

(2006) 07 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Criminal Appeal 14 Of 2000, Crl. Appeal 15 Of 2000, Acq. Appeal 67 Of 2000 and Criminal Reference 19 Of 2000

Balwant Singh and Ors.

APPELLANT

Vs

State of J&K and Ors.

RESPONDENT

Date of Decision : 07-07-2006

Acts Referred:

Ranbir Penal Code, 1989 — Section 302, 34

Citation : (2006) 3 JKJ 445

Hon'ble Judges : Hakim Imtiyaz Hussain, J and Nirmal Singh, J

Bench : Division Bench

Advocate : V.R.Wazir, Sakal Bhushan, B.S.Salathia, Advocates appearing for the Parties

Judgement

1. This judgment shall dispose of Crl. Appeal No. 14/2000, Crl. appeal No. 15/2000, Acq. Appeal No.67/2000 and Criminal Reference No.

19/2000, as these arise out of common judgment dated 01082000 and order dated 16082000.

2. The case of the prosecution case is that on 11.05.1994 at about 6.30 AM, Ram Lal, complainant, accompanied by his brother Kuldeep Raj

went to cut green fodder (Barseen) in their field. They were busy in cutting 'Barseen' and their brother Ajit Ram, deceased passed nearby them

while going for answering the call of nature in his field. All of a sudden they heard the cries 'Bachao Bachao'. On this they got up and saw that

accused Balwant Singh alias Kaku, Jaswant Singh alias Ludha and Avtar Singh alias Guddu armed with Tokas' had attacked the deceased and

were inflicting the injuries. They ran to the spot to save their brother. People who were working in their fields also attracted towards spot and on

seeing them accused Balwant Singh, Jaswant Singh and Darshan Lal ran away on the Scooter which was parked on the road towards Ranbir

Singh Pura, whereas Avtar Singh alias Guddu, ran away from the spot on foot. On the basis of statement of Ram Lal, FIR No. 119 of 1994 under

sections 302/34 RPC and 4/25 Arms Act,, was registered by SI Sukhdev Singh, vide EXPW SS.

3. SI Sukhdev Singh, accompanied by other police officials alongwith Ram Lal, complainant and Parkash Chand went to the spot and prepared

site plan EXPW SSI and also take into possession the blood stained earth EXPW PI/1. The dead body was taken into possession and the same

was sent for postmortem examination to Government Hospital, Ranbir Singh. Pura. After the postmortem examination the dead body was handed

over to Ram Lal, complainant.

4. SI Sukhdev Singh arrested accused Balwant Singh and Krishan Lal on 22061994. Krishan Lal was also interrogated. On interrogation he made

a disclosure statement EXPW 1/9 that he had got concealed the 'Khokri' in the Cow shed and the blood stained cloths in the residential house. In

pursuance of the disclosure statement he got recovered the 'Khokri' as well as the blood stained clothes from the place of disclosure and the same

was taken into possession.

5. SI Sukhdev Singh also interrogated Balwant Singh on 24061994. He made disclosure statement that he had kept 'Dah', blood stained pent and

shirt in the heap of cow dung. In pursuance of his disclosure statement he got recovered 'Dah' and clothes from the specified place. Darshan

Lal accused was arrested on 24061989. On his disclosure statement a 'Dah', a under shirt and a pent was also got recovered from the specified

place. The Scooter No. 9365 PCM was also seized during the investigation vide seizure memo EXPW 1/16.

6. During the investigation it revealed that Avtar Singh alias Guddu was not the assailant instead of that Krishan Lal was the assailant, therefore he

was arrested.

7. On receipt of the report from the FSL and on completion of the investigation a report under section 173 Cr. P. C was presented before the

Illaqa Magistrate who committed the case to the Court of Sessions, Jammu. On commitment the accused were charge sheeted under sections

302/34 RPC and 4/25 Arms Act to which they pleaded not guilty and claimed trial.

8. To prove the case the prosecution has examined Ram Lal, Prakash Chand, Kuldeep Raj, Mela Ram, Sain Dass, Nagar Mai. Balwant Raj,

Girdhari Lal, Harbans Lal, Sewa Ram Patwari, Janak Raj Photographer, Purapkar Singh M.O. Abdul Gani Assistant Director FSL and SI, Sukh

Dev Singh, Investigating Officer.

