PETITIONER:
BALBIR SINGH AND ANR.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT01/10/1991

BENCH:
FATHIMA BEEVI, M. (J)
BENCH:
FATHIMA BEEVI, M. (J)
PANDIAN, S.R. (J)

CITATION:
1991 AIR 2231 1991 SCR Supl. (1) 239
1991 SCC Supl. (2) 445 JT 1991 (4) 72
1991 SCALE (2)747

ACT:
Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970--Section 2-- Appeal---Charge under ss. 302/34, IPC--- Acquittal order of trial Court--Conviction by High Court--Appreciation of evidence ---Findings of High Court approved-- Acquittal of companion accused Whether affects the case of appellants.

HEADNOTE:
The appellants along with another were tried of the charge of murder under Section 302, I.P.C., read with Section 34, I.P.C.

The prosecution case was that the appellants as well as the deceased's brother and his son were residing in a village. The deceased came to the village on 6.7.1974. On 8.7.1974 at about 10.30 a.m., the deceased's brother along with his wife and his son had gone to the mango grove across the choe to collect mangoes to give to the deceased. While they were returning home along the pathway, the deceased was seen coming in the opposite direction. The two appellants along with another accused, emerged on the scene and attacked the deceased. Appellant No.1 had a datar and Appellant No. 2 had a sua and their companion had a lathi. After inflicting injuries with the weapons the appellants escaped. The deceased was removed to the house of one Darbara Singh for being rushed to the hospital, but within a short time, he breathed his last.

The first information was lodged at the police station, around 7.00 P.M., and the crime was registered and investigated and finally chargesheeted. The post-mortem examination of the dead body revealed that the deceased had sustained lacerated injuries and three stab wounds and that he died on account of the shock and hemorrhage as a result of the injuries.

The motive alleged was that there had been some grouse on account of the transfer of agricultural land that belonged to the family, among the
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children of the three brothers.

The Sessions Judge acquitted the accused of the charge. The High Court, in appeal preferred by the State convicted

the appellants and sentenced them to undergo imprisonment for life, against which, this appeal under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 was filed.

The appellants contended that the view taken by the trial court was reasonable and there was no justification for upsetting the judgment even if a different view could have been taken by the appellate court on reappraisal of the evidence; that the High Court did not dislodge the various reasons given by the trial court for discarding the evidence and that the conclusion drawn by the High Court on the evidence on record was wrong.

Dismissing the appeal, this Court,

HELD: 1. The prosecution evidence in the case is wholly reliable and it leads to irresistible conclusion that the appellants had intentionally caused the death of the deceased. The occurrence took place in broad day light at a place close to the residence of the witnesses. The appellants are the near relations of the deceased and the witnesses and it has happened in the background of the family rued. The first information has been recorded within a few hours which in the circumstances of the case cannot be considered as unreasonably delayed. The version given in the F.I.R. is substantially the same as the one spoken to by the witnesses before the Court. [243 C-D]

2. The eye witnesses have given consistent account of the role played by each of the appellants. There would not have been any difficulty for the witnesses to identify the appellants from a distance and across the reeds even if they could get only a glimpse of them in the course of their action, and the medical evidence is not Inconsistent. [243 E-F]

3. The fact that the acquittal of the companion of the appellants had not been interfered with by the High Court cannot advance the case of the appellants. The High Court has given him the benefit of doubt on the materials that emerged in the evidence. That is no reason to discard the evidence of the witnesses so far as the appellants are concerned when such

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evidence does not suffer from any serious infirmity; [243 H; 244 A]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 214 of 1979.

From the Judgment and Order dated 22.11.1978 of the Punjab and Haryana High Court in Criminal Appeal No. 701 of 1975.

A.N. Mulla, O.P. Sharma and R.C. Gubrele for the Appellants.

Ms. Amita Gupta and R.S. Suri for the Respondents.

The Judgment of the Court was delivered by

FATHIMA BEEVI, J. Balbir Singh and Inderjit Singh, the appellants, are brothers. Onkar Singh, brother of Brijinder Singh, the father of the appellants, died of multiple injuries on 8.7.1974. The appellants along with Mehar Singh, were tried on the charge of murder under Section 302, I.P.C. read with Section 34, I.P.C. The Sessions Judge acquitted the accused of the charge. The High Court, in appeal preferred by the State, convicted these appellants and sentenced them to undergo imprisonment for life under Section 302, I.P.C.

The appeal being one under Section 2 of the Supreme

Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, the appellants' learned counsel persuaded us to go through the entire evidence maintaining that the High Court has erred in interfering with the order of acquittal. According to the learned counsel, the view taken by the trial court is reasonable and there was no justification for upsetting the judgment even if a different view could have been taken by the appellate court on reappraisal of the evidence. It was contended that the High Court has not effectively dislodged the various reasons given by the trial Court for discarding the evidence and that the conclusion drawn by the High Court on the evidence on record is clearly wrong.

