
(2003) 09 SC CK 0118

In the Supreme Court Of India

Case No : Criminal Appeal No's. 749 and 750 of 2002 etc.

Mohinder Singh and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 148, 149, 201, 302, 323

Citation : (2004) 1 ACR 984 : AIR 2003 SC 4399 : (2003) AIRSCW 5033 :
(2003) CriLJ 5002 : (2003) 1 JT 117 Supp : (2003) 7 SCALE 372 : (2004) 12
SCC 311 : (2003) 6 Supreme 836 : (2004) 1 UC 275

Hon'ble Judges : N. Santosh Hedge, J;B. P. Singh, J

Bench : Division Bench

Advocate : Sushil Kumar, R.P. Wadhawani, Sanjay Jain and Adolf Mathew and
C.K. Sucharita, A.C. in Criminal A. No. 750/200, for the Appellant; V.C. Mahajan
Sunita Pandit and Bimal Roy Jad, for the Respondent

Final Decision : Dismissed

Judgement

Santosh Hegde, J.—Ten accused persons including the appellants in these appeals were chargesheeted for offences punishable under Sections 302, 201, 324, 323, 148 and 149 IPC before the Sessions Judge, Hoshiarpur in Sessions Case No.5/1996 (Sessions Trial No.24 of 1996). The trial court acquitted A-6 to A-9 of all the charges framed against them. It convicted A-1 to A-5 and A-10 for various offences punishable u/s 302 simplicitor. Section 302 read with Section 149. 148, 326 read with 149, 324 read with 149, 323 read with 149 and Section 201 IPC. It imposed a sentence of life imprisonment for offences under Sections 302. 302 read with 149 and varying sentences for other lesser offences enumerated hereinabove. An appeal filed by the convicted accused before the High Court of Punjab & Haryana at Chandigarh came to be dismissed.

Being aggrieved by the said judgment of the courts below. Mohinder Singh A-5 and Jaswinder Singh A-10 have preferred Criminal Appeal No.794 of 2002 and Jagjit Singh A-2 and Manjit Singh A-3 have preferred Criminal Appeal No. 750 of

2002 before this Court. Two other convicted accused, namely, Sarabjit Singh A-1 and Nirmal Singh A-4 had preferred SLPs. against the judgment of the High Court before this Court but the same came to be dismissed for default. Therefore, in the above two appeals before this Court, A-2, A-3, A-5 and A-10 are the appellants before this Court.

2. Brief facts necessary for disposal of the above appeals are as follows:

About 2 years prior to the incident from which these appeals arise, the complainant party in this case had assaulted A-10 Jasvir Singh who is one of the appellants herein, causing serious injuries to him. On a complaint filed by said A-10 against PW-4 and others for offences punishable u/s 326 IPC, a case was pending in a court at Dasuya which is about 40 kms. away from the village where the present incident took place. It is the case of the prosecution that on 11.9.1995 the said criminal case was posted for evidence and PW-4 and some others who were accused in the said case, had gone to Dasuya to attend the court. At that time, A-10 was also present in the court. The court in that case had recorded the evidence of A-10 and adjourned the case. Thereafter, the prosecution alleges that PW-4 and others came back to the village. It is the further case of the prosecution that PW-4 along with Gurdeep Singh and Raghbir Singh (both deceased), Bikram Singh PW-5; Amarjit Kaur (not examined) and Sukhvir Kaur (not examined) went to their field to attend to the agricultural work, and while returning back from their fields at about 5.30 p.m., all the accused persons were waiting for them armed with darters at a place about 1 kila ahead of Dera of Puran Singh A-9. and on a Lalkara (challenge) being raised by Puran Singh and Gurcharan Singh A-7, the other accused persons assaulted Raghbir Singh and Gurdip Singh with their darters, consequent to which Raghbir Singh's head got decapitated, and he along with Gurdip Singh succumbed to his injuries. In the said incident, PWs. 4 and 5 also suffered minor injuries and the two ladies -Amarjit Kaur and Sukhvir Kaur were also assaulted by fists by some of the accused persons.

