

CASE NO.:
Appeal (crl.) 1304 of 2005

PETITIONER:
Avtar Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 13/10/2006

BENCH:
B.P. SINGH & ALTAMAS KABIR

JUDGMENT:
JUDGMENT

WITH
CRIMINAL APPEAL NO. 1305 OF 2005
Rajinder Singh and another
Versus

\005 Appellants

State of Punjab

...Respondent

WITH
CRIMINAL APPEAL NO. 1645 OF 2005
Sewa Singh and others
Versus

...Appellants

State of Punjab

..Respondent

WITH
CRIMINAL APPEAL NO. 1646 OF 2005
Sandhura Singh and another
Versus

...Appellants

State of Punjab

...Respondent

B.P. Singh, J.

There are 9 appellants in these four appeals which have been preferred against a common judgment and order of the High Court of Punjab and Haryana at Chandigarh dated July 1, 2005 in Criminal Appeal Nos. 671-DB/2003; 701-DB/2003 and 696-DB/2003. The appellants had been convicted and sentenced by the learned Additional Sessions Judge, Bathinda by his judgment and order dated 5th August 2003 and 7th August, 2003 to undergo imprisonment for life and to pay a fine of Rs.3,000/- each, in default of payment of fine, to undergo rigorous imprisonment for 6 months under Section 302 read with Section 149 IPC. They had also been sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- each, in default of payment of fine, to undergo rigorous imprisonment for 2 months under Section 364 read with Section 149 IPC and Section 436 read with Section 149 IPC. They had also been sentenced to undergo rigorous imprisonment for 1 year and 6 months each respectively under Section 148 and Section 427 read with Section 149 IPC. All the sentences had been directed to run concurrently. The High Court by its impugned judgment and order dated 1st July, 2005 dismissed the appeals preferred by the appellants against the judgment and order of the Additional Sessions Judge, Bathinda dated 5th August, 2003 and 7th August, 2003.

The facts of this case disclose that in village Kamalu there were two groups inimically disposed towards each other which resulted in several murders. The appellants herein belong to one group while the family members of the informant and others

belong to the rival group. The case of the prosecution is that on 19th November, 1989 the informant Chhoto, PW-1, alongwith her brother Shivraj Singh and her sister-in-law (brother's wife) Balbir Kaur, PW-2 went to their fields in Village Bangi Kalan where they had also constructed a farm house. While they were there, the appellants came on a jeep and a tractor variously armed with deadly weapons including a double barrel gun. They also belong to village Kamalu, the village of the informant. Seeing them, the informant's brother Shivraj Singh hid himself in a room meant for storing chaff but the accused set the room on fire so that he was compelled to come out. He was immediately abducted by the appellants. The informant apprehended that they may kill Shivraj Singh. It is an undisputed fact that thereafter no one has seen Shivraj Singh alive, nor was his body recovered. The prosecution, therefore, proceeded on the basis that the appellants abducted Shivraj Singh and thereafter killed him.

The case of the informant PW-1 is that soon after the occurrence she returned to her village and immediately reported the matter to Namberdar Gurnam Singh and Chokidar Tohla Singh (both not examined). Along with them she went to P.S. Raman but despite their insistence the police did not take any interest in the matter and did not record the information she wanted to give. They, therefore, came back to the village. The informant admitted in her deposition that except the Namberdar and the Chowkidar she did not report the matter to any other person in the village on that day. She, in particular, named Major Singh Thanedar, PW-6, and stated that she had met him in P.S. Raman but he refused to take down the information which she wanted to lodge.

Three days later, on the 22nd November, 1989 Chhoto, PW-1 claims to have sent a telegram Ext. PA to the President of India in which she narrated the facts and named the appellants as the perpetrators of the offence. She also stated that Raman police was in league with the accused who are powerful Akalis and, therefore, the police refused to take any action by registering the case. PW-1 stated that since police took no action she waited for 2-3 days. Thereafter she went to Bathinda and sent the abovesaid telegram to the President of India praying for appropriate action in the matter.

Thereafter on 4th December, 1989, PW-1, made a written complaint to the Senior Superintendent of Police (SSP), Bathinda in which she narrated the incident which took place on 19th November, 1989 and complained that police were not taking any action and even refused to record the information which she sought to give to the police for taking appropriate action. In the said complaint to the SSP it was also stated that the appellants with their other companions had taken away 14 killas of cotton and plucked kinnus from two killas. They had also taken away girders, cement and fertilizers etc. lying in the fields. A complaint had been lodged by her with the police, but no action was taken. The said complaint made by PW-1 was sent to Raman Police Station where a case was registered against the appellants. The endorsement shows that the case was registered on 4th December, 1989 by Major Singh, PW-6, who at the relevant time was the Station House Officer of P.S. Raman.

