

CASE NO.:
Appeal (crl.) 820 of 1997

PETITIONER:
State of Punjab

RESPONDENT:
Ajaib Singh and others

DATE OF JUDGMENT: 13/04/2004

BENCH:
N. SANTOSH HEGDE & B.P. SINGH.

JUDGMENT:
J U D G M E N T

B.P. Singh, J.

The State of Punjab has preferred this appeal by special leave against the judgment and order of the High Court of Punjab and Haryana at Chandigarh dated 24th September, 1996 in Criminal Appeal No. 627-DB of 1995 and Murder Reference No. 7 of 1995 whereby the High Court while allowing the appeal of the respondents herein acquitted them of the charges under Sections 148, 302, 302/34 IPC. Accordingly the High Court set aside the judgment of the Additional Sessions Judge, Bhatinda, who by his judgment and order dated 13th November, 1995 in Sessions Case No. 54 of 14.12.1190 had found the respondents guilty of offences under Sections 302 and 302/34 IPC and sentenced them to death. Three other accused persons who were tried alongwith the respondents herein were, however, acquitted by the trial court.

The occurrence giving rise to the instant appeal occurred on the night intervening 26th and 27th July, 1990. The case of the prosecution is that in the said occurrence five persons were murdered by the respondents and their three accomplices, since acquitted. We may notice at the threshold that all the respondents herein are brothers. Of the three accused acquitted by the trial court two are their brothers while the third is said to be their friend. The deceased include the mother of the respondents namely Surjit Kaur, their maternal grand mother Jangir Kaur, their sister Sujan Kaur, her husband Mohinder Singh and their six years old daughter Kirna. The motive alleged by the prosecution was that their maternal grand father Jeon Singh who had executed a will in favour of the respondents and their brother Teja Singh in respect of 8 killas of land, had since changed the Will and bequeathed the property in favour of his wife Jangir Kaur and daughter Surjit Kaur. The respondents and their brothers, therefore, apprehended that their mother and maternal grand mother may ultimately give the land to their sister Sujan Kaur and this is what prompted them to commit the murders.

The factual backgrounds in which the occurrence took place may be briefly noticed.

Jeon Singh was married to Jangir Kaur and lived in Village Adamke where the occurrence is said to have taken place. They had only one issue namely Surjit Kaur @ Seeto

who was married to Mukhtiar Singh of village Singhpura. They had five sons namely Teja Singh, Mohinder Singh, Ajaib Singh, Balwinder Singh and Joginder Singh. They had also three daughters including Surjit Kaur (deceased). It is not in dispute that at some stage Surjit Kaur @ Seeto deserted her husband Mukhtiar Singh and started living with Bogha Singh of Village Jhunir. Sujan Kaur, the daughter of Surjit Kaur was married to Mohinder Singh of Chudhuwala. They had two children \026 a son Gurcharan Singh (PW-5) aged about 8 years and a daughter Kirna aged about 6 years. They resided in village Chudhuwala.

It is not in dispute that two sons of Surjit Kaur namely \026 Ajaib Singh and Joginder Singh (respondents herein) were married and lived with their families at village Adamke with their maternal grand father Jeon Singh. It also appears from the record that PW-5 Gurcharan Singh (son of Sujan Kaur deceased) lived with his maternal grand mother Surjit Kaur at village Jhunir and was studying at Fatta Maluka. His education expenses were borne by Bogha Singh with whom his maternal grand mother Surjit Kaur was living.

The case of the prosecution is that Jeon Singh (not examined) and his brother Amar Singh owned 16 killas of land in equal share. The land of Amar Singh was recorded in the name of Jangir Singh and the said land came in ownership of Joginder Singh, respondent, since Jangir Kaur suffered a decree in respect of the said land in favour of the aforesaid Joginder Singh. Remaining 8 killas of land was held by Jeon Singh and he had executed a will bequeathing 2 killas of land each in favour of his remaining 4 grand sons namely \026 Teja Singh, Ajaib Singh, Mohinder Singh and Balwinder Singh. It appears that he had later changed his mind and had executed a fresh will bequeathing the aforesaid 8 killas of land in favour of his wife Jangir Kaur and daughter Surjit Kaur (both deceased). It is further case of the prosecution that about 15-30 days before the occurrence Sujan Kaur and her husband Mohinder Singh left Chudhuwala and started residing at village Adamke in the house of Jeon Singh alongwith their children. The occurrence is alleged to have taken place on the night intervening 26th and 27th July, 1990 at Adamke.

