

STATE OF PUNJAB
v.
RAJINDER SINGH
(Criminal Appeal No.1252 of 2006)

AUGUST 11, 2009

[HARJIT SINGH BEDI AND J.M. PANCHAL, JJ.]

[2009] 13 (ADDL.) SCR 622

The following Order of the Court was delivered:

O R D E R

This appeal by way of special leave arises out of the judgment and order dated 22.07.2004 in Criminal Appeal No. 481 of 1999 passed by a Division Bench of the High Court of Punjab and Haryana whereby the High Court had allowed the appeal filed by the accused-respondent Rajinder Singh setting aside his conviction and sentence of life imprisonment and fine under Section 302 IPC and under Section 27 of the Arms Act, by giving him the benefit of doubt and had also dismissed the appeal against acquittal filed by the appellant-State against the acquittal of Kuldip Singh and Rachhpal Singh, by the Sessions Judge, Faridkot.

The brief facts leading to this appeal are as follows:

Madan Lal – P.W. 2, the father of the deceased- Harinder Kumar was the co-owner of brick kilns in villages Madooke and Ajitwal with Rajinder Singh, respondent herein. About one year prior to the occurrence, a settlement had been arrived at between the parties aforesaid and the brick kiln in village Madooke had fallen to the share of Madan Lal and the one in Ajitwal to the share of Rajinder Singh. As per the settlement, a truck bearing registration No. PJB 2155 had also come to the share of Rajinder Singh who was to pay a sum of Rs. 1,68,000/- to Madan Lal in lieu

thereof. On 30th November, 1995, Madan Lal and his son Harinder Kumar, the deceased along with P.W. 3 - Shamsheer Singh and P.W. 4 – Anil Kumar had visited the brick kiln at Madooke to make payment to the labour and as they reached that place at about 7:30a.m., they observed that bricks were being loaded onto a tractor trolley by Rajinder Singh, and Kuldip Singh (armed with shotguns) assisted by four or five persons. As soon as the complainant party intervened Rachhpal Singh who too was present, raised a lalkara calling on Rajinder Singh to fire on the complainant party. Rajinder Singh thereupon fired a shot which hit Harinder Kumar near his left eye. Rachhpal Singh and Kuldip Singh thereafter fired shots towards the complainant party but on an alarm raised by the latter, the accused ran away firing shots in the air. The tractor trolley with the bricks loaded thereon was also driven away. Madan Lal, accompanied by Shamsheer Singh and Anil Kumar, attempted to move Harinder Kumar to the hospital at Moga in a car but he died along the way. A First Information Report was thereafter lodged by Madan Lal at Police Station, Mehna. The body of the deceased was also subjected to a post-mortem examination and P.W. 1 - Dr. Iqbal Singh opined that the injury appeared to have been caused with a shot from a rifle, though the possibility that it had been caused with a shot from a 12 bore gun, using single projectile cartridge, could not be ruled out. P.W. 9 - ASI Devinder Singh of P.S. Mehna also visited the place of incident and picked up two spent cartridges of a .315 bore rifle, four spent cartridge cases of a 12 bore shot gun and nine cartridges of 12 bore which were taken into possession and sent for examination to the Forensic Science Laboratory, Chandigarh. In the meanwhile, Rajinder Singh and Mohinder Singh, who too had

also received injuries in the incident, got themselves examined at the Civil Hospital, Jagraon, and on receiving this information P.W. 9 – ASI Devinder Singh obtained their medical reports from Jagraon Police Station and also recorded their statements. A rifle of .315 bore belonging to P.W. 4 - Anil Kumar and a 12 bore gun belonging to P.W. 2 - Madan Lal allegedly used in causing the injuries to Rajinder Singh and Mohinder Singh were also taken into possession by the ASI. On the completion of the investigation, Rajinder Singh was charged for an offence punishable under Section 302 whereas the other accused were charged under Section 302/34 of the IPC read with Section 120B of the IPC and all the three were also charged under Section 27 of the Arms Act.

