

PETITIONER:
THE STATE OF PUNJAB

Vs.

RESPONDENT:
SURJA RAM

DATE OF JUDGMENT 09/08/1995

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
NANAVATI G.T. (J)

CITATION:
1995 AIR 2413 1995 SCC Supl. (3) 419
JT 1995 (6) 383 1995 SCALE (4) 689

ACT:

HEADNOTE:

JUDGMENT:
(With Crl. Appeal No. 346 of 1984)
JUDGMENT

M.K.MUKHERJEE, J.

Surja Ram and his three sons Mohan Lal, Vinod Kumar and Pramod Kumar, all residents of village Puran Patti under the police station of Fazilka (Sadar), were placed on trial before the Sessions Judge, Ferozepore to answer charges under Section 302 read with Section 34 of the Indian Penal Code for the murders of Tulsa Ram, the elder brother of Surja Ram, and his son Brij Lal. On conclusion of the trial, the learned Judge acquitted all of them of the charge relating to the murder of Brij Lal and also acquitted Vinod Kumar and Pramod Kumar of the other charge but convicted Surja Ram and Mohan Lal and sentenced each of them to suffer imprisonment for life. Against their conviction and sentence, Surja Ram and Mohan Lal preferred an appeal which was allowed by the High Court. Assailing their acquittal these two appeals have been preferred; one by the State of Punjab (Criminal Appeal No. 448 of 1984) and the other (Criminal Appeal No. 346 of 1984) by Kamla Devi, daughter of the deceased Tulsa Ram. Both the appeals have been heard together and this judgment will dispose of them.

The case for the prosecution, briefly stated, is as under: Ishar Ram, father of Surja Ram and Tulsa Ram had divided his lands in three equal shares, one of which was given to Surja Ram (the respondent no. 1), another to Tulsa Ram (the deceased) and the third was retained by him. In terms of the said division, a field known as 'Diggiwala' fell in the share of Tulsa Ram and he used to sow Moongi crops thereon. Surja Ram, however, was demanding a share out of the Moongi crops from Tulsa Ram, but the latter told him that as he (Surja Ram) was already in possession of more land than that fell in his share, he should first give him (Tulsa Ram) a part of it before he could claim any share in the Moongi crops. This proposal was however not acceptable

to Surja Ram.

On April 18, 1982 at or about 5 p.m. Tulsa Ram was sitting in an open space outside his house while his two sons Ram Gopal (PW 4) and Brij Lal (the deceased) were away to the field for raising crops. At that time Surja Ram accompanied by his three sons came there and started shouting that Tulsa Ram should be taught a lesson for not giving the share of Moongi crops. Surja Ram was carrying a spear, Mohan Lal a pistol, Vinod Kumar a kirpan and Parmod Kumar a soti. Apprehending danger, Tulsa Ram got up and tried to rush into his house when Mohan Lal fired from the pistol hitting him on the back. As a result thereof Tulsa Ram fell down with his face upwards. Surja Ram then inflicted a blow, with the spear he was carrying, on the chest of Tulsa Ram. Immediately thereafter Tulsa Ram died. Kamla Devi (PW 2), daughter of Tulsa Ram, and Ram Swarup (PW 3) who were inside the house and had earlier come out on hearing the shouts raised by Surja Ram, cried out for help. All the four miscreants then ran towards the field shouting that they would not spare the sons of Tulsa Ram also. Kamla Devi and Ram Swarup then rushed towards the field where Brij Lal and Ram Gopal were working. Sighting the miscreants Ram Gopal fled away but Brij Lal could not succeed in his attempt as Mohan Lal fired three shots at him resulting in his instantaneous death. Finding Brij Lal dead, Kamla Devi came back home and sent Ram Swarup to inform her maternal uncles, who lived in a nearby village. After Ram Swarup returned with her maternal uncles Raja Ram (PW 12) and Kanshi Ram (PW 13), Kamla Devi left for the police station accompanied by Kanshi Ram. There she lodged a First Information Report, (Ext. PJ) which was recorded by Sub-Inspector Bhagwan Singh (PW 18).