The first information report relating to the occurrence was lodged by Gurjant Singh (PW-4), a brother of Mohinder Singh. Though he was a resident of Village Chudhuwala he claimed that on 26th July, 1990 in the evening he had come to meet his brother Mohinder Singh at Village Adamke and slept in the night in the house of Jeon Singh. In the first information report, which is a detailed report, lodged at 9.05 a.m. at P.S. Sardulgarh, the informant narrated the various facts relating to the families of Jeon Singh, Surjit Kaur and Mohinder Singh. He also narrated facts relating to the execution of wills by Jeon Singh as a result of which the sons of Surjit Kaur bore a grudge against him. He then stated that he had come to village Adamke in the evening of 26th July, 1990 to see his brother Mohinder Singh. He found that Surjit Kaur had also come there from Jhunir. Ajaib Singh, Joginder Singh and their brother Balwinder Singh had also come there but the families of Ajaib Singh and Balwinder Singh were not present in the house. In the evening, after taking dinner, he and his nephew Gurcharan Singh (PW-5) went on the roof of the house and slept on two cots while the remaining family members slept in the courtyard. There was an electric bulb emitting light in the courtyard. At about mid night, on hearing some noise, he and Gurcharan Singh woke up and they saw that in the courtyard Ajaib Singh armed with a kirpan;

Balwinder Singh armed with a dah and Joginder Singh armed with a kirpan were standing near the head of the cot of his brother Mohinder Singh. They were causing injuries to him with their respective weapons. This was being resisted by his sister-in-law Sujan Kaur and her mother Surjit Kaur. He saw that Ajaib Singh gave two blows with his kirpan on the shoulder of his brother and Joginder Singh gave a kirpan blow on the neck of his brother with the result that his brother could not get up from the cot. He then described in the first information report the manner in which Surjit Kaur, Sujan Kaur, Jangir Kaur and Kirna were assaulted by the three accused who had entered the courtyard. In the first information report the informant has given a detailed description of the manner of assault and the injuries caused thereby. The informant and Gurcharan Singh (PW-5) raised an alarm and the accused persons fled away. They found that all the five injured succumbed to their injuries. According to the informant he left Chowkidar Sukhdev Singh to look after the dead bodies and he himself went to the police station to lodge the first information report.

The first information report was recorded by Inspector Gurjit Singh who left for the place of occurrence immediately. He recorded the statements of Gurjant Singh (PW-4) and Gurcharan Singh (PW-5) under Section 175 Cr. P.C. The police party inspected the place of occurrence and lifted blood stained earth from different places. Inquest reports in respect of the five dead bodies were prepared and the bodies were sent for post-mortem examination. It is also the case of the prosecution that after arrest the respondents and other accomplices suffered disclosure statements and got their weapons of offence recovered. The rough site plan of the place of occurrence Ext. DA was prepared by the investigating officer at the spot and a site plan drawn to scale Ext. DB was prepared by Shiv Chand Jindal, draftsman with the assistance of PW-4 Gurjant Singh and PW-5 Gurcharan Singh. After investigation police filed a charge sheet against the respondents herein as also their remaining two brothers namely \026 Teja Singh and Mohinder Singh and their alleged accomplice Baldev Singh.

At the trial the prosecution relied upon the testimony of two eye witnesses namely \026 Gurjant Singh (PW-4) and Gurcharan Singh (PW-5). As noticed earlier they claim to have witnessed the occurrence which took place in the courtyard from the roof of the house where they were sleeping on separate cots. The trial court acquitted Teja Singh, Mohinder Singh and Baldev Singh finding that they were not named in the first information report and no specific overt act was attributed to them. The trial court found that their participation in the occurrence, in the facts and circumstances of the case, had not been established. The trial court also found that the alleged weapons of offence recovered at the instance of the accused were not produced before the court. Commenting on the testimony of Gurjant Singh (PW-4) the trial court found that he had not mentioned the names of three other accused persons who were subsequently sought to be implicated. They were persons who were known to him and if they had really taken part in the occurrence, PW-4 could not have omitted to name them in the first information report. The trial court, therefore, concluded that the informant Gurjant Singh (PW-4) as an after thought roped the two remaining brothers of the respondents alongwith their family friend Baldev Singh. It would, thus, appear that the trial court has not treated witnesses Gurjant Singh (PW-4) and Gurcharan

Singh (PW-5) as witnesses on whose testimony implicit reliance could be placed. However, the trial court relying upon the testimony of these very witnesses convicted the respondents herein and sentenced them to death for the murder of five members of the family.