The prosecution in support of its case relied on the evidence of P.W. 1 - Dr. Iqbal Singh, P.W. 2 – Madan Lal, P.W. 3 – Shamsheer Singh and P.W. 4 – Anil Kumar, the last three named being eye witnesses, P.W. 9 – ASI Devinder Singh who had investigated the case for a day or so and P.W. 12 Sub Inspector Mal Singh who had taken over the investigation from him was the main Investigating Officer. The prosecution case was then put to the accused and their statements were recorded under Section 313 of the Code of Criminal Procedure. They pleaded false implication. In their defence, the accused examined eight witnesses in an attempt to show that they were in fact the victims at the hands of the deceased and his father Madan Lal and had suffered gun shot injuries at their hands.

The Sessions Judge, Faridkot in an elaborate judgment held that the participation of Kuldip Singh and Rachhpal Singh was doubtful as they had not caused any injury to the deceased and

that the three eye witnesses were also discordant as to their role in the incident. On a philosophical note, the Sessions Judge concluded that:

“The settled law is that it is safe to acquit 10 accused persons rather than to convict one innocent. Weighing the above dictum in the scale of justice, I am of the considered opinion that when there is a doubt with regard to the participation of accused Kuldeep Singh in the present occurrence, then it is safe to give him the benefit of doubt and acquit him. Thus by giving him the benefit of doubt, accused Kuldeep Singh is acquitted of the charges framed against him.”

The Sessions Judge, accordingly, holding Rajinder Singh guilty of murder convicted and sentenced him under Section 302 of the IPC and under Section 27 of the Arms Act as already indicated above, but acquitted Kuldeep Singh and Rachhpal Singh.

The matter was thereafter taken to the High Court by way of two appeals; one by the State of Punjab challenging the acquittal of Kuldeep Singh and Rachhpal Singh and the other by the convicted accused Rajinder Singh. The High Court by its judgment dated 07.01.2002 dismissed the appeal filed by the State and allowed the appeal filed by Rajinder Singh primarily on two grounds:-

(i) that as per the eye witnesses – Madan Lal and Shamsher Singh in particular, the weapon used in causing the fatal injury was a shot gun but the injury found on the deceased was by a shot from a rifle; and (ii) that the injuries on the person of Rajinder Singh and Mohinder Singh had not been explained which cast a doubt on the entire prosecution

story. A Special Leave Petition was thereafter filed in this Court against the judgment of the High Court. This Petition was dismissed qua Kuldip Singh and Rachhpal Singh but leave has been granted with respect to Rajinder Singh, the present respondent, vide order dated 20th November, 2006.

It is under these circumstances that the matter has come up before us today for final disposal.

Mr. H.M. Singh, the learned counsel for the State has argued that there was no reason whatsoever to disbelieve the eyewitness accounts given by Madan Lal, Shamsheer Singh and Anil Kumar; the first and the third named being close relatives of the deceased, and in that eventuality any flaw or shortcoming with regard to the medical evidence ought to have been ignored. He has also submitted that as per the statement of P.W. 1 – Dr. Iqbal Singh who had conducted the post mortem examination on the dead body, the injury on the person of the deceased could have been caused by a shot gun using a single projectile cartridge and the finding of the High Court was also wrong on this aspect as well. He has finally submitted that the observations of the High Court with respect to the non-explanation of the injuries on the accused was again based on a mis-appreciation of the evidence as the injuries could not have been caused to the injured in the manner suggested by the defence.

Mr. Sushil Kumar, the learned senior counsel for the respondent-accused Rajinder Singh has, however, supported the judgment of the High Court.

As would be evident, the fate of appeal would primarily rest on the evidence of the three eye witnesses vis-à-vis the evidence of

P.W. 1 - Dr. Iqbal Singh. We have gone through the judgment of the Sessions Judge and find that he has, in several places, noticed the argument on behalf of the accused that the doctor's evidence did not support the use of a shot gun and that the gun shot wound was perfectly in consonance with the use of a rifle. Faced with this situation, the Sessions Judge had no option but to hold that Madan Lal who was an old man, had seen the weapon from some distance and it was possible that he had been unable to distinguish between a rifle and a shot gun and in the light of the fact that he had every reason to be present on the spot, the eye witness account was to be preferred over the doctor's evidence. We are of the opinion that this is perhaps over simplifying and stretching the matter too far in favour of the prosecution as Madan Lal had identified the murder weapon as a 'pakki' weapon which in Punjab's rural dialect always means a 'rifle'. Moreover, the possibility of a mistake is difficult to swallow for the very significant reason that Madan Lal and his son Anil Kumar – P.W. 4 were the owners of a shot gun and a rifle respectively.