3. The prosecution alleges that after the accused persons left the place of incident. PW-4 along with his brother Chanan Singh proceeded to Hajipur by foot which, according to them, is about 6-7 kms. from the place of incident where the jurisdictional Police Station was stationed. On nearing Hajipur at a T-point on Mukerian Dasuya road, they met Jagdish Mitter PW-19, the I.O. in this case who was there on a special bandobust duty and told him about the incident in question. Said PW-19 recorded the statement of PW-4 and sent the same to Hajipur Police Station which was about 2 kms. from the place where he was on a bandobust duty. Thereafter, PW-19 along with other Police officials and PW-4 came to the place of incident, conducted the inquest Panchnama and recorded the statements of witnesses. He also sent injured PWs.4 and 5 to the hospital at Hajipur for treatment. It was on completion of the said investigation, a chargesheet as stated above was filed against the accused including the appellants herein.

4. The accused persons in this case have taken a specific defence contending that the motive alleged against them was stale and weak and since the incident of 1993, till the alleged incident, there was no other incident indicating that these accused persons were in any manner entertaining any such motive to commit the gruesome murders like the one alleged against them. They also contend that as a matter of fact the original suspicion about these murders was on one Sampuran Singh @ Bhattu with whose family the complainant party had a running feud resulting in a series of murders and the Investigating Agency having failed to trace the whereabouts of said Sampuran Singh has implicated the accused including the appellants herein falsely, particularly because of the personal enmity Between the I.O. PW-19 and A-10 who was also a Police Officer in the Punjab Police, with the connivance of PW-4. They contend that with this, view all the male members of the family of A-7 and A-9 have been implicated in these murders without anybody actually witnessing the incident which led- to the death of two deceased. A-10 took a further defence that there was enmity between him and PW-19 and on he being implicated falsely, he had made a complaint to the higher authorities and on an inquiry conducted by a senior Police Officer it was found that A-10 was falsely implicated in this case, hence, his name was shown in Column 2 of the chargesheet originally, but subsequently for various reasons, the trial proceeded against him also.

5. The two courts below have chosen to accept the prosecution version of the case and have convicted the appellants, as stated above.

6. Learned counsel appearing for the appellants in this case contended that there is sufficient evidence in the prosecution case itself to show that though a complaint in regard to the incident was made to the I.O. PW-19 at about 7 p.m. near Hajipur, the actual complaint and the FIR reached the Police Station at 11 p.m. from that place which was hardly 2 kms. from the T-point where PW-4's statement was recorded. This delay, learned counsel submits, was because of the fact that the complaint never recorded a statement at the T-point because the Investigating Agency did not know who were the actual assailants, therefore, the same was recorded in the village where the incident took place after making inquiries about Sampuran Singh @ Bhattu, and failing to trace him the I.O. in connivance with PW-4 decided to implicate the accused, consequent to which nearly 4 hours' delay was caused in the FIR reaching the Police Station. He submits that apart from the entry made in the, FIR. station house diary, the special report reaching the jurisdictional Magistrate, other prosecution evidence also shows that the complaint was drafted in the village hours after PW-4 told PW-19 about the incident. They also submitted that the village in question had a population of over 2000 people but none of them has been examined either as a witness to the incident or has been involved in the investigation by PW-19. The so called injuries suffered by PWs.4 and 5. according to the medical evidence, are simple in nature and could have been self-suffered. In this background, they further point out that there was bitter enmity between PW-19 and A-10 consequent to which there have been complaints and counter-complaints against

each other. In such circumstances there is every possibility that PW-19 took more than ordinary interest in the investigation to involve A-10 while PW-4 who had an enmity with the family of accused, joined PW-19 in involving all the male members of the two families. They further contended that if the evidence of PWs.4 and 5 who were allegedly eye witnesses to the incident in question is examined, it could be seen that the said evidence being fraught with contradictions, omissions and improvements, is not worthy of acceptance. Hence, the appellants are entitled to be acquitted of the charges leveled against them.