The respondents herein preferred an appeal before the High Court which was allowed by the High Court. In substance the High Court has held that the presence of PW-4 Gurjant Singh and PW-5 Gurcharan Singh was doubtful. Even the other circumstances established by the evidence on record supported the case of the defence that the instant case was a case of blind murder not witnessed by anyone, but when the news about the murders spread in the locality Gurjant Singh (PW-4) and Gurcharan Singh (PW-5) as well as many other relatives came in the morning at about 7.00 a.m. and only thereafter the case was concocted against the respondents. In this view of the matter the High Court allowed the appeal and acquitted the respondents of all the charges levelled against them.

This being an appeal against acquittal we have with the assistance of counsel for the parties gone through the evidence on record with a view to find whether the view favourable to the accused taken by the High Court is based on the evidence on record and is reasonable. It is well settled that in an appeal against acquittal, the appellate court is entitled to re-appreciate the evidence on record, but having done so it will not interfere with the order of acquittal unless it finds the view of the court acquitting the accused to be unreasonable or perverse. If the view recorded by the court acquitting the accused is a possible, reasonable view of the evidence on record, the order of acquittal ought not to be reversed.

The High Court has considered the evidence on record in detail and recorded its findings, but we propose to consider only the important findings recorded by the High Court on the basis of which the order of acquittal has been recorded.

As we have noticed earlier the prosecution examined two witnesses as eye witnesses, namely PW-4 Gurjant Singh and PW-5 Gurcharan Singh. Gurjant Singh (PW-4) was a brother of deceased Mohinder Singh and at the relevant time resided at Chudhuwala. Gurcharan Singh (PW-5) was a son of the deceased, Mohinder Singh and his wife Sujana Kaur. He was about 7 years of age at the time of occurrence. The case of the prosecution is that in the evening preceding the night of occurrence Gurjant Singh (PW-4) had come to meet his brother Mohinder Singh at Village Adamke. In the night he and Gurcharan Singh (PW-5) slept on two separate cots on the roof of the house from where courtyard was visible. The deceased were sleeping in the courtyard. According to these two witnesses they witnessed the occurrence which took place at about midnight. The High Court has suspected their presence at the place of occurrence and described them as chance witnesses. This is because Gurjant Singh (PW-4) was a resident of another village while Gurcharan Singh (PW-5) was studying in a school near village Jhunir where he resided with his grand-mother Surjit Kaur and Bogha Singh.

Gurjant Singh (PW-4) in his evidence admitted that he was separated from his brother Mohinder Singh. They were separate in mess and residence and they separately carried on their agricultural operations. He did not give any reason why he came to his brother who was then staying with his wife and children at the house of his wife's grand parents. This led the High Court to observe that he is a mere chance witness. Similarly PW-4 after some hesitation had

to admit that Gurcharan Singh (PW-5) was residing with his grandmother Surjit Kaur and Bogha Singh at village Jhunir and was studying in a school nearby at Fatta Maluka. However, what is significant is the fact that the objective findings of the investigating officer did not support the testimony of PWs. 4 and 5 that they had slept on the roof on the night of occurrence on two separate cots. Ext. DA was the sketch plan prepared by the investigating officer PW-7. He stated that he had included every relevant feature of place of occurrence in the rough sketch plan prepared by him. Ext. DB is the sketch plan drawn to scale by the draftsman with the assistance of PWs. 4 and 5. In both the sketch plans neither a wooden stair-case nor cots on the roof have been shown. The prosecution has failed to explain why the wooden stair-case and the cots were not shown in the sketch plans prepared by the investigating officer and later by the draftsman. The absence of these things from the sketch plans created a doubt about the truthfulness of the two eye witnesses. It also raised a serious doubt as to whether they slept in the house of Jeon Singh on the night of occurrence at all. The High Court noticed the fact that the wooden stair-case and cots on the roof were not shown in either of the sketch plans and, therefore, the evidence of the investigating officer who prepared the rough sketch plan did not support the evidence of the eye witnesses that on the night of occurrence they had slept on two separate cots on the roof of the house. We also find that the investigating officer who reached the place of occurrence soon after the report was lodged could not have missed to notice the wooden stair-case and the two cots if they were really there, because there was mention of these things in the first information report itself.