The Sessions Judge was also influenced by the fact that the four spent cartridge cases that had been recovered from the place of incident by P.W. 9 – ASI Devinder Singh on 30th November, 1999 and sent to the Forensic Science Laboratory were found to have been fired from the licensed shot gun belonging to Rajinder Singh. We find this observation to be contrary to the record as it is clear from the report of the Forensic Science Laboratory (Exh. PV) that it had observed that no conclusive opinion could be given as to the use of Rajinder Singh's shot gun on account of insufficient identifying characteristics on the cartridges.

We have also gone through the medical evidence of P.W. 1 - Dr. Iqbal Singh. He found the following injury on the dead body:-

“A lacerated punctured wound 4cms X 2.5 cms. margins inverted and colour of abrasion was present and was placed on the left side of the face on the lower lid and face. Also incorporating the left eye bar below the upper eyelid. Grease colour present over the abrasion colour. the underlying structures that is left eye ball was macerated into unrecognisable mass. On probing and dissecting the track of the wound was backward and to the right. On its way it fractured the underlying bone and lacerated meninges and brain matter till it communicated with the lacerated punctured wound with everted and irregular margins and of the size of 4cms. X 3cms. placed on the right lateral side of head just above and anterior to right tragus. The upper part of pins was dismantled. Meninges and brain matter were driven out through the exit wound. Clotted blood was present. All other organs were normal.”

As per the ocular account, the shot gun had been fired from a distance of 10 or 12 karm i.e., 50 or 60 feet or about 20 yards. In this situation, and if the prosecution story was to be accepted the pellets would have entered the body making individual pellet holes and not en-masse as appears in this case. The injury being of the head along with single exit wound is compatible with the use of a rifle and not a shot gun. In Modi's Medical Jurisprudence & Toxicology 23rd Edition, it has been observed:-

“At a distance of one to three feet, small shots make a single aperture with irregular and lacerated edges

corresponding in size to the bore of the muzzle of the gun, as the shot enter as one mass, but are scattered after entering the wound and cause great damage to the internal tissues. The skin surrounding the wounds is blackened, scorched and tattooed, with unburnt grains of powder. On the other hand, at a distance of six feet, the central aperture is surrounded by separate openings in an area of about two inches in diameter made by a few pellets of the shot, which spread out before reaching the mark. The skin surrounding the aperture may not be blackened or scorched, but is tattooed to some extent. At a distance of 12 feet, the charge of the shot spreads widely and enters the body as individual pellets producing separate openings in an area of five to eight inches in diameter depending on the choke, but without causing blackening, scorching or tattooing of the surrounding skin. At a distance of about 50 feet a pattern measuring about 14 inches from a fully choked barrel and 28 inches from an unchoked barrel are produced and at about 100 feet the spread pattern on the target unchoked one. A rule of thumb in long usage is that the diameter of the spread of the shot pattern on the skin in inches is roughly equal to the distance from the muzzle in yards."

It is true that in cross examination P.W. 1 - Dr. Iqbal Singh stated that the injury was possible from a rifle as well. However, in view of the categorical statement in his examination in chief that the injury was possible with a single projectile 12 bore cartridge the use of a shot gun becomes suspect, as single projectile cartridges are not available in India and even, otherwise can be used with a measure of accuracy only in specialised shot guns. We also find from the statements of P.W. 9 - ASI Devinder Singh the first

investigating officer, that on preliminary investigation he had found that as per the statement of Mohinder Singh, one of the injured though not an accused, a .315 bore rifle belonging to Anil Kumar and a 12 bore gun belonging to Madan Lal had been used in the occurrence and had caused the injuries including the fatal one on Harinder Kumar (although as pointed out by Mr. H.M. Singh), this fact had been denied by Inspector Malinder Singh, the subsequent Investigating Officer. Be that as it may, in the fact that the eye witness account does not support the medical evidence and vice versa, we are of the opinion that some serious doubt is cast on the prosecution story.

