

PETITIONER:
SAT PAL & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 20/10/1995

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
PARIPOORNAN, K.S. (J)

CITATION:
1995 SCC Supl. (4) 1 1995 SCALE (6) 86

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE. J.

Om Parkash @ Neelu, his two sons Satpal @ Sattu and Bir Bhan, and Gulzar Singh were arraigned before the Sessions Judge, Bhatinda for the murder of Janta Singh. The trial ended in an acquittal of Sat Pal and conviction of the other three under section 302 read with Section 34 I.P.C. with a sentence of imprisonment for life and a fine of Rs.1,000/- each. While the three convicts filed appeals against their convictions, the State of Punjab filed an appeal against the acquittal of Sat Pal, and Bant Singh, the brother of the deceased, filed a revision petition seeking compensation. In disposing of the appeals and the revision petition by a common judgment the High Court affirmed the conviction and sentence recorded by the trial Court, reversed the acquittal of Sat Pal by convicting and sentencing him to imprisonment for life and a fine of Rs. 1,000/- under Section 302/34 I.P.C. and directed that the fine if realised shall be paid to the heirs of Janta Singh. Hence these appeals at the instance of the four convicts.

The prosecution case is that on December 5, 1981 at or about 11.45 A.M. Janta Singh (the deceased) was going to his outer house followed by his brothers Bant Singh and Mukhtiar Singh to guard their cattle. When they had almost reached Bahamanwali Gali (lane) in their village the four appellants suddenly emerged from that gali armed with different weapons. Om Parkash had a dang, Sat Pal a kulhari and Bir Bhan and Gulzar Singh had a gandas each. Om Parkash raised a lalkara exhorting his companions that Janta Singh should not be allowed to escape. Immediately thereupon Bir Bhan and Gulzar Singh gave successive gandas blows on the head of Janta Singh as a result of which he fell down. While he was lying on the ground both Sat Pal and Om Parkash gave blows on his neck with their respective weapons. On alarms being raised by Bant Singh and Mukhtiar Singh they fled away from the spot along with their respective weapons. Janta Singh

had in the meantime died at the spot. The motive ascribed for the murderous assault was that a few days prior to the incident Om Parkash had been arrested for having been found in possession of opium and intoxicating drugs and he suspected that it was Janta Singh who had given information to the police.

It is the further prosecution case that Bant Singh then went and informed Zoravar Singh and Jang Singh, the Sarpanch and Chowkidar of the village respectively about the incident. On receiving the information, Jang Singh went to guard the dead body of Janta Singh along with Mukhtiar Singh while Bant Singh accompanied by Zoravar Singh went to Budhlada Police Station to lodge an information. ASI Gurmit Singh recorded the statement of Bant Singh and registered a case. After making arraignment to send a special report to the local Judicial Magistrate, ASI Gurmit Singh went to the spot accompanied by Bant Singh and Zoravar Singh. He held inquest upon the dead body of Janta Singh and forwarded it for post-mortem examination. He prepared a rough site plan, seized some blood stained earth from near the spot and recorded the statements of Zoravar Singh, Mukhtiar Singh and Jang Singh. In course of investigation he arrested the appellants and pursuant to their statements discovered some lathis, kulharis and gandasas. On completion of investigation he submitted a charge-sheet against the four appellants.

The appellants pleaded not guilty to the charges levelled against them and tendered written statements in support of their claim that they had been falsely implicated.

Though the prosecution examined as many as eleven witnesses including Zoravar Singh (PW 7) and ASI Gurmit Singh (PW 11) to prove its case its success depended primarily upon the acceptance of the ocular version of the incident as given out by Bant Singh (P.W. 2) and Mukhtiar Singh (P.W. 6) and of Dr. A.K. Garg (P.W. 1), who held post mortem examination on the dead body of Janta Singh and found the following injuries on his person:

1. Incised wound 2" x 0.3" on the head just right to the mid line, 6" above occipital protuberance, placed vertically.
2. One incised wound 1" x 1/3" present on head, 2. 1/2" to the left of injury No.1.
3. Abrasion 1/2" x 1/2" on the medial side of right elbow.
4. One abrasion 1" x 1/2" behind left elbow.
5. Abrasion 1/2" x 1/2" on the other side of left elbow.
6. Abrasion 1/2" x 1/2" on the poster medial side of left elbow.
7. One bluish bruise 4" x 1" on the right side of chest 3" from midline, against 2nd, 3rd and 4th ribs.
8. One bruise of bluish colour 6" x 3.1/2" against left clavicle 2nd & 3rd ribs in the shape like.
9. One bruise 4.1/2" x 1/4" was transversely placed on the neck between lower jaw and thyroid protuberance.
10. One bruise 4" x 1/4" on the neck obliquely to right side against thyroid cartilage.
11. One bruise 1/2' x 1/4" on the right side of the neck."

