

CASE NO.:
Appeal (crl.) 437 of 2002

PETITIONER:
Ravinder Pal Singh & Anr.

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 29/11/2002

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

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

Appellants along with ten other persons were charged for offences punishable under Sections 302, 307, 364, 323 324, read with Section 149, 148 and under Section 27 and 30 of the Arms Act for having caused the abduction of Sukhchain Singh with a view to commit his murder and for having caused injuries to Nishan Singh PW-4 on 23rd of December, 1990 at about 6 p.m.

The learned trial Judge transferred the case in regard to one of the accused persons to the Juvenile Court on the ground that the said accused was a juvenile. It is also seen from the records, another accused person died during the trial, while six of the accused persons along with appellants before us were convicted for various offences including under Sections 302 read with 34 IPC and was imposed imprisonment for life along with other punishments for other offences, particulars of which may not be necessary for the disposal of this appeal. Two of the accused were acquitted.

In appeal by the convicted accused, the High Court of Punjab at Chandigarh disbelieved the prosecution case in regard to six other accused persons while the appellant's appeal was dismissed basically believing evidence of the injured witness PW-4 as also evidence of one Baj Singh (PW-7), who according to the prosecution had witnessed the disposal of the body of Sukhchain Singh. It is against the said judgment and conviction of these appellants they are before us in the above appeal.

Prosecution case briefly stated is that on 23rd of December, 1990 at about 6.p.m. the original 12 accused persons including these appellants came to the field where PW-4, his brother PW-8 Jagtar Singh, Sukhchain Singh (deceased) PW-6 Tarlochan Singh, the brother in-law of Jagtar Singh were ploughing the land belonging to Tarlochan Singh in the village of Ghanga Kalam to settle the score with Jagtar Singh, who, according to the prosecution allegedly murdered father of the accused. It is stated that Angrez Kaur, (wife of the said deceased) one of the accused acquitted by the Trial Court, exhorted Mukhtiar Singh, another accused acquitted by the Trial Court to shoot at the complainant party. It is also stated Gurpal Singh, another accused raised Lalkara that since his father was murdered, Mukhtiar Singh should not be spared. Consequently, to the said exhortation and Lalkara, it is stated that Gurpreet Singh and Balkar Singh opened fire but that shot did not hit anyone. Thereafter the appellants and other accused persons assaulted PW-4 out of whom first

appellant Ravinder Pal Singh allegedly attacked PW-4 on the parietal region with Gandasa and caused an incised wound just above left ear and the second appellant, Balwinder Singh assaulted PW-4 with a Dang causing an injury on the finger of the hand. The prosecution story then is, after PW-4 fell down and the accused persons assaulted him, they caught hold of Sukhchain Singh, tied him and took him in their tractor with a view to commit his murder. The complaint in this regard was lodged according to the prosecution at about 3. A.m. on 24th of December, 1990 in Police Station Jalalabad, which is about 7 Miles from the place of incident by PW-4, which was recorded in the general diary and a special report was sent to the Jurisdictional Magistrate which reached only at about 9. P.m., on 24th of December, 1990. The further case of the prosecution is that PW-11, the ASI reached the place of incident at about 7 a.m. on 24th of December, 1990 and held the preliminary investigation which was later continued by PW-12, who recorded the statement of the witnesses and conducted the spot mahazar. On completion of that part of investigation case under Sections 307, 323, 324 read with 149 and 148 was registered. On 30th of December, 1990 it was stated that a dead body was found in the Canal near the village where the complainant resides, which was in a highly decomposed state and was not in a condition to be identified, but on the basis of the complainant's statement and evidence of PW-7, the same was identified as that of Sukhchain Singh, who on 23rd of December, 1990 was abducted by the accused persons. Hence, on additional charge under Section 302 read with 149 was also added.

As stated above all but the two appellants before us have been acquitted by the Trial Court or the High Court.

Shri Ranjit Kumar, Senior Advocate contended before us that practically, entire prosecution case both in regard to the incident of 23rd December, 1990 as also the alleged disposal of the body was disbelieved by either of the two courts in regard to eight of the ten accused in such circumstances they could not have relied upon the very same evidence to convict the appellants before us. He pointed out apart from the allegations of assault on PW-4, there is no material to show that these appellants had any role to play in the murder or disposal of the body of Sukhchain Singh. He contended when the courts below disbelieved the very same evidence of the prosecution as to the abduction and murder of Sukhchain Singh in regard to other acquitted persons there is no special reason why they should be believed in regard to these accused person more so when the charge was by invoking Section 149 IPC. He also contended the prosecution evidence in regard to the assault by these appellants on PW-4 cannot also be believed, because of the contradictions exaggerations and improvements in the prosecution case.