7. Learned counsel appearing for the respondent-State, however, contended that there is absolutely no reason for PWs.4 and 5 to falsely implicate the accused persons and the fact that they were injured itself would go to show that these witnesses were present at the time of the incident. It was submitted on behalf of the respondents that both the courts below have considered the argument of delay and the motive and have rejected the same for good reasons, therefore, it is not a fit case for interference by us.

8. We are aware that in cases where eye witnesses' evidence is acceptable, all other evidences that might have been produced by the prosecution recede to the background. It becomes more so in the case of eye witnesses who have suffered injuries in the alleged incident. Therefore, generally, it would be the endeavour of the courts to assess the evidence of eye witnesses first to find whether the prosecution case is acceptable or not. But in this case there are some glaring' discrepancies in the prosecution case which require consideration by us in the first instance and thereafter examine the evidence of eye witnesses in the background of those inconsistencies which in our opinion, would give us a better perspective of the oral evidence led in this case. Therefore, we will first discuss the other circumstances produced by the prosecution before we consider the evidence of PWs.4 and 5.

9. It is an admitted fact that the original 10 accused persons are all closely related except A-8 and they include all the male members of the two families of A-7 and A-9 who were residing in the village concerned, while A-8 is supposed to be a follower of the family members of A-7 and A-8. The motive suggested in this case pertains to an attack on A-10 about two years prior to the present incident. There is no evidence on record that during this period there was any such incident or occasion where any of the accused persons tried to take revenge for the attack on A-10. The prosecution has not come out with any special reason why the accused planned such a brutal attack on the deceased so long after the attack on A-10, nor has it produced any material to show any proximate cause. In this background, we are inclined to agree with the defence that the motive suggested, on facts of this case, seems to be very weak and stale. But men the existence or otherwise of motive in a case of this nature would only be a link evidence therefore, bearing in mind this fact we will examine the manner in which complaint Ex. PL 1 came into existence. It is the case of PW-4 that after the incident he with his brother proceeded on foot to Hajipur. Herein it is to be

noted that it has come in prosecution evidence that there was a Police Outpost in the village itself but for reasons known only to PW-4, he preferred to go to Hajipur and that too by foot while he had a tractor and a scooter in his house. It has come in evidence that he reached Hajipur T-point at 7 p.m. and lodged a complaint with PW-19 orally which was reduced to writing by PW-19 and forwarded to Hajipur Police Station which is about 2 kms. from that place. If we consider the prosecution evidence in this regard accepting PW-4's afore statement that he lodged the complaint at 7 p.m. (which is not controverted) the said complaint should have reached the Police Station at least by 8 p.m. i.e. duly providing for the time consumed in reducing the complaint into writing and transmitting it to the Police Station. But a perusal of the complaint itself as also Diary No.23/31 of Hajipur Police Station do show that the said complaint was received at about 11.15 p.m. There is absolutely no explanation for this delay in the complaint reaching the Police Station. Both the courts below have merely rejected this argument addressed on behalf of the appellants by holding that PW-4 Lakhbir Singh's statement had been recorded at about 11 p.m. at the T-point Hajipur. hence, there is no delay in the FIR reaching the Police Station. This, we think, is a factual error. We notice from the evidence of PW-4 that he has specifically admitted in his cross examination that when he met the Police at the T-point at Hajipur. it was 7 p.m. and they came back to the place of incident at 10 p.m. This is what the witness actually stated : "It took us about half an hour at the T-point where police met us. It was at 7 p.m. when the police met us. We reached the spot at about 10 p.m." It is the case of the prosecution that the complaint was reduced to writing at the T-point and forwarded to the Police Station before the I.O. left for the place of incident. Therefore, in our opinion the courts below were factually wrong when they observed that PW-4 met the Police and his statement was recorded only at about 10 p.m. This is not the only piece of evidence which shows that the Police had come to know of the incident by about 7 p.m. on that day, and they actually recorded the statement of PW-4 only at the village after due deliberations and sent the same to Hajipur Police Station well past 10 p.m. It is seen from the evidence of PW-9 who is also related to the complainant that when he went to the place of incident at about 7 p.m.. the Police arrived there within half an hour which in our opinion corroborates that part of PW-4's evidence that he had met the police by about 7 p.m. and then came to the place of incident immediately thereafter, with the police, therefore, a legitimate inference can be drawn that though PW-4 informed PW-19 of the incident at 7 p.m. at T-point at Hajipur, actual complaint in question was drafted in the village after the Police arrived at the place of incident. It is surprising to note that PW-19 in his evidence does not state the specific time at which the complaint was recorded. He in his examination merely states that on 11.9.1995 when he was on Naka duty on the T-Point, Hajipur, PW-4 made a statement which was recorded as Ex. PL which was read over to him and he signed the same and thereafter PW-19 made his endorsement and sent the same to the Police Station on the basis of which FIR PL/1 was recorded. He then states that thereafter he went to the village where the incident took place and conducted

