
(1999) 12 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 392-DB of 1996

Balwinder Singh and others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 04-12-1999

Acts Referred:

Citation : (2000) 3 AICLR 591 : (2000) 3 RCR(Criminal) 1

Hon'ble Judges : N.K.Agrawal, J and Jawahar Lal Gupta, J

Advocate : H.S. Bhullar, S.S. Dhaliwal, Advocates for appearing Parties

Judgement

Jawahar Lal Gupta, J. (Oral)

1. The appellants have been tried and convicted for offences punishable under Sections 302, 148, 307, 149, 449 IPC. Aggrieved by the judgment, they have filed the present appeal. A few facts maybe briefly noticed.

2. On September 22, 1999, Major Singh, Balwinder Singh the two appellants alongwith Joginder Singh, Balwinder Singh (son of Shoki) and Nasib Singh are alleged to have gone to the house of Gurnam Singh. They suspected that he was a police informer. Joginder Singh fired a shot with his assault rifle. Gurnam Singh was killed at the spot.

3. Sukhchain Singh (PW4) the nephew of the deceased Gurnam Singh alongwith Sukha and Dial was going to the house of his uncle Gurnam Singh on a tractor. They saw the two appellants alongwith the three other accused persons coming from the house of Gurnam Singh. Sukhchain Singh (PW4) challenged them. While running, the accused persons fired at him and others. They were injured. Many shots were alleged to have hit even the tractor. Despite that, Sukhchain Singh alongwith his two companies reached the house of Gurnam Singh. On reaching there, he found that his uncle was dead.

4. On September 23, 1991, Sukhchain Singh (PW4) alongwith Sukha and Dial were removed to the Civil Hospital, Zira by his uncle Sharam Singh. On

intimation from the Doctor, Inspector Ajay Maluja (PW8) went to the hospital. He recorded the statement of Sukhchain Singh. It is Ex. PN. He endorsed that statement to the Police Station on the basis of which FIR Ex. PN/2 was recorded at 9.15 AM on September 23, 1991. The Inspector then went to the place of occurrence, prepared the inquest report (Ex. PF) and sent the dead body of Gurnam Singh for postmortem examination. The request made by the Inspector of Police for postmortem examination is Ex. PG. He also lifted bloodstained earth from the spot vide memo Ex. PQ. The empty cartridge recovered from the spot is Ex. PO. It was put in a sealed cover and taken into possession.

5. During the course of investigation, it was established that Joginder, Balwinder Singh s/o Shoki and Nasib Singh had been killed in police encounters. Balwinder Singh s/o Anokh Singh, the present appellant was arrested on July 12, 1992. Major Singh was taken into custody from the Court premises on May 14, 1993. After completion of all the formalities, the challan was presented to the Court.

6. The prosecution rested its case on medical evidence which consisted of the statements of Dr. Hartirath Singh (PW2) and Dr. Sukhbir Singh Chauhan (PW3). PW1 Manohar Lal Garg had prepared the rough site plan which is Ex. PA on the record. PW4 Sukhchain Singh is the nephew of the deceased Gurnam Singh. PW5 Pritam Kaur the wife of the deceased is the solitary eye witness. PW6 ASI Baljinder Singh, PW7 SI Baldev Singh and PW8 DSP Ajay Maluja are part of the Investigating team which looked into the case.

7. On consideration of the testimony of these witnesses, the trial Court found that the offences have been duly proved. It, thus, convicted the two appellants and sentenced them to various terms of imprisonment. It also imposed fine on both of them.

8. Mr. H.S. Bhullar, learned counsel for the appellants has made a twofold submission. Firstly, it has been contended that the prosecution has not been able to prove the charge as levelled against the appellants. In particular, it has been pointed out that the oral testimony does not prove that the appellants were armed with assault rifles or that they had indulged in the offence as alleged against them.

9. On the other hand, Mr. S.S. Dhaliwal, learned DAG, Punjab, has submitted that the appellants were a part of an unlawful assembly. All of them had the common object of committing the murder of Gurnam Singh. It was in pursuance to this object that they had killed him with an assault rifle and, thus, they have been rightly found to be guilty by the trial Court.

10. What is the story as put forward by the lone eye witness Smt. Pritam Kaur (PW5) to the incident of death ?

11. According to Smt. Pritam Kaur (PW5), she and her husband Gurnam Singh were present in the house after taking meals. Their children had already gone to sleep. They were talking and the electric bulb was on in the house. At about 8

PM, someone had called out the name of her husband. He went near the persons who had called him out. Her husband was told that he and her brother Tehal Singh "are police informers". She saw the five persons talking to her husband. They were "armed with rifles". She further asserted that "Balwinder Singh accused now present in the Court asked his companions to shoot my husband being police informer. Joginder Singh @ Nikku fired a shot at my husband killing him at the spot". She also gives the details about the visit of Sukhchain Singh etc.