He pointed out, though the incident in question had taken place on 23rd December, 1990 at about 6 p.m. from the material on record it is seen the complaint was lodged only at about 3.p.m. in Jalalabad Police Station which is only 7 miles from the place of incident and the special report reached the Jurisdictional Magistrate only at 9 p.m. Therefore, the complainant had sufficient time to deliberate and concoct a false case against these appellants because of the previous enmity. Hence he argued that these appellants alone could not be found guilty of the charges levelled against them.

We find substantial force in the argument of the learned counsel in regard to the finding of the courts below

as to the involvement of these appellants in the kidnapping and murder of Sukhchain Singh i.e. assuming that the body of Sukhchain Singh has really been identified as stated by the prosecution. For this purpose we need discuss only that part of the evidence of the prosecution which refers to the act of the accused persons involving the disposal of the body of Sukhchain Singh. As per the prosecution case on the fateful day all the 12 persons came armed to the field where the complainants party was ploughing the field and after opening fire, by two of the acquittal accused all the them attacked PW-4 and after attacking PW-4, they forcibly took away Sukhchain Singh in their tractor. Thereafter the prosecution has no evidence to show what actually happened and where and when Sukhchain Singh was murdered. The evidence of the prosecution to establish the fact that Sukhchain Singh was actually murdered and his body was disposed of in the Canal is solely based on the statement of PW-7, who in his evidence stated that when he was coming from his house at about 6 a.m. on 24.12.1990 he saw Daljit Singh, the juvenile accused, Gurpreet Singh (deceased, who died during the trial) and Kala Singh (A-9) carrying a body which the witness identified as that of Sukhchain Singh from the distance of about 8 kanals being thrown into the Canal. This witness says that on that early morning at 6.0'clock in the month of December, he was able to identify the body of Sukhchain Singh from a distance of about 8 kanals even without knowing anything about previous evening's incident. His further evidence as to what he did after seeing the acts of the above-mentioned three accused persons, is full of contradictions and improvements because of which the High Court refused to place reliance and acquitted PW-9 Kala Singh, who was one of the three persons who was noticed by PW-7, allegedly throwing the body of Sukhchain Singh into the Canal.

In such circumstances, we find it extremely difficult to place any reliance on the evidence of PW-7 to come to the conclusion that he either witnessed the three accused named by him disposing of a body by throwing into the Canal on the early morning of 24th December, 1990, or that he could identify the said body as that of Sukhchain Singh. If this part of evidence of the prosecution is to be disbelieved then in our opinion, it is not safe to rely upon that part of the evidence of PW-4, PW-6 and others when they say that these appellants were either responsible for the abduction or the murder of Sukhchain Singh. In the said view of the matter, we are of the opinion that the prosecution case that these appellants are responsible either for the abduction of Sukhchain Singh or for his death by applying Section 34 IPC cannot be sustained.

But then same cannot be the reasoning in regard to the overt act of these appellants for causing injuries to PW-4. In regard to this incident it would suffice to rely upon the evidence of PW-4, who is the injured person, who has stated in his evidence that the first appellant Ravinder Pal Singh assaulted him with Gandasa and caused an incised injury, which is above the left ear in the parietal region and second appellant Balvinder Singh had caused in the injury on his finger by using a dang. In regard to this part of the prosecution case, the only argument on behalf of the appellant in that the same could have been self suffered injury. We do not think, on the facts and circumstances of this case, this argument can be accepted. Because from the prosecution case it is clear that the appellants did cause the injuries by the use a dang and Gandasa to PW-4 on the evening of 23.12.90 while rest of the prosecution case as to

the incident of that day can not be believed as having been proved beyond all reasonable doubt.

Accepting that part of the evidence of PW-4, as to the attack on him by the appellants, we are of the opinion that these appellants are guilty of causing injury to the said witnesses. Therefore, it is clear that these two appellants are guilty of having caused voluntary hurt to PW-4 out of which appellant no.1 used a gandasa and appellant No.2 used a dang, hence, we find both the appellants guilty of an offence under Section 324 read with 34 IPC.

Taking into consideration facts and circumstances of this case we think it appropriate that these appellants be convicted for the said offence by imposing a sentence of three years rigorous imprisonment. If the appellants have already served this sentence by virtue of their conviction suffered by the judgments of the courts below, then they shall be entitled for remission and they shall be released forthwith.

We are told that both the appellants are still in jail, if so, and if they have already served the sentence imposed by us and if they are not wanted in any other case they shall be released forthwith.

Therefore, the appeal is partly allowed.