inquest and other proceedings. But this does not explain the delay in the complaint reaching the Police Station, therefore, in the absence of any explanation from PW-19 as to the actual time of recording the complaint and in view of the evidence of PW-9 that by about 7.30 p.m. the Police had arrived in the village, we find sufficient force in the argument advanced on behalf of the appellants that the complaint must have come into existence nearly 4-5 hours after the incident in question. If that be so, the only conclusion that could be arrived at on facts of this case is that when PW-4 met PW-19, he did not have the knowledge as to who were the actual assailants.

10. It is in the above background, having failed to be convinced as to the motive as also having found no explanation in the prosecution case as to the inordinate delay in the complaint reaching the Police Station, we will examine the evidence of the two eye witnesses.

11. As noted above, prosecution has projected only PWs.4 and 5 as eye-witnesses to this case. PW-4 in his evidence has stated that on the date of incident he had gone to Dasuya to attend to the criminal case in which he was an accused. That case was adjourned around mid-day thereafter he returned back to the village on that day and later in the evening, along with the deceased, PW-5 and two ladies went to their fields, attended to the agricultural work and was coming back to the village at about 5.30 p.m. when they were attacked by the accused. In his complaint and examination-in-chief, he has given graphic details as to who assaulted whom and on which part of the body. He also accused A-7 and A-9 of raising a Lalkara which part of his case has not been accepted by both the courts below. So also his evidence in regard to A-6 and A-7 has not been accepted by the courts below. He also says that when A-5 tried to inflict injuries on Raghbir Singh he intervened, consequently he received some injuries on his forehead, leg, and arm which were dealt by a datar with its front side. After the incident in question, he with his brother went to Hajipur, lodged a Police complaint and returned to the village with PW-19, and was sent for medical examination at about 11 p.m. The doctor who examined this witness has said that the injuries suffered by him were simple in nature and could have been self-suffered. While in the cross examination it was elicited that many of the important factors mentioned by him in the court were not stated by him when a statement u/s 161 Cr.P.C. was recorded. For example, he had not stated before the I.O. that he received the blow on his forehead when he intervened in the attack. He had also not stated before the I.O. that A-1 to A-3 had assaulted deceased Raghbir Singh on his head. He had also not stated before the I.O. that the two ladies were also assaulted during the attack. This witness, as stated above, is a very highly interested witness who has a strong motive to implicate the accused persons. In this background, if we analyse his evidence bearing in mind the fact that there is very serious dispute as to the time when he named the accused to the I.O., we think it is not safe to place reliance on his evidence, more so in the wake of the fact that the doctor in his evidence has stated that these injuries could be caused by a tail on a hard surface or could even be the

result of a friendly hand. While so assessing the evidence of PW-4 we may also take note of the fact that though admittedly there was a scooter and a tractor in his house, for unexplained reasons, he and his brother chose to walk all the way to Hajipur which under the circumstances, we think, is opposed to normal human conduct unless the same is being stated as an excuse for the delay in naming the accused.