9. When the accused appellants were examined for explaining in criminating circumstances appearing in the prosecution evidence under section 342

Cr. P. C, they denied simplicitor and false implication. Accused appellants were called to lead defence. In their defence they did not examine any witness.

10. The learned Sessions Judge, Jammu, after appreciating the evidence of the prosecution, hearing public prosecutor and the counsel for the

accused acquitted Darshan Lal and Krishan Lal of the charges framed against them, whereas Balwant Singh and Jaswant Singh were convicted

and sentenced 10 rigorous imprisonment for life and fine of Rs.25, 000/ (twenty five thousands) each. In default of payment of fine they were

further sentenced to undergo rigorous imprisonment for two years under sections 302/34 RFC. It was further ordered that in case fine is recovered

from each of the accused Rs.15, 000 out of the recovered fine will be paid to the LRs of the deceased as compensation.

11. Aggrieved by the judgment and order of the learned Sessions Judge, Jammu, appellants Balwant Singh and Jaswant Singh have filed the above

said criminal appeals, whereas the State has filed the acquittal appeal against Darshan Lal and Krishan Lal. The learned Sessions Judge, has sent

the file to this Court for the confirmation of the sentence as envisaged under section 374 Cr. P. C.

12. We have heard the learned counsel for the parties and perused the record. First of all we deal with the acquittal appeal filed by the State.

When the matter pertains to the acquittal of the accused the evidence would be examined in the light of the principles as laid down by the Hon'ble

Supreme Court in Ashok Kumar v. State of Rajasthan, 1991 (1) SCO 166 and Kashi Ram v. State of M.P., 2001 (4) RCR (Criminal) 556,

wherein it has been held that interference in an appeal against acquittal would be called for only when the judgment under appeal was palpably

perverse or based on a misreading of the evidence and where two views are possible, the one taken by the trial Court in making a judgment of acquittal should not be disturbed.

13. When we appreciated the evidence of the prosecution in the light of guidelines laid down in Ashok Kumar's case supra with regard to the acquittal of the Darshan Lal and Krishan Lal, only one view is possible which has been taken by the learned Sessions Judge, Jammu.

14. Ram Lal, Kuldeep Raj and Parkash Chand are the brothers of the deceased and they had witnessed the occurrence. Ram Lal has deposed in

his statement that after the occurrence he left Kuldeep Raj by the side of the dead body and went to lodge a report alongwith Parkash Chand. On

his statement the FIR was registered. In the FIR Ram Lal has not given the names of Darshan Lal and Krishan Lal as assailants. For the first time,

the names of Darshan Lal and Krishan Lal appeared in the statement recorded under section 161 Cr. P. C. Ram Lal has deposed in his statement

while appearing as PW1 that he has given the names of Balwant Singh, Jaswant Singh, Darshan Lal and Krishan Lal as accused. Police might have

written the name of Avtar Singh alias Guddu at its own but he has given the names of Darshan Lal and Krishan Lal. This part of the version given

by Ram Lal is not believable. The occurrence in this case had taken place at 6.30 A.M and the FIR was recorded at 7.30 A.M by SI, Sukh Dev

Singh, PW19. He has no enmity with the complainant that he will not mention the names of Darshan Lal and Krishan Lal and instead of that he will

introduce some other person as an accused whose name is Avtar Singh alias Guddu rather SI Sukh Dev Singh, IO has specifically deposed in his

statement that at the time of lodging the report the complainant has mentioned the name of Avtar Singh alias Guddu and not the names of Darshan

Lal and Krishan Lal. The complainant and the eye witnesses may have for some personal reasons left out Avtar Singh alias Guddu from the list of

the assailants and instead of him they have roped Krishan Lal and Darshan Lal as an accused.

15. In this part of the Country there is a tendency to rope innocent person as an accused alongwith real assailants, but the Court has to scan the

evidence to find out who are the real assailants. The motive for committing the crime was a property dispute between the deceased and the

accused Balwant Singh and Jaswant Singh. Darshan Lal and Krishan Lal have no motive to join hands with Balwant Singh and Jaswant Singh. The

learned Sessions Judge, Jammu, after appreciating the evidence has rightly acquitted Darshan Lal and Krishan Lal. Therefore, no interference is

warranted with the order of acquittal. Hence, the appeal filed by the State is dismissed.