In order to appreciate these arguments, it is necessary to set out briefly the facts of the case and summarize the relevant evidence. The deceased, Onkar Singh, at the time of his death was employed in government service and was residing in Chandigarh. His brother, Darbara Singh, and his son Iswardial Singh, as well as these appellants were residing in the village. Onkar Singh came to the village on 6th July, 1974. On 8th July,

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1974, at about 10.30 A.M., Darbara Singh, along with his wife, Surjit Kant, and son Ishwardial Singh had gone to the mango grove across the choe to collect mangoes for being given to Onkar Singh. While they were returning home along the pathway, Onkar Singh was seen coming in the opposite direction. These two appellants along with their companion emerged on the scene and attacked Onkar Singh Balbir Singh had a datar and Inderjit Singh had a sua and Mehar Singh had a lathi. After inflicting injuries with the weapons the appellants escaped. The deceased, Onkar Singh, was removed to the house of Darbara Singh for being rushed to the hospital but within a short time, he breathed his last.

The first information was lodged at the police station around 7.00 P.M., and the crime was registered and investigated and finally chargesheeted. The post-mortem examination on the dead body revealed that Onkar Singh had sustained besides lacerated injuries three stab wounds and that he died on account of the shock and hemorrhage as a result of the injuries. The motive alleged was that there had been some grouse on account of the transfer of agricultural land that belonged to the family, among the children of the three brothers. The land stood in the name of the deceased's son under cultivation of Darbara Singh at the material time. The land was originally gifted to the appellants in 1964 but was reconveyed to the deceased.

The learned Sessions Judge found that the motive had been proved. The two eye-witnesses to the occurrence were Darbara Singh and his son Ishwardial Singh. They narrated the incident. Their evidence was discarded by the trial court for the reasons that there was a thick growth of reeds on either side of the pathway which was running zigzag and it was not, therefore, possible for the witnesses even if they were present in the vicinity to observe the assault and identify the assailants. Another reason was that the medical evidence was in distinct conflict with the oral testimony and the nature of injuries were such that the same could not be attributed to the use of the weapons mentioned by the witnesses. Yet another reason was that there had been no trace of blood either on the pathway or on the clothes worn by the deceased. The time of death of the deceased as disclosed by the medical evidence did not agree with the version of the witnesses. There had been inordinate delay in lodging the F.I.R. The first information report did not

inspire confidence. The witnesses had no consistent case regarding the role played by Mehar Singh and the evidence was interested and unconvincing. The learned Judge, therefore, rejected the
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same and recorded the order of acquittal.

The High Court had cautioned itself on the limited scope of interference while analysing and appreciating the evidence and arriving at its own conclusion. The High Court has given very cogent reasons to establish that the whole approach by the trial court was wrong and reasons for rejecting the evidence did not stand scrutiny.

Having heard the counsel on both sides, we agree with the High Court that the prosecution evidence in the case is wholly reliable and it leads to irresistible conclusion that these appellants had intentionally caused the death of Onkar Singh. The occurrence took place in broad day light at a place close to the residence of the witnesses. The appellants are the near relations of the deceased and the witnesses and it has happened in the background of the family rued. The first information has been recorded within a few hours which in the circumstances of the case cannot be considered as unreasonably delayed. The version given in the F.I.R, is substantially the same as the one spoken to by the witnesses before the court. There had not been any acceptable suggestion why Darbara Singh should foist a case against the appellants. It is most unlikely that these witnesses would allow the real culprits to escape and their near relations to be implicated on the happening of such a tragedy in the family. Both the father and the son have given consistent account of the role played by each of the appellants. There would not have been any difficulty for the witnesses to identify the appellants from a distance and across the reeds even if they could get only a glimpse of them in the course of their action. The evidence is also clear that there had not been thick growth of reeds to cause complete obliteration of the scene. It could not, therefore, be assumed that the place of occurrence was out of bounds and that the witnesses have weaved a story of their own. As rightly pointed out by the High Court, the medical evidence is not inconsistent. The witnesses are clear that the appellants used the datar on the wrong side and that accounts for the lacerated injuries. Incised wounds may be produced by using the sua on that part of the body. We do not find any material to infer that the death could not have happened at the time spoken to by the witnesses. Since there had been internal hemorrhage and the injured person was immediately lifted from the place of occurrence the absence of blood at the scene is not strange. The fact that the acquittal of Mehar Singh had not been interfered with by the High Court cannot advance the case of the appellants. The High Court
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has given him the benefit of doubt on the materials that emerged in the evidence. That is no reason to discard the evidence of the witnesses so far as these appellants are concerned when such evidence does not suffer from any serious infirmity.

We find that the High Court had given weighty reasons in accepting the evidence and finding that the view taken by the trial court was clearly wrong. We reject the contentions of the appellants. There is no reason to interfere with the judgment of the High Court. The appeal is accordingly
V.P.R. Appeal dismissed.
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