After registering the case Bhagwan Singh left for the place of occurrence accompanied by Kamla Devi and Kanshi Ram. Reaching there he found the dead body of Tulsa Ram lying in front of his house. He held inquest thereupon and sent it for post-mortem examination. He also collected and seized some blood stained earth from the spot. He then went to the field where the dead body of Brij Lal was lying. After holding inquest he forwarded the dead body for post-mortem examination. From the field he also collected and seized some blood stained earth. Thereafter he recorded the statements of witnesses including Ram Swarup and Ram Gopal. In course of the investigation he arrested the accused persons and interrogated them. Pursuant to the statement made by Surja Ram he recovered a spear which was lying under a heap of cotton sticks in his house. The other accused Mohan Lal (respondent No. 2) also made a disclosure statement and pursuant thereto PW 18 recovered a country-made pistol and three cartridges, which were wrapped in a piece of cloth and kept buried in a field. On completion of investigation he submitted charge-sheet and in due course the case was committed to the Court of Session.

The accused persons pleaded not guilty to the charges levelled against them and stated that they have been falsely implicated. They, however, admitted their relationship inter-se as also with the deceased and the factum of partition.

To bring home the charges levelled against the accused the prosecution relied principally upon the ocular version of the incident as given out by Kamla Devi (PW 2) and Ram Swarup (PW 3). PW 2 also testified about her having lodged the F.I.R. at the police station and PW 3 spoke about his having gone to village Sabuana immediately after the incident to fetch Raja Ram and Kanshi Ram. To corroborate

the testimonies of the above two witnesses the prosecution relied upon the evidence of Dr. S.N. Mittal (PW 1) who held post-mortem examination upon the two dead bodies and found a number of injuries on their persons. Besides, prosecution laid evidence to prove that pursuant to the statements made by Surja Ram and Mohan Lal (the two accused-respondents) the offending spear and pistols were recovered. The reports of the Forensic Science Laboratory, which indicated that earth seized from near the house of the deceased Tulsa Ram contained human blood, and of the Ballistic Expert indicating that the recovered pistol was used in recent firing were also exhibited. On discussion of the evidence so adduced by the prosecution, the trial Judge firstly held that even if it might be concluded that there was no proof of motive it would not adversely affect the direct evidence of the eye-witnesses. The trial Judge then discussed the evidence of the two eye-witnesses. The trial Judge then discussed the evidence of the two eye-witnesses and found the same reliable, so far as it related to murder of Tulsa Ram near his house, notwithstanding some discrepancies which, according to him, were of a minor nature. The trial Judge further held that the injuries found on the dead body of Tulsa Ram by the doctor conformed with the eye-witnesses' narration of the incident. As regards the other murder the trial Judge held that the account of the incident as given out by the two eye-witnesses stood contradicted by the medical evidence. In drawing the above conclusion he observed that the fire-arm injuries sustained by Brij Lal were the result of a single shot but both the eye-witnesses stated that he had been shot at thrice. Another reason which weighed with him in recording the order of acquittal in respect of the murder of Brij Lal was the unnatural conduct of the two eye-witnesses following the murder of Tulsa Ram. According to the trial Judge if PWs 2 and 3 had heard from the accused about their intention to go after the sons of Tulsa Ram and if they had in fact seen the accused going towards the fields where Brij Lal and Ram Gopal were working it was expected of them to raise hue and cry and seek others' help. He also doubted the presence of Ram Gopal in the field. Having perused the evidence on record we find that none of the grounds canvassed by the trial Judge for recording the acquittal in respect of the charge for the murder of Brij Lal is sustainable. However, we need not detail the reasons for our above conclusion for, no appeal was preferred against that acquittal and in these appeals we are only concerned with the question whether the High Court was justified in acquitting the two respondents of the charge relating to the murder of Tulsa Ram.

It is trite that while dealing with an appeal against an acquittal recorded by the High Court this Court does not ordinarily interfere with it but if it is found that relevant and reliable evidence on record has been lost sight of, ignored or brushed aside for reasons which are wholly unsustainable this Court will not only be justified - but it will be its duty - to interfere with the acquittal to make amends for the failure of justice.