16. Now we will deal with Criminal Appeal No. 14 of 2000 filed by Balwant Singh and Criminal Appeal No. 15 of 2000 filed by Balwant Singh

and Jaswant Singh.

17. M/s V.R. Wazir and Sakal Bhushan, learned counsel for appellants have vehemently contended that the learned Sessions Judge, Jammu has

erred in convicting and sentencing the appellants as he has not appreciated the evidence on record in right perspective. They submitted that as per

the case of the prosecution the occurrence had taken place at about 6.30 A.M but the FIR in this case was registered at 7.30 A.M, whereas the

distance between the Police Station and place of occurrence is only about 2 kms. They submitted that this time has been taken by the prosecution

to concoct a false story to introduce false witnesses who have not witnessed the occurrence and to rope innocent person(s) as accused. They

contended that the prosecution has not given any plausible explanation for delay.

18. The submission made by the learned counsel for the appellants is without any foundation.

19. PW I Ram Lal, complainant has deposed in his statement that he along with his brother Kuldeep Raj were cutting green fodder (Barseen) when

deceased Ajit Ram passed nearby them for answering the call of nature, after some time all of sudden they heard cries 'Bachao Bachao' and found

that accused were inflicting injuries on the deceased. They ran towards their brother to save him then accused ran away from the spot along with

their weapons. They were trying to take their brother to the Hospital but he succumbed to his injuries.

20. When any person receives injuries in an occurrence the first curiosity of the person(s) attending him, his relatives or friends is to take him to the

Hospital then run to the Police Station to lodge the report. Ram Lal, complainant and his brother Kuldeep Raj had witnessed the occurrence and

as their real brother had succumbed to injuries, therefore, they were in shock,

despite that they immediately left the place of occurrence to lodge the report.

21. There is no evidence on record that the complainant, Ram Lal and Parkash Chand went to the field with some vehicle(s). Even, it is common knowledge that people do not take vehicles to the field when they go for cutting the fodder. The Police Station is at a distance of about 2 kms and for covering a distance of 2 kms on foot at least half an hour must have been taken to reach the Police Station. After that the complainant met SI Sukhdev Singh and narrated him the occurrence and then his statement was recorded. For recording the statement some time must have been taken and the statement was completed at 7.30 am in which the details of occurrence, names of the accused and the weapon used have been given. In these circumstances, it cannot be said that there is a delay in lodging the FIR rather from the facts of the case it demonstrates that the FIR has been recorded promptly. After recording the FIR the police swung into action quickly and reached at the place of occurrence within hour. So there is no delay in lodging the FIR as asserted by the counsel for the appellants.

22. Next contention raised by the learned counsel for the appellants is that the prosecution has examined only interested and related witnesses even though occurrence had taken place near the Village and independent witnesses had attracted to the spot and they have witnessed the occurrence, but the prosecution has not examined any of the independent witnesses. They further submitted that no reliance can be placed on the statements of these interested and related witnesses as they have improved the version at every point. They pointed out that in the FIR the complainant, Ram Lal has given the names of Balwant Singh, Jaswant Singh, and Avtar Singh alias Guddu as assailants, but in the Court he has not deposed that Avtar Singh alias Guddu was the assailant instead of that the witnesses of the prosecution have implicated Darshan Lal and Krishan Lal. The learned Sessions Judge has already acquitted Darshan Lal and Krishan Lal by disbelieving the prosecution witnesses. When the prosecution witnesses have been disbelieved qua Darshan Lal and Krishan Lal then they should not be believed with regard to the present appellants.

23. We have considered the submissions of the learned counsel for the appellants but find the same without any merit. There is no law that the

evidence of related and interested witnesses is not admissible in evidence. When the case is based on the evidence of related and interested

witnesses it puts the Court on its own guard to scrutinize the evidence with great care and caution. The Court has to see whether the evidence

given by the prosecution witnesses is corroborated by medical evidence and the version given by the prosecution witnesses is consistent with the

FIR and other circumstances of the case or not.