It would also be seen that the second ground taken by the High Court in the impugned judgment is the non-explanation of the injuries on Rajinder Singh and Mohinder Singh. The injuries found are given below:-

“Mohinder Singh

1. Obliquely and partially amputated terminal phalanx of right little finger of right hand. The distal portion of the terminal phalanx of right little finger had been cut through and through. There was raw surface 2.5cm. X 1.5cm present. Bleeding from the wound was present. cut and of the terminal phalanx of right little finger was seen and felt in the wound.

2. Obliquely and partially amputated terminal pahalnx of right ring finger of right hand the distal portion of the terminal phalanx of right ring finger had been cut through and through. There was surface 2.5 cm X 1.75 cms. (1.75) present. Bleeding from the wound was present. Cut end of the terminal phalanx of right ring finger was seen and felt in the wound.

General condition of the injured was satisfactory. Pulse was 78 per minute. BP 120 X 80 mm of HG.

3. Respiratory rate was 18 per minute. Pupils were equal and reacting. No vomiting was present.

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1. Irregular/lacerated wound 15 cms X 7 cms muscle deep on back of right lower leg in calf region about 9 cms. from the popliteal fossa and going downwards and medially from the upper outer end. There was tattooing of skin 1.75 cms X 1.5 cms., on upper and outer part of upper end of a wound and on sides of upper end of the wound. The hairs were partially burnt in the area. The upper and outer end of the wound for 3 cms. was bruised and blackened and the margins of the wound in this area were inverted.

The margins of the wound turned inwards at this point that is 3 cms from upper and outer end. The muscle for about 1.5 cms depth was lacerated. Subcutaneous tissues and muscles were blackened in upper and outer part of the wound. Bleeding was present from the wound. There were three holes in the right side leg of the pyjama and the pyjama was also blood stained. There was blackening around two smaller holes in the pyjama. X-ray of the right lower leg were impaired and painful. Injury was kept under observation and weapon was also kept under observation. The probable duration of the injury was within 6 hours.”

A bare look at these injuries would reveal that they could not have been self inflicted and it is not even the suggestion of the prosecution that it was so. The High Court has, accordingly, held

that the prosecution story was clearly suspicious and fell within the scope of the principles laid down for acquittal in the case of non-explanation of the injuries on the person of an accused in *Lakshmi Singh v. State of Bihar* (1976) 4 SCC 394. The following observations from the aforesaid judgment are relevant:

“In murder case, the non-explanation of the injuries sustained by the accused at the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:-

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) that the witnesses, who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.”

There is yet another circumstance on this aspect which creates suspicion. As per the defence version, the injuries had been caused by Madan Lal and his son Anil Kumar to the members of the accused party and a reference to this fact has been made by

P.W. 9 – ASI Devinder Singh in his evidence. It also appears that on re- investigation two senior police officers D.W. 1 – Manminder Singh, DSP and D.W. 5 - SP Narinder Pal Singh too had come to the conclusion that the defence put up by the accused was in fact the correct one and that they had been the victims of an attack, rather than the other way around.

We also observe that a shot gun and a rifle (both licensed) belonging to Madan Lal and Anil Kumar had been taken into possession and though two empty cartridges of a .315 rifle had been recovered about 120 feet away from the spot on the 30th November, 1999 they had not been sent to the forensic laboratory for comparison with Anil Kumar's weapon. Mr. Sushil Kumar is, therefore, justified in submitting that the investigation in this matter was tainted and the defence version had not even been taken into consideration by the investigating officer, more particularly when two senior officers had given a report favourable to the accused.

We have also examined the scope of inference by this Court with regard to an appeal against acquittal in *State of U.P. v. Banne* (2009) 4 SCC 271 wherein after referring to a large number of cases earlier decided, it was concluded as follows:

“Following are some of the circumstances in which perhaps this Court would be justified in interfering with the judgment of the High Court, but these are illustrative not exhaustive:

(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal. “

Applying the parameters aforesaid, we are of the opinion that the judgment of the High Court calls for no interference. The appeal is dismissed.