From the impugned judgment of the High Court we first find that it negatived-and in our view rightly-the plea raised on behalf of the two respondents (the appellants therein) that since the trial Court had totally rejected the evidence of the two eye-witnesses in respect of the murder of Brij Lal there was no guarantee of truth attached to the self-same evidence in respect of the murder of Tulsa Ram, with the following observation:-

"There is no gainsaying and the trial

Court has also held that the maxim "Falsus in uno, Falsus in omnibus" has not been applied by the courts in India but at the same time, what is required to be judged is as to whether the eye-witnesses are otherwise reliable, or not".

The High Court then posed the question as to whether the two eye-witnesses were reliable or not and answered the same in the negative with the following findings:

i) The F.I.R. was not a genuine document as it was prepared at the behest of the Investigation Officer, after he held inquest, to dovetail with the injuries found by him on the person of Brij Lal. Consequently, no reliance could be placed upon the testimony of Kamla Devi, who lodged the same;

ii) There was no satisfactory explanation for the delay in lodging the F.I.R. at the police station which was at a distance of hardly 4 or 5 miles from the spot;

iii) Ram Swarup was merely a chance witness as he was a resident of a different village and it was a strange coincidence that he had come from his own village to see Kamla Devi at exactly 5 p.m. when the incident took place; and

iv) Considering the matter from the angle of natural course of human conduct and probabilities, the two eye-witnesses would not have dared to follow the appellants to the fields, after seeing Tulsa Ram being put to death, in order to witness the murder of Brij Lal and if they had really followed the assailants, as claimed by them, it was more likely that they would have been attacked by the accused persons but no such claim was even made.

After a close look to the entire evidence on record we are constrained to say that each of the above findings is untenable. Prosecution laid evidence, through PW 2 and PW 18 - which was not controverted - that the F.I.R. was lodged at the police station at 8 p.m. on 18.4.82. We next get from the record of the trial Court that on 11.1.1983 the Public Prosecutor tendered the evidence of a number of witnesses, including Constable Sukhwant Sing (PW 11), through affidavits, as he considered their evidence to be formal. On such tendering of evidence the trial Judge recorded the following order:

"The accused have no objection to the admissions to the statements of P.W. 5 to P.W. 11 on affidavits. They do not wish to cross examine them. I hereby order that the statements of formal witnesses P.W.5 to P.W.11 be admitted on affidavits."

The procedure so adopted by the trial Judge was clearly in consonance with Section 296 of the Code of Criminal Procedure. Coming now to the affidavit of PW 11 we get therefrom that on 18.4.1982 at 9.45 p.m. he delivered the special report to Shri D.R. Arora, the Judicial Magistrate in charge of Fazilka. PW 11 asserted that he did not delay the delivery of the special report. The endorsement in the FIR also corroborates the above uncontroverted statement of PW 11. Then again it is the categorical statement of the Investigation Officer - which again has not been controverted - that he completed the formalities regarding the recording of FIR by 9.15 p.m. and proceeded for the spot at 10 p.m. Having regard to the fact that the FIR and for that matter the special report in respect thereof had reached the Magistrate in accordance with Section 157 of the code of

Criminal procedure before departure of the Investigating Officer from the police station for the spot, the finding of the High Court that the FIR was doctored at the behest of the Investigating Officer to fit in with the injuries he found on the person of Brij Lal at the time of inquest must be attributed to its non-consideration of material evidence.

Regarding the second finding we can only say that there was no delay whatsoever in lodging the F.I.R. for it was lodged by PW 2 within three hours of the incident after covering a distance of 5 miles. This apart, the sequence of events as deposed to by PW 2 clearly demonstrates that she had gone to the police station at the earliest opportunity. According to her she first sent message to her maternal uncles through Ram Swarup and only after they came she went to the police station and her evidence in this regard stands fully supported by Raja Ram (PW 12), her maternal uncle. PW12 testified that at 6.30 p.m. Ram Swarup had come to his village and reported the incident to him. Thereafter he left for Kamla's place accompanied by Kanshi Ram. We cannot lose sight of the fact that PW 2, who was aged only 19 years, had lost her father and brother just then and it was not unlikely of her first to apprise her relations of the same and seek their help at that hour of her distress. The High Court, however, observed that if really PW 3 was there nothing prevented PW 2 to go to the police station accompanied by him as he was the sarpanch of his village instead of getting in touch with her maternal uncles. Simply because PW 2 did not react in the way the High Court thought she should have, it ought not have been made a ground for drawing adverse conclusions against her conduct, which was clearly normal and natural. While on this point it will be also pertinent to point out that PW 3 was not a sarpanch of Kamla's village.