The trial Court found that the evidence of P.Ws. 2 and

6 could be safely relied upon to sustain the charges levelled against the appellants Om Parkash, Bir Bhan and Gulzar Singh, more so, as it was corroborated by the first information report which was promptly lodge by P.W. 2 and the injuries found by P.W. 1 on the person of the deceased. In acquitting the other appellant, namely, Sat Pal the trial Court recorded the following finding:

"After Janta Singh had fallen on the ground, Sat Pal accused gave two kulhari blows, one on the neck and the other on the left side of the chest of the deceased. The medical evidence on the record shows that injuries on the neck and on the chest are not incised injuries. Faced with this situation the two eye-witnesses in the instant case changed their stance and instant case changed their stance and tried to explain said injuries that the first kulhari blow, was given from upward-downward while holding the handle of the kulhari and the second blow was given from flat portion of the blade of the kulhari. This aspect of the case is conspicuous by its absence from the earliest version given by the two eye-witnesses before the police, before the post mortem had been conducted. In these circumstances, it will not be safe to place illicit reliance on the testimony of Bant Singh Mukhtiar Singh P.Ws. as far as the infliction of the aforesaid two injuries attributed to Sat Pal accused, is concerned."

The High Court concurred with all the findings recorded by the trial Court for convicting the three appellants and in reversing the acquittal of Sat Pal the High Court had this to say:

"So far as Sat Pal is concerned, according to the prosecution when Janta Singh had fallen on the ground Sat Pal gave two kulhari blows, one on the neck and the other on the left side of the chest of the deceased. According to the medical evidence, the injuries on the neck and in the chest are not incised injuries and the prosecution witnesses have explained this that the first kulhari blow was give from upward-downward while holding the hendle of the kulhari and the second blow was given from flat portion of the blade of the kulhari. although this aspect of the case is not in the earliest version, but the minutest photographic details cannot be expected to be given by the eye-witnesses. The learned trial court acquitted Sat Pal respondent on this ground that these injuries were not explained at the earliest were not explained at the earliest version and go counter to the medical evidence. In all 11 injuries were caused and out of them for were abrasions on the elbows. It may be that the said abrasions were caused as a result of fall and not due to direct blows. the appellants and Sat Pal respondent inflicted blows in quick succession and it was not possible for the eye-witnesses to give an exact account, as observed earlier. Thus, we are of the view

that the acquittal of Sat Pal was not justified by the learned trial Court on this ground."

Mr. Sushil Kumar the learned counsel appearing for the appellants took us through the evidence of the prosecution witnesses to contend that the High Court was not at all justified in setting aside the order of acquittal of Sat Pal as the findings recorded by the trial Court for his acquittal could not be said to be perverse.

Having considered the impugned judgments in the light of the evidence on record we are in complete agreement with the High Court that the trial Court was not at all justified in recording the acquittal of Sat Pal on the basis of the findings quoted earlier. In the F.I.R. that was lodged by Bant Singh within two hours of the incident he categorically stated that while Janta Singh was lying on the ground Sat Pal gave axe blows on his neck as also on the left side of his chest. In course of the trial also Bant Singh stuck to his above version and gave further details regarding the mode of use of the axe. It was not expected of Bant Singh nor was it necessary to give minute details in the F.I.R.. The finding of the trial Court as earlier quoted, for brushing aside the evidence of P.W. 2 as against Sat Pal must therefore be held to be perverse. For the self same reason the finding of the trial Court for discarding the evidence of P.W. 6, in view of his omission to detail the manner of use of the axe by Sat Pal in his statement recorded under Section 161 Cr. P.C. cannot be sustained for it was not a material omission amounting to contradiction. Having carefully gone through the evidence of Bant Singh (P.W. 2) and Mukhtiar Singh (P.W. 6) we are satisfied that their evidence as against Sat Pal is also cogent and consistent and the High Court was fully justified in relying upon the same. So far as the other three appellants are concerned both the learned courts below, who were entrusted with the duty of investigating into questions of fact have, on a proper discussion and appraisal of the evidence, recorded their findings against them and sitting in this jurisdiction under Article 136 of the Constitution of India we do not find any reason to interfere with the same.

It was sought to be argued on behalf of the appellants that the learned Courts below failed to notice that the prosecution signally failed to prove the motive ascribed for the alleged murder, thereby making its case suspect. Since both the learned Courts below found the evidence of the eye witnesses regarding the actual murder acceptable, the motive and for that matter proof therefor, paled into insignificance..

On the conclusions as above we dismiss the appeal and direct the appellants, who are on bail, to their respective bail bonds to serve out the sentence.