24. The case of the prosecution hinges on the statements of Ram Lal, complainant, Kuldeep Raj and Parkash Chand, eye witnesses. They are real

brothers of the deceased, but their evidence cannot be discarded simply on the ground that they are related to the deceased. The occurrence has

been taken place at about 6.30 A.M when Ram Lal and Kuldeep Raj were cutting green fodder (Barseen) in their field and deceased Ajit Ram had

passed by their side to answer the call of nature. Taking into consideration the time of occurrence their presence in the field is most natural. The

contention raised by the learned counsel for the appellants that there is inconsistency between the FIR and the evidence given by Ram Lal

complainant, Kuldeep Raj and Parkash Chand as Ram Lal has not given the names of Darshan Lal and Krishan Lal as the assailants in the FIR but

he has given the names of; Avtar Singh alias Guddu.

25. Ram Lal, complainant no doubt has given in the FIR, the names of assailants as Jaswant Singh, Balwant Singh I and Avtar Singh alias Guddu,

but subsequently in a statement under section 161, Cr. P. C, he had added Darshan Lal and Krishan Lal as assailants instead of Avtar Singh alias

Guddu. When he was called to identify Avtar Singh, he stated that he was not the assailant among other assailants,

26. The learned trial Court after appreciating the evidence has acquitted Darshan Lal and Krishan Lal because the complainant has not given the

names of Darshan Lal and Krishan Lal in the FIR. Instead of that he has given the name of Avtar Singh alias Guddu. Ram Lal may have given the

name of Avtar Singh alias Guddu by mistake as he might have not identified him properly, but on this ground that the complainant and the eye

witnesses have subsequently added in their statements the names of assailants Darshan Lal and Krishan Lal, the entire version of the complainant

and eye witnesses cannot be discarded when their evidence qua the

appellants Balwant Singh and Jaswant Singh on all the material points is consistent regarding date, time, place and manner in which the occurrence has taken place and the weapon used by the appellants and after the occurrence how the appellants escaped from the spot.

27. In AIR 1975 SC 1475 Soma Bhai v. State of Gujarat, the apex Court has held as under:

It is well settled that the Courts should make an effort in disengaging the truth from falsehood. Merely because a portion of the testimony of a witness is unreliable, it is no ground to brush aside his entire testimony.

28. The evidence given by the witnesses has been further corroborated by medical evidence given by PW16 Dr. P.S. Soodan who has conducted the postmortem examination and found the following injuries on the person of the deceased:

1. 2 incised wounds right parietal region of scalp parallel to each other each 4"" inches long X 1"" deep, bone visible.
2. Large wound lower third of right upper arm. Bone cut Arms separated at point joined only a piece of skin.
3. 2 incised wound right upper arm parallel to each other horizontally 5"" long 2"" deep muscle cut.
4. Multiple incised wounds right lower arm, muscles cut.
5. Large incised wound lateral side of right thigh from hip joint to 4"" above knee, 3"" deep muscles cut.
6. Right lower leg separated at knee joint. Ends of bone visible.
7. Multiple deep incised wounds right lower leg.
8. Two middle fingers of right foot cut and joined only by skin.
9. Large incised wound centre of left lower leg posteriorly 4"" long 3"" deep,
10. Large wound at left elbow joint. Bones of joint visible.
11. Incised wound back of left shoulder 3""x 1"" deep.

29. In the opinion of Doctor, the death of the deceased was within six hours before the time of autopsy and in his opinion the death has caused due to shock and excessive haemorrhage because of cutting of large blood vessels.

30. The learned counsel for the appellants submitted that the case of the case of prosecution is that appellant Balwant Singh was arrested on

22061994 and he was interrogated by SI Sukhdev Singh on 24061994. On interrogation he made a disclosure statement EXPW 1/10 that he had

kept concealed a 'Dah' Pent and undershirt having stained with blood in a heap of cow dung, which he only knew and can get the same recovered.

It is further case of the prosecution that in pursuance of the disclosure statement he got recovered 'Dan', Pent and undershirt and the same were

taken into possession vide EXPW PI/13. They pointed out that the learned Sessions Judge has disbelieved the recovery of 'Dah' from

appellant Balwant Singh and acquitted him of the offence under section 4/25 of the Arms Act by observing that the alleged weapon of offence

could not connect with the commission of crime. Learned counsel for appellants contended that when the learned Sessions Judge has disbelieved

the recovery of weapon of offence allegedly used in the crime then the learned Sessions Judge has erroneously convicted the appellants.