Coming now to the third finding it must be said that the High Court ought not to have brushed aside the evidence of Ram Swarup (PW 3) solely on the ground that being a resident of another village it was not expected of him to be present at the spot just at the right time for, there are, besides his own evidence and that of PW 2, other materials on record which confirms his presence at the time of the occurrence. Raja Ram (PW 12) stated in his evidence that Ram Swarup had come to his house in village Sabuana on April 18, 1982, at or about 6.30 p.m. and gave a detailed version of the incident. He further stated that accompanied by Raja Ram he went to village Puran Patti on a motor cycle. In cross-examination it was not even suggested to PW 12 that his above statements were incorrect. Another significant fact is that PW 3's name finds place in the FIR as a witness to the occurrence. We do not, therefore, find any reason to leave the evidence of PW 3 out of our consideration on the ground that he was a chance witness.

The last finding of the High Court is solely based on the ground that the claim of the two eye-witnesses that they had seen the murder of Brij Lal was highly improbable. Even if we proceed on the assumption that the finding is unexceptionable still then the High Court was not at all justified in rejecting their evidence so far as it related to the murder of Tulsa Ram on that score alone for law is well settled that when evidence of a witness is rejected in part a duty is cast upon the court to sift his evidence with more than ordinary care and caution to find out whether the rest of the evidence is fully trustworthy, either intrinsically or by reason of corroboration from other trustworthy sources. Indeed, as noticed earlier, the High Court itself negated an identical threshold contention

raised by the respondents based on the maxim "Falsus in uno, Falsus in omnibus".

Now that we have found that the reasons which weighed with the High Court in recording the order of acquittal in favour of the two respondents cannot be sustained we have to ascertain whether the trial Court was justified in convicting them solely relying on the evidence of P.Ws. 2 and 3. After going through their evidence carefully we find that they fully supported the prosecution case as detailed earlier, including the specific roles played by the two respondents in the murder of Tulsa Ram. Considering the fact that the incident took place just in front of the house of Tulsa Ram, P.W. 2 was the most natural and probable witness. The claim of PW 3 that he was in the house of Tulsa Ram at the material time has already been found by us to be a genuine one. He must, therefore, also be held to be a probable witness. Though both of them were cross-examined at length nothing could be elicited to discard their evidence or materially contradict them. Dr. Mittal (P.W. 1) testified that the deceased (Tulsa Ram) had an incised wound on the right chest, and an incised wound below base of neck. He also found four pellet wounds on the dead body besides some abrasions. When P.W. 1 was shown a spear (Ex. p. 1) which was seized during investigation he opined that the two incised wounds might have been caused by one blow with that instrument as the two wounds communicated with each other. He further opined that the pellet wounds might have been the result of a single shot from a firearm. The evidence of the Doctor, therefore, fully supports the evidence of the two eye-witnesses. This apart, the F.I.R., which has been found by us to have been promptly lodged contains a detailed outline of the prosecution case and thus corroborates the evidence of P.W.2. The find of human blood near the house of Tulsa Ram also is a piece of corroboration of the evidence of P.Ws. 2 and 3. The trial Judge, however, did not lend any importance to the factum of recovery of the spear and the pistol pursuant to the statements made by the respondent Nos. 1 and 2 respectively, on the ground that no blood was found on the spear and the Ballistic Expert's report only indicated that the pistol had been used before it was recovered but such user could not be connected with the commission of the crime. We also, therefore, do not find it prudent to take into consideration the above evidence. However such non-consideration does not in any way deter us from accepting the prosecution case as we find that both P.Ws. 2 and 3 are wholly reliable and their evidence stands corroborated by other evidence on record.

On the conclusions as above we allow both the appeals, set aside the impugned judgment of the High Court and restore the order of conviction and sentence recorded against the two respondents under Section 302/34 I.P.C. by the learned trial Judge. The respondents who are on bail will now surrender to their bail bonds to serve out the sentence.