12. Similar is the evidence of PW-5 who is the son of deceased Raghubir Singh. He in his examination-in-chief practically repeats what PW-4 had to say in his examination in chief. In his case also the injuries were declared to be simple by the doctor. PW-1, who also opined that these injuries could be caused by friendly hands. In his cross examination he has stated that there were other villagers also present on the spot but the Police did not inquire anything from them. According to him, he did not mention anything to the Police at the spot or to the doctor when he was examined and his statement was recorded only on the next day even though he was present when PW-4's statement was recorded and other proceedings like inquest proceedings took place in the village. He did not tell the Police in his previous statement that PW-4 had received injuries when he intervened in the assault. This witness admits that his father was bleeding profusely when he lay on his (PW-5) body but states that his clothes were not smeared with blood nor his clothes seized by the Police. Bearing in mind the enmity between the two families and non-examination of any independent witness and the serious contradictions in regard to the time of incident we think it not safe to place reliance on the evidence of this witness without any independent corroboration which is lacking in this case.

13. We will now take up for consideration the evidence of PW-19. I.O. who in our opinion has played a very dubious role in the investigation. As quoted earlier, A-10 has specifically alleged bias against this witness because of their personal rivalry and there is material on record which we will presently discuss to show that there were complaints and counter-complaints against each other. When this witness was in the box and was being cross examined he was asked a specific question whether he knew A-10 personally. He replied that he did not know Jaswinder Singh A-10 personally and he came to know him only after he registered the present case. Interestingly, he admitted immediately thereafter that A-10 had made a complaint against him much earlier to the registration of the present case. He was then asked whether he had any relatives in the U.P. Police of the rank of an IPS Officer. He denied the said suggestion in the first instance but later admitted that it is correct that one Mr. Harish Kumar, IPS Officer of U.P. is related to him though he volunteered to say that he is distantly related. Then when he was asked whether he had taken the assistance of said Harish Kumar to deal with the complaint filed by A-10, he admitted that said Harish Kumar had told him that he would talk to the SSP against A-10. It was also suggested to him that in the present case even after he was transferred from Hajipur he was taking keen interest to see that no bail was granted to A-10. In reply, he admitted that he had taken the file of this case with him before the

S.P. (D) in connection with the inquiry of this case. He also admitted that he made a complaint against the Inquiry Officer of the rank of Superintendent of Police alleging that the said officer was favouring A-10. In the said complaint this witness had mentioned about the granting of bail and cancellation of the same. In that complaint he had also alleged that the S.P. inquiring into the complaint was a relation of A-10 but when specifically asked whether the S.P. and A-10 belonged to the same community, he denied he had any such knowledge. He had also admitted in his evidence that he himself had filed a complaint against A-10. From the above material, it is crystal clear that the relationship between PW-19 and A-10 was not at all cordial and there were attempts to implicate each other. We also notice the conduct of PW-19 when he was tendering evidence in this case. He in his evidence had stated that he did not remember at whose instance the rough site plan was prepared. When it was suggested to him that he may answer the question after looking into the case diary for refreshing his memory, he refused to do so by blatantly answering that suggestion in the following manner : "I do not want to consult the zimnis to tell this fact. There is no reason for not seeing the zimnis." When he was asked about the preparation of the inquest of Gurdip Singh's body which was completed at 2 a.m. and which contained in the Last para presence of PW-4 he contradicted the same by saying that PW-4 was not present at the time of the inquest but his name was mentioned in the last paragraph because PW-4 was present only when the proceedings were started, forgetting for a moment he had mentioned the presence of PW-4 even at the subsequent inquest of the body of Raghbir Singh which was taken up only after completing the inquest of Gurdip Singh.

14. This witness had admitted that he had not associated any Panch, Sarpanch or Lambardar of village Kattowal to which some of the accused belonged during the interrogation of the accused at the village or at the time their alleged disclosure statements were recorded. But he chose to involve PW-9 who was related to one of the deceased in this case as a Panch for the recovery of the alleged weapon. Having perused the evidence of this witness carefully, we think this witness is not worth believing and has no respect for truth.