12. Smt. Pritam Kaur (PW5) was crossexamined. She admitted that her statement had been recorded on the next day of occurrence. She claimed to have stated before the police that Balwinder Singh had exhorted his companions to shoot her husband. She was confronted with her statement where it was not so recorded. She also admitted that she "had received Rs. 20,000/ as compensation from the Government due to the murder" of her husband "by the terrorists". Sukhchain Singh etc. had also received compensation from the Government. This, in a nutshell, is her testimony against the appellants. Has she told the whole truth ? Is this an honest narration of the events as they have actually occurred ?

13. It is undoubtedly correct that Smt. Pritam Kaur (PW5) has no animus against the appellants. Her presence is normal and natural. She had no motive to falsely implicate anyone. Yet, a fact that stares us in the face is that the exhortation by Balwinder Singh was being suggested for the first time in her testimony in the Court. No such suggestion had been made in the FIR or even by Sukhchain Singh though he claims that Smt. Pritam Kaur had told him everything about the occurrence. It appears that the exhortation was introduced to bring home the offence against Balwinder Singh. Besides the fact that no such suggestion had been made in the FIR, it also appears unreasonable to believe that Balwinder Singh would exhort anyone to fire. It is prosecution's own case that all the accused persons were duly armed. Thus, each one of them was equipped to attack. Where was the occasion for exhortation ? Balwinder Singh could have easily fired a shot and done the needful.

14. Not only that. No weapon was recovered by the police despite the fact that the challan was presented to the Court after the lapse of almost two years after the date of occurrence. Surely, the arms which the appellants had allegedly used could have been recovered. The "empty" which was picked up from the spot could have been sent to the Forensic Science Laboratory for testing. The story would have found corroboration. In the present case, no gun was recovered. Thus, the essential link between the weapon and the bullet has not been established.

15. There is yet another part of the story. Sukhchain Singh is the nephew of the deceased. He appeared as PW4. According to him, he had gone to the house of his uncle on September 22, 1991 alongwith Dial Singh and Sukha Masih. On reaching near the house of Gurnam Singh, he had seen "five persons running

from the house.....in the lights of the tractor". He named the five accused persons including the two appellants. He asserts that "both the accused now present and their companions were armed with assault rifles". They were challenged. At this, the accused persons had started firing. The bullets hit the tractor. The tyre was burst. Yet, they managed to reach the house of the deceased.

16. Sukhchain Singh (PW4) was crossexamined at length. During the course of crossexamination, he asserted that "all the five assailants fired towards us including both the accused present in the Court. They fired more than 1520 shots. 11 shots hit the tractor". Surprisingly, he added that "no bullet hit the tyre of the tractor". This was probably an attempt to explain as to how the tractor was taken to the house of the deceased. Still further, he added that he "received about 1516 bullet injuries and there were similar number of holes" in his "chaddar due to the passing of the bullets".

17. This witness was an important link in the entire prosecution story. If proved right, his statement would have proved the presence of both the appellants at the place of occurrence. It would have also indicated that they had gone together to the house of the deceased with the common object of killing him. However, there are unexplained gaps in his statement. To illustrate : the witness maintains that he had received about 1516 bullet injuries. If proved right, it could have been a clear evidence inculcating the appellants. However, the testimony of this witness is directly contradicted by the medical evidence on the record. PW3Dr. Sukhbir Singh Chauhan had conducted the medicolegal examination of Sukhchain Singh (PW4). He had found "four lacerated wounds each measuring in size 0.6 x 0.5 cms. on the antero medial aspect of the right leg.....Blackening present. Clotted blood present. Injury kept under observation. Advised Xray". He had further found "four lacerated wounds each measuring in size 0.5 x 0.5 cm. and four gutter shaped (superficial) wounds each measuring in size 2.5 cms. x 0.5 cms. on the dorsem of left foot....." These lacerated wounds are not bullet injuries. At best, these could have been caused by pellets. It was not even suggested that any of the accused persons had a gun. Sukhchain Singh is definite in his statement that all were armed with assault rifles. Thus, the story as sought to be put forward by Sukhchain Singh (PW4) is not free from doubt.

18. There is yet another aspect of the matter. Sukhchain Singh (PW4) has asserted that he was accompanied by Sukha and Dial. They were persons who had worked as labourers with him. They had allegedly accompanied him on the tractor. They were also injured. They could have deposed with regard to what they had actually seen at the house of the deceased Gurnam Singh. They could have also deposed with regard to the information that had been given by Pritam Kaur. However, they were kept back. Why ? Mr. Dhaliwal says that they had been won over. Still further, even these two persons are not shown to have suffered any bullet injury.

19. The prosecution having failed to produce the two stamped witnesses, it

appears unsafe to hold that the case as sought to be made out is proved beyond any reasonable doubt.

20. Mr. Dhaliwal contends that even the pellet injury could not be self suffered. It may be so. However, the short question that we are concerned with is Were these caused by the appellants in the manner as suggested by the prosecution ? On the basis of the present record, we are not able to answer this question in the affirmative or to say that the prosecution has proved its case beyond reasonable doubt. Thus, the benefit must go the appellants.

21. No other point has been raised.

22. In view of the above, we find that the prosecution has not been able to prove the charge beyond reasonable doubt. Thus, the appeal is allowed. The appellants are given benefit of doubt and are acquitted. They are ordered to be released forthwith.