The High Court also noticed that the deposition of PW-4 Gurjant Singh is not corroborated by the statement made in the first information report lodged by him. The most significant fact is that while deposing as a witness PW-4 Gurjant Singh involved not only the three respondents herein, who were named as the assailants in the first information report, but also implicated three others, namely the remaining two brothers Teja Singh and Mohinder Singh and their alleged accomplice Baldev Singh. The High Court, therefore, doubted the truthfulness of PW-4 as also that of PW-5 since he also sought to implicate the remaining accused for the first time in the course of his deposition. It is worth noticing that in the first information report lodged by PW-4 he had named only three assailants of the deceased, namely \026 Ajaib Singh, Balwinder Singh and Joginder Singh, the respondents herein. In a very graphic manner PW-4 described the manner in which they had assaulted the victims one after the other. He expressed his suspicion that all this was done by the three named accused in connivance with their two other brothers namely \026 Teja Singh and Mohinder Singh. This necessarily implies that those two other brothers were not present at the time of occurrence. In the course of deposition, however, PW-4 asserted that there were six assailants which included all the five brothers and their associate Baldev Singh. A similar improvement was made by PW-5 Gurcharan Singh who had also named only three assailants in the course of investigation and later sought to implicate three more. The explanation offered by PW-4 is that out of fear and nervousness he omitted to name the remaining three accused while lodging the first information report. This explanation does not deserve even a serious consideration because in the first information report he had mentioned the names of two of the remaining brothers but with the allegation that what was done by the respondents was in connivance with them. Moreover, PWs. 4 and 5 both knew Teja Singh and Mohinder Singh very well, and if they had really seen them at the time of occurrence they could not have forgotten to mention their names, particularly when the

remaining three brothers were specifically named and specific roles were assigned to them in the occurrence. These facts lead us to doubt the truthfulness of the alleged eye witnesses and creates a serious doubt about their credibility. It cannot be a mere coincidence that both the witnesses, so well known to the accused, forgot to name two of the accused, and both forgot the names of the same persons.

The High Court has noticed many inconsistencies between the evidence of PWs. 4 and 5. It is not necessary to notice all of them but we find from the evidence on record that according to PW-4 he raised an alarm after the occurrence but no one came in response to the same. There after the village Chowkidar came at about 7.00 a.m. and leaving him to guard the dead bodies he went to police station to lodge a report.

On the other hand, according to PW-5 he became unconscious on seeing the occurrence and he re-gained consciousness only in the morning where he saw his great grandfather Jeon Singh to whom he narrated the incident. He has also mentioned the presence of Bogha Singh alongwith Jeon Singh when he regained consciousness. PW-4 has not even whispered about PW-5 becoming unconscious after seeing the occurrence and remaining as such till 7.00 a.m. in the morning. If both of them slept on adjacent cots and had seen the occurrence and one of them had become unconscious after seeing the occurrence, PW-4 would have certainly mentioned these facts. It is surprising that he has not said a word about PW-4 becoming unconscious after witnessing the occurrence. This creates a serious doubt about the presence of the alleged eye witnesses at the time of occurrence and it appears from the evidence on record that they may have come to the place of occurrence in the morning after hearing about the ghastly crime. The crime was committed in the dead of night and was not witnessed by anyone. Only much later, after word was sent to the relatives, they assembled at the house of Jeon Singh at about 7.00 a.m. in the morning which included PWs. 4 and 5. This was the plea of defence and this has been accepted by the High Court. We find evidence on record to support this conclusion. Firstly we find it difficult to believe that though the occurrence took place in the village in the night which was witnessed by PWs. 4 and 5, no one came to the house after they raised alarm, and only at 7.00 a.m. in the morning the village Chowkidar could be contacted. However, even if we do not attach much importance to this fact the evidence on record clearly indicates that village Chudhuwala where PW-4 resided is connected by a metalled road with village Adamke. PW-4 denied this fact, but the evidence of the investigating officer PW-7 establishes beyond doubt that there is a metalled road connecting Adamke with Chudhuwala and the same can be covered in 7-8 minutes by car and 1 to 1½ hours on bicycle. PW-5 was residing at village Jhunir where Surjit Kaur resided with Bogha Singh. According to the evidence on record village Jhunir is also connected with Adamke by a metalled road and the evidence is that its distance is 5 kms. less than the distance to village Chudhuwala. The evidence on record further discloses that at 7.00 a.m. Jeon Singh, Bogha Singh, PW-4 Gurjant Singh, PW-5 Gurcharan Singh and Jagjit Singh, another brother of PW-4, were present in village Adamke. It was thereafter that Gurjant Singh (PW-4) left for the police station to lodge a report. If we are to believe Gurjant Singh (PW-4) that the whole night they could do nothing since no one came to the house even on raising alarm, it is difficult to explain how all these persons from different villages assembled there at 7.00 a.m. in the morning at about the time when the Chowkidar came there. Obviously, therefore, word must have been sent to relatives in different villages nearby in the night itself, so that they could reach the place of occurrence at about 7.00 a.m.