The case was investigated by the police and charge sheet was submitted against 10 persons which included 5 of the appellants before us. It appears from the record that the statements of Amar Singh and Gurdev Singh were recorded by the police in the course of investigation under Section 161 of the Code of Criminal Procedure on 9th October, 1990 and on the basis of their statements 5 other persons, namely Gurjit Singh, Harjinder Singh, Jit Singh, Kuljit Singh and Ajaib Singh were arrayed as accused in

the case alongwith 5 of the appellants, namely \026 Sewa Singh, Sarabjit Singh @ Ujagar Singh @ Jagger Singh, Jagdeep Singh, Hardeep Singh, and Avatar Singh @ Tari.

The trial court, however acquitted five persons who were sent up as accused and tried by the Sessions Judge on the basis of the statements of Amar Singh and Gurdev Singh. Amar Singh and Gurdev Singh were not even examined as witnesses at the trial. The remaining two eye witnesses, namely \026 PW1 and PW-2 did not implicate them.

However, four of the accused persons named in the first information report against whom charge sheet was not submitted were summoned for trial by the learned Additions Sessions Judge under Section 319 of the Code of Criminal Procedure. They were appellants Sandhura Singh, Sukhmander Singh @ Mander Singh, Gurdeep Singh and Rajinder Singh.

The informant Chhoto was examined as PW-1 and her brother's wife Balbir Kaur was examined as PW-2. Major Singh, SHO Raman Police Station was examined as PW-6.

The appellants in their statements recorded under Section 313 of the Code of Criminal Procedure denied their guilt and it appears to be their case from the suggestions made to the witnesses that the alleged deceased Shivraj Singh was mentally handicapped and that he may have gone somewhere which was not within their knowledge. Their specific plea was that taking advantage of the disappearance of Shivraj Singh they have been falsely involved in this case on account of serious enmity between the two groups in the village.

The statement of Sewa Singh was to the effect that he had contested elections to the post of Sarpanch against Jugraj Singh brother of the informant PW-1. Once he had won and on the second occasion he lost the election. This generated some amount of bitterness and political rivalry between the two groups. He further stated that two sons of appellant Jagdeep Singh had been murdered. Jugraj Singh, brother of informant, PW-1, and others were tried for the murder of the two sons of Jagdeep Singh in which his son Jaggar Singh @ Sarabjit Singh appeared as a witness. He further stated that Niranjana Singh, a brother of the informant, PW-1 had lodged a first information report against him and Jagdeep Singh under Sections 447/427/148/149 IPC. However, in that case they were acquitted. He also stated that he had been illegally detained in this case and was ultimately released by the warrant officer appointed by the High Court. He further stated that Niranjana Singh made a complaint against him which was found to be false and was consequently filed but thereafter action under Section 182 IPC was initiated against him.

Sarabjit Singh son of Sewa Singh also made a similar statement.

Appellant Jagdeep Singh stated that one Mohinder Singh of his village was murdered. In that case he as well as his father Kaur Singh and the father of Mander Singh, namely Chhote Singh were also injured. In that case he had lodged a first information report under Sections 302/307/324/148/149 IPC and Sections 25/27 of the Arms Act. He and his father had also deposed as eye witnesses in that case and the accused in that case including Jugraj Singh were convicted by trial court. However, their conviction was set aside by the High Court but on further appeal to the Supreme Court, the order of the High Court was reversed and the order of the trial court convicting them was upheld. It is also on record that the brother of the informant PW-1, namely Jugraj Singh was

undergoing his sentence when the instant occurrence took place. It also appears that Namberdar Gurnam Singh was also a co-accused in that case with the brothers of the informant, but it is not clear whether he was acquitted in that case since there were several accused persons in that case. They included the two brothers of the informant. Appellant Jagdeep Singh also stated that his two sons were murdered by Jugraj Singh, his brother Niranjn Singh his son Naginder Singh. Jugraj Singh and Niranjn Singh, as earlier noticed, are the brothers of the informant. In that case as well Hardeep Singh deposed as an eye witness. Appellant Sarabjit Singh was the other witness examined in that case.

