminal Appeal No. 595 of 2005 filed by Gurdeep Singh is dismissed as having becomes infructuous as the appellant has already served the sentence.