15. We also notice that A-10 in support of his case that he was unable to wield a weapon like datar after the assault on him, had examined the doctors in defence who in their evidence have stated that the movement of A-10's right hand was restricted. Be that as it may, since we are not convinced with the prosecution case, we need not go into this aspect of the defence case. But we think it may be worthwhile to note another part of the defence suggestion which is almost admitted by PWs.4 and 9 that is as to the motive of Sampuran Singh @ Bhattu for committing the murders of two deceased in this case. PW-4 in his evidence admits that one of the deceased in this incident namely Gurdip Singh and 7 others were tried for the murder of one Dalip Singh who was the father of Sampuran Singh @ Battu. In that case Gurdip Singh (deceased) and others were sentenced to life imprisonment, and consequent to the said incident there was a counter murder in which one of the members of the complainant family by name

Panjab Singh was allegedly murdered by Bhattu and his brother Tejwant Singh but they were acquitted. Later very same Bhattu and Tejwant Singh had attacked PW-4 and his father Naranjan Singh. Subsequent to that murder, there was another murder of one Malook Singh in which Bhattu was an accused but was declared a proclaimed offender. In that murder of Malook Singh, it is alleged that said Bhattu had decapitated the head of the deceased and took the head away with him which act is also similar to what was committed in this case. It is because of these acts of Bhattu and his brother, the complainant party in this case had applied for and obtained arms licences. It is in this background a suggestion was made by defence to PW-4 that it was Bhattu and his associates who were responsible for the murder of the deceased in this case and since there was no eye witness to these murders, the appellants and other accused were implicated. Though this suggestion is denied by PW-4, one thing becomes clear that there were others who had better motive to commit the present murders than these appellants

16. In the above background, having considered the judgments of the two courts below and having independently perused the evidence, "we find the courts below have misdirected themselves while coming to the conclusion that the prosecution has proved its case beyond reasonable doubt. In the said view of the matter, these appeals have to be allowed.

17. As noted above, two of the accused persons Sarabjit Singh A-1 and Nirmal Singh A-4 whose conviction is upheld by the High Court based on the very same evidence of the prosecution had filed SLP which was dismissed for default. We find that there is absolutely no difference in the prosecution case about the involvement of the appellants herein and the said accused A-1 and A-4, therefore, we think benefit of the acquittal that is being granted to the appellants herein, has to be extended to those two accused persons also because we have come to the conclusion that on an evaluation of the evidence led by the prosecution in this case, no conviction of any accused is possible. This Court in a catena of cases like Bijoy Singh and Another Vs. State of Bihar, , Raja Ram and Others Vs. State of M.P., . Dandu Lakshmi Reddy Vs. State of A.P., ; and Anil Rai v. State of Bihar has laid down that the benefit of such judgments of acquittal is available to non-appealing accused also. However, we have to notice in the case of the abovesaid accused A-1 and A-4 they had actually filed an appeal but the same was dismissed for default but this would not make any difference in law if the basis of the judgments of courts below is common to the appellants herein and the accused who are not before us or whose appeals have been, dismissed for whatever reason. This Court in the case of Gurucharan Kumar and Another Vs. State of Rajasthan, has held in a similar fact-situation as follow:

"Even in a case where one of the accused has not preferred an appeal, or even if his SLP is dismissed, in case relief is granted to the remaining accused and the case of the accused, who has either not appealed or whose SLP has been dismissed, stands on the same footing, he should not be denied the benefit

which is extended to the other accused." (emphasis supplied).

18. Applying the said principle to the facts of the instant case, we have no hesitation in coming to the conclusion that the benefit of this judgment accrues to those two accused persons also whose SLPs. have been dismissed earlier.

19. For the reasons stated above, these appeals are allowed. The judgments of the courts below are set aside not only with reference to the appellants herein but also with reference to Sarabjit Singh A-1 and Nirmal Singh A-4 whose SLPs. have earlier been dismissed. The conviction and sentence imposed on the said appellants as well as A-1 and A-4 are set aside.

20. All the appellants and accused A-1 and A-4, who are in custody, shall be released forthwith, if not required in connection with any other case. Ordered accordingly.