Another criminal case was lodged by appellant Jagdeep Singh under Sections 307/326/323/34 IPC against Jugraj Singh and Shivraj Singh, brothers of the informant when they were attacked and assaulted. Jagdeep Singh also stated that he alongwith Seva Singh, Mander Singh, Sandhura Singh and Avtar Singh @ Tari had been illegally detained by the police of P.S. Raman and were brutally tortured by the police on 6th December, 1989. Ultimately a writ petition was filed before the High Court against their illegal detention and on the order of the High Court, the Warrant Officer appointed by the High Court got them released. It was, therefore, submitted that far from being friendly towards the accused the police was bent against them and illegally detained them in custody continuously for several days till they were released from their illegal detention by the Warrant Officer appointed by the High Court.

It is not necessary to refer to the statements of the other accused recorded under Sections 313 of the Code of Criminal Procedure because the facts we have noticed are sufficient to reach the conclusion that there was intense enmity between the two groups in village Kamalu and several murders had taken place including the murders of two sons of appellant Jagdeep Singh by the brothers of the informant PW-1 and others.

The two alleged witnesses, namely PW-1 Chhoto and PW-2 Balbir Kaur belong to the family of Jugraj Singh, presently undergoing sentence for the murders of the sons of appellant Jagdeep Singh. Unfortunately, the High Court has not critically scrutinized the evidence on record and, therefore, with the assistance of counsel appearing for the parties we have read the entire evidence on record since the prosecution case rests on the evidence of two alleged eye witnesses who are inimically disposed towards the appellants. This is pre-eminently a case in which the rule of caution must strictly be applied.

It was submitted before us that the occurrence took place on 19th November, 1989 at about 7.00 a.m. but no report was made to the police regarding the incident. Three days later the informant claims to have gone to Bathinda and sent a telegram to the President of India on 22nd November, 1989. Thereafter on 4th December, 1989 she made a belated complaint to the Senior Superintendent of Police, Bathinda on the basis of which the first information report was registered at P.S. Raman. On the other hand PW-1 contends that she had in fact gone to the police station alongwith Namberdar Gurnam Singh and the Chowkidar of the village but the police, which was under the influence of the accused, refused to record the statement of the informant and register the case against the appellants. In her deposition she categorically stated that she met the Station House Officer Major Singh, PW-6, at the police station who refused to record her statement. She thereafter returned to the village and waited for 2-3 days. When she found that the police had not taken any action in the matter, she sent a telegram to the President of India on 22nd

November, 1989. Later she made a complaint to the Senior Superintendent of Police, Bathinda on 4th December, 1989. She has admitted in the course of her examination that apart from the Namberdar and the Chowkidar of the village, she did not inform any one after returning to the village soon after the incident. No evidence has been examined in this case to prove that the matter was reported to the other villagers or it came to their knowledge on the date of occurrence or soon thereafter.

PW-6, Major Singh had been examined as a prosecution witness. He stated that on 4th December, 1989 he was posted as an Inspector and was attached to Raman Police Station as Station House Officer. On receipt of the application Ext. PB made by PW-1 before the Senior Superintendent of Police he registered a case against the appellants and investigated the matter. He narrated the steps which he took during the course of investigation of the case. He categorically asserted that he did not receive any complaint prior to the registration of the case on 4th December, 1989. Neither Chowkidar nor Gurnam Singh, Namberdar met him prior to 4th December, 1989.

From the facts noticed above it is apparent that no case was registered at P.S. Raman on the date of occurrence, namely 19th November, 1989. PW-1 claims that she had gone to the police station with Namberdar Gurnam Singh and Chowkidar of the village but PW-6 refused to record her statement and take further action. On the other hand we have the evidence of PW-6 who states that no report had been made to him of the instant incident prior to the date of registration of the case on the basis of the complaint made to the Senior Superintendent of Police i.e. till 4th December, 1989. There is, therefore, inconsistent evidence of two prosecution witnesses and the benefit of this must ordinarily go to the accused. However, by way of abundant caution we have further examined the evidence on record and we find that Namberdar Gurnam Singh and the Chowkidar were not examined by the prosecution to prove that PW-1 had reported the matter to them and that PW-6 had refused to record the statement of PW-1. It is not the case of the prosecution that these witnesses had been won over by the accused. In fact what appears from the record is that Namberdar Gurnam Singh was a co-accused with the brothers of PW-1 in the case of murder of Mohinder Singh. If at all, Namberdar Gurnam Singh appears to belong to the informant's group. Their non-examination creates a serious doubt whether any effort had been made by PW-1 on the date of occurrence to lodge the report at the police station. She admitted in the course of her deposition that she did not narrate the incident to anyone else on that date.