31. We have considered this aspect of the case. SI Sukhdev Singh has deposed that after the recovery of 'Dah', Pent and undershirt on the

disclosure statement of appellant Balwant Singh, he produced the same before Bihari Lal Bagat PW 17, Executive Magistrate, who has deposed

that SI Sukhdev Singh brought 10 packets for resealing and he rescaled the packets and sent the same to FSL alongwith the sample of the seal

and the certificate EXPBL. The certificate EXPBL does not show that the certificate which was produced before him for resealing was found with

intact seals. So when the 'Dah' was produced for resealing the seals which were put at the place of occurrence had been tampered with, therefore,

the 'Dah' could not be connected with the commission of crime. The learned Sessions Judge has acquitted the accused appellants by observing as

under:

Commission of the offence under section 4/25 Arms Act is not proved beyond any shadow of doubt against any of the accused because of the

reasons that the alleged weapon of offence seized could not be connected with the commission of the crime for sufficient scientific evidence and

identification of the weapons as the weapons used in the commission of the crime and the size of the weapons actually used in the commission of

the crime not known and as such the accused are acquitted for offences sections 4/25 Arms Act, though it is proved that the sharp edged weapons

had been used in the commission of the crime by accused Balwant Singh and Jaswant Singh.

32. The learned Sessions Judge has acquitted Balwant Singh on technical grounds for the offence under section 4/25 Arms Act, therefore, his

acquittal under the Arms Act will not affect the merits of the case under section 302 RFC, when the evidence given by Ram Lal, complainant,

Kuldeep Raj and Parkash Chand, eye witnesses of the occurrence that the appellant Balwant Singh had given injuries with a 'Dah', i.e., a sharp

edge weapon, is unblemished, trustworthy and believable.

33. Learned counsel appearing appellant Jaswant Singh tried to distinguish his case by submitting that as per the eye witnesses and the complainant

the appellant Jaswant Singh was present at the scene of occurrence but no overt act has been attributed to him. He was not even carrying a

weapon with him, therefore, he cannot be convicted and sentenced with the aid of section 34 RPC for the offence committed by other accused.

34. Section 34 RPC lays down a principle of joint liability for doing a criminal act. Section 34 reads as under:

Acts done by several persons in furtherance of common intention: When a criminal act is done by several persons, in furtherance of the common

intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

35. A perusal of the section shows that a person can be convicted with the aid of section 34 if the prosecution proves that the criminal act was

done in furtherance of the common intention of all. It is not necessary that each of the accused should have participated.

36. The contention raised by learned counsel for Jaswant Singh is not acceptable because as per Ram Lal, complainant and eye witnesses

Kuldeep Raj and Prakash Chand when they heard cries of deceased Ajit Ram they saw Balwant Singh, Jaswant Singh and others were causing

injuries, they attracted to the spot and the persons who were working in the nearby fields also attracted to the spot, on seeing them the accused left

the place of occurrence. They have specifically deposed that Balwant Singh, Jaswant Singh and Darshan Singh ran away on the Scooter towards

Ranbir Singh Pura. All the accused came to the place of occurrence together and left the place together after causing the injuries. Therefore, it

proves that there was a common intention on the part of the accused to cause injuries. Even though no overt act has been attributed to Jaswant

Singh, but section 34 RPC will be attracted from the conduct of Jaswant Singh which establish that all of them had gone to the place of occurrence

with preplan as the deceased was having a property dispute with the appellants. Therefore, the appellants had a motive to cause the injuries to the

deceased. With the injuries given by the appellants the deceased had died. The learned Sessions Judge has rightly convicted and sentenced the

appellants and no interference is called for in the wellreasoned judgment and order passed by the learned sessions Judge.

37. For the reasons mentioned above, the appeal filed by the State as well as appeals filed by Balwant Singh and Jaswant Singh stand dismissed.

The reference made by the learned Sessions Judge is accepted and the sentence imposed on the appellants is confirmed.