The explanation of PWs. 4 and 5 that no one from the village came inspite of their raising alarm and that they kept sitting in the house till 7.00 clock in the morning appears to be untrue.

It is surprising that Jeon Singh who was admittedly present in the house where the occurrence took place has not been examined as a witness. What is really surprising is that his statement was not even recorded in the course of investigation. The High Court has commented on the non-examination of Jeon Singh who appeared to be a witness who could really unfold the prosecution case. Having regard to the facts and circumstances of the case it appears probable that Jeon Singh who ought to have been the main target, if the motive alleged was true, had a miraculous escape, may be because he was sleeping elsewhere and not in the court-yard. It also appears probable that after the occurrence he may have sent word to the relatives who assembled at his house at about 7.00 a.m. in the morning. Otherwise the presence of Bogha Singh and Jagjit Singh, brother of PW-4 at the place of occurrence cannot be explained. There is force in the defence plea that PWs. 4 and 5 also came to the village of occurrence on hearing about the murder of five members of the family. In these facts and circumstances we cannot say that the High Court was not justified in observing that the case appears to have been concocted after due deliberations and only after large number of persons had assembled in the morning at the place of occurrence whereafter PW-4 left for the police station to lodge the report. In this connection it is interesting to note that in the first information report PW-4 Gurjant Singh mentioned in detail the facts relating to the execution of two wills by Jeon Singh and details of his holdings etc., which in normal course would not have been within his knowledge. He admitted that he had never seen the will of Jeon Singh. The mention in such great detail about the affairs of the family of Jeon Singh in the first information report leads to an irresistible conclusion that PW-4 Gurjant Singh was properly briefed before he came to lodge the first information report. We do not find any infirmity in the finding of the High Court that the first information report was lodged after much deliberation.

The High Court has also observed that there was considerable delay in lodging the first information report. If really the occurrence had taken place as alleged, there was no reason for PW-4 to keep sitting in the village till 7.00 a.m. and only thereafter to start for the police station for lodging the report. The plea sought to be urged before us, that in those days the terrorists were active in the State of Punjab, is unacceptable in the facts of this case, because PW-4 knew that the assailants were not members of a terrorist group but were members of the family of his brother's wife.

The High Court has also commented upon the recovery of weapons allegedly made at the instance of the accused. It has noticed the fact that the alleged disclosure statements were not supported by the evidence of any independent witness and even the Serologist report did not give any clear opinion about the origin of the blood allegedly found on the weapons since the blood on the weapons had disintegrated. The High Court was also of the opinion that the motive suggested by the prosecution did not appear to be a sufficient motive for the respondents to commit such a ghastly offence.

Having carefully appreciated the evidence on record and the conclusion reached by the High Court we have no hesitation in holding that the view of the High Court is a reasonable view of the evidence on record and does not deserve to be interfered with in an

appeal against acquittal. The High Court has very meticulously examined the evidence on record and its findings are fully supported by evidence.

In the result we find no merit in this appeal and the same is accordingly dismissed.

JUDIS