A telegram to the President of India was sent on 22nd November, 1989 i.e. three days after the occurrence. The explanation of PW-1 is that she waited for 2-3 days and when police took no action, she sent a telegram to the President of India. The explanation offered by PW-1 is not convincing. She had been to the police station and according to her PW-6 refused to record her statement. If her statement itself was not recorded, it was really futile for her to expect any action in the next 2-3 days. In fact in normal circumstances one would have expected her to report the matter to other villagers and to higher authorities for appropriate action because she apprehended that her brother who had been abducted may be killed. This does not appear to have been done. Having sent the telegram, she waited for almost 12 days before she went and complained about the matter to the Senior Superintendent of Police, Bathinda. All these facts create a very serious doubt as to whether any occurrence took place as alleged by PWs. 1 and 2 and whether any attempt was made by

PW-1 to lodge a report at the police station about the incident on the date of occurrence. This has encouraged the defence to submit that no such occurrence took place and the disappearance of the brother of the informant, PW-1, gave an opportunity to PW-1 to implicate all the members of the rival group on a charge of abduction and murder of her brother Shivraj Singh. Reliance is placed on the evidence to show that there was serious enmity between the two groups and, therefore, PW-1 took advantage of the disappearance of her brother and lodged a false case against the members of the rival group.

The High Court has noticed the statements of the accused recorded under Section 313 of the Criminal Procedure Code and held that there was bad blood between the two groups in the village who were inimically disposed towards each other. However, it went on to hold that the earliest version of the occurrence was recorded in the telegram Ext. PA which was sent to the President of India on November 22, 1989. Later, a detailed petition was made to the Senior Superintendent of Police on December 4, 1989 complaining that the police was not taking any action in the matter. In the light of these two reports the High Court concluded that the basic details of the entire occurrence stood crystalised in the complaint forwarded by PW-1 in the form of a telegram Ext. PA. The grouse of the appellants to the effect that they were implicated in the case by PW-1 and PW-2 on account of animosity which exhibited between the two parties could not be accepted as the defence had not brought on record any evidence to prove that the mental state of Shivraj Singh was such that he may have left his house for an unknown destination in such state of mind. The High Court then proceeded to scrutinize the evidence of PWs.1 and 2 and held that since their evidence was to the effect that Shivraj Singh had been abducted by the appellants, it was for the defence to explain what had happened after he was abducted by them. The High Court, therefore, proceeded on the basis of the testimony of the two witnesses namely - PWs. 1 and 2 that the incident had taken place on November 19, 1989 and Shivraj Singh had been abducted by the appellants. It went on to observe that in case none of the appellants had anything to do with the incident, there was no earthly reason why the aforesaid witnesses would have named them as persons responsible for the abduction of Shivraj Singh. Since the appellants had failed to explain what happened to Shivraj Singh after his abduction, the presumption under Section 114 of the Evidence Act was available to the prosecution that the appellants alone were responsible for the death of Shivraj Singh.

It will thus appear that though the High Court noticed the enmity between the two groups, it accepted the evidence of PWs.1 and 2 and held that an occurrence did take place on November 19, 1989 and there was no reason why these two witnesses would implicate the appellants if they had no role to play.

It is no doubt true that if the evidence of PWs.1 and 2 is accepted as it is, the prosecution must be held to have proved its case against the appellants. The question is whether PWs.1 and 2 can be relied upon, particularly in the background of the bad blood and intense enmity which existed between the two groups which in the past had led to several murders. The High Court has not really examined the evidence of PWs.1 and 2 critically as it ought to have done.

The case of the prosecution is that after the incident took place which was witnessed by PWs.1 and 2, the witnesses went back to the village and reported the matter to Namberdar and Chowkidar of the village namely \026 Tohla. Thereafter, PW.1 accompanied by the Namberdar and the Chowkidar went to the

Police Station but PW.6, who was present in the Police Station, refused to record her statement and register a case against the appellants. This was because the police was favouring the appellants on political considerations.

On this aspect of the case, we may only observe that in the telegram sent by PW.1 to the President of India as also in the first information report there is no mention of the Namberdar or the Chowkidar accompanying PW.1 to the Police Station. It was only in the course of her deposition that PW.1 named these two persons. Neither the Namberdar nor the Chowkidar was examined to prove that PW.1 had gone to the Police Station to lodge a report. According to PW.1, she had not reported the matter to anyone else in the village which by itself appears to be rather unnatural. We have also the evidence of PW.6, Station House Officer of P.S. Raman, who has categorically deposed that no report regarding the incident had been made to him by anyone before December 4, 1989 when the complaint submitted by PW.1 to Senior Superintendent of Police, Bathinda was sent to him, on the basis of which he registered a case against the appellants. The High Court has completely ignored the evidence on record which belies the prosecution assertion that PW.1 went to the Police Station alongwith the Namberdar and the Chowkidar to lodge a report but the police took no action. It is not even the case of the prosecution that Namberdar Gurnam Singh was not willing to depose for any reason. What appears on the record is that the aforesaid Namberdar, Gurnam Singh was himself a co-accused with the brothers of PW.1 in the case of murder of Mohinder Singh. Obviously Namberdar Gurnam Singh supported the group of which the brothers of PW.1 were members.

Apart from the vague allegation that the police was supporting the appellants there was no evidence to substantiate the allegations. On the other hand, it appears that some of the appellants were illegally arrested by the police and were kept in unlawful detention. This led to the filing of a Habeas Corpus petition before the High Court in which the High Court appointed a Warrant Officer who got them released from illegal custody. This completely demolishes the prosecution allegation that the police was favouring the appellants.

We, therefore, entertain a serious doubt as to whether PWs.1 and 2 had at all witnessed the occurrence and made an attempt to lodge a report with the police. Their conduct in not informing anyone in the village apart from Namberdar and Chowkidar, which also appears to be doubtful, is rather unnatural. Moreover, if the police refused to register a case against the appellants, having regard to the fact that her brother had been abducted and it was apprehended that he may be killed, PW.1 would not have waited for 3 or 4 days for the police to take action. In fact, there was no question of the police taking any action since they had even refused to record the information which PW.1 wanted to give. The telegram was sent three days after the occurrence and the complaint to the Senior Superintendent of Police was made about 12 days thereafter. The belated complaint made by PW.1, in the background of the enmity that existed between the two groups, leads us to suspect the authenticity of the statements made in those reports. The High Court was clearly in error in rejecting the submission urged on behalf of the appellants that on account of enmity they have been falsely implicated. The defence of the appellants was that Shivraj Singh was a mentally handicapped person and he may have left on his own for some unknown destination in view of his mental state. Taking advantage of his disappearance a false case was concocted against the appellants which included all persons against whom PW.1 had a grouse. The

High Court rejected the submission observing that the defence had failed to prove that Shivraj Singh was mentally handicapped and that he had left the village on his own and disappeared. It may be that the defence has not proved these facts but that cannot be used against the appellants because the burden always lies on the prosecution to prove its case. The observation of the High Court that there was no earthly reason why the appellants should be falsely implicated is answered by its own finding with regard to the existence of bad blood between the two groups resulting in several murders.

One of the submissions urged on behalf of the appellants was that in the FIR itself there was a statement that the appellants had plucked cotton from 14 killas of land and kinnus from 2 killas of land. This would have taken considerable time and would have attracted the notice of others. We find no merit in this submission because it appears from a reading of the FIR that the plucking of cotton and kinnus from the lands of PW.1 related to another incident in which a report had been lodged but the police had taken no action. This statement appears to have been made in the report of PW.1 only to support her allegation that the police was favourably inclined towards the appellants.

This is a case in which enmity and bad blood between the rival groups is established beyond doubt. We have only the evidence of two interested witnesses namely PWs.1 and 2. No immediate report was lodged to the police regarding the occurrence. We have scrutinized the evidence on record and come to the conclusion that the story about making an effort to lodge a report earlier does not appear to be true. The Namberdar and the Chowkidar who were alleged to have accompanied PW.1 to the Police Station have not been examined as witnesses. On the other hand, there is a categorical denial by PW.6, the Station House Officer that anyone reported the incident to him before December 4, 1989. Unfortunately, the High Court has not even noticed these facts. Even the allegation that the police was favourably disposed towards the appellants is belied by the fact that some of the appellants were illegally detained by the police who were ultimately released by the Warrant Officer appointed by the High Court in the Habeas Corpus petition. We, therefore, entertain a serious doubt about the truthfulness of the prosecution case. The facts and circumstances of the case no doubt establish that Shivraj Singh had disappeared on November 19, 1989 but the circumstances of the case indicate that PWs.1 and 2 may not have seen the occurrence in which Shivraj Singh had been either abducted or killed, and taking advantage of his disappearance a false case was belatedly concocted against the appellants. Since we entertain a serious doubt about the truthfulness of the two eye-witnesses examined by the prosecution, we hold that the appellants are entitled to the benefit of doubt.

Accordingly, these appeals are allowed and the appellants are acquitted of all the charges levelled against them. The judgment and order of the High Court is set aside. The appellants are directed to be released forthwith unless required in connection with any other case.