
(2007) 03 P&H CK 0191
In the Punjab And Haryana At Chandigarh

State of Haryana

APPELLANT

Vs

Pohla Singh and Others

RESPONDENT

Date of Decision : 14-03-2007

Acts Referred:

Citation : (2007) 03 P&H CK 0191

Hon'ble Judges : H.S. Bhalla, J.; Adarsh Kumar Goel, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—The State of Haryana challenges the acquittal of the respondents of the charges under Sections 148, 302, 364 read with Section 149 IPC.

2. The case of the prosecution is that on 26.7.1993 at about 7.00 p.m. Kuldeep Singh, PW6 along with Teja Singh, son of Jarnail Singh was taking tea in front of tea shop of Roshan Lal of Baragudha. Balbir Singh alias Bhira son of Jaggar Singh(deceased) was also sitting with him. In the meantime, the jeep of Thekedars (contractors) came from the bus stand side. Pohla Singh alias Bachittar Singh, accused armed with rifle, Gurmail Singh alias Maili and Gurjant Singh alias Janta armed with a .12 bore gun each and three others armed with gandasa and lathis alighted from the jeep.

3. They declared that they will teach Balbir Singh a lesson for registration of case under Section 307 IPC. They took Balbir Singh in the jeep forcibly. Kuldeep Singh and Teja Singh tried to rescue Balbir Singh but Pohla Singh threatened that if they came forward, the accused will shoot them. The accused then took away Balbir Singh in the jeep towards Biruwala Gudha. Kuldeep Singh alongwith his son went to inform Gurdev Singh, Sarpanch Baragudha and after taking him with them, they went to police station Baragudha for lodging FIR. The statement of Kuldeep Singh was recorded on the basis of which FIR was registered. Bhoja Ram, SI along with others visited the place of occurrence and conducted

investigation.

4. Darbara Singh, PW 7 saw the jeep at 8/8.30 p.m. outside the house of Major Singh, Sarpanch of village Jhorar Rohi from which accused Amar Singh and Lila Singh alighted. They dragged Balbir Singh alias Bhira from the jeep and threw him on the ground. Four/Five more persons were there in that jeep. Balbir Singh alias Bhira was having injuries and fractures all over his body. Major Singh, Sarpanch also came there. Amar Singh accused raised lalkara Tell Malkanwalas that Balbir Singh was lying in the street. Darbara Singh PW 7 went to Gurdwara and informed the Granthi.

5. Ruldu Singh, PW8 heard the noise in the Gurdwara on 26.7.1993 at 9.00 p.m. that Balbir Singh was lying in the street in front of the house of Major Singh in injured condition. He along with his brother-in-law Ram Singh, his mother, his brother Manjit Singh, his wife and brother's wife went to the site and saw Balbir Singh in injured condition. They arranged rehra and took Balbir Singh to General Hospital, Sirsa and then to General Hospital, Fatehabad. He also met Darbara Singh, Iqbal Singh, Major Singh and Ajaib Singh at the place where injured was lying.

6. Doctor R.P. Dahiya, PW 18 sent a message Ex. PZ/2 to the SHO police station Sirsa. At 12.15 a.m. on 27.7.1993, Balbir Singh alias Bhira gained consciousness in the congenital and told Ruldu Singh PW 8 in the presence of Iqbal Singh and Ajaib Singh that he was injured by Pohla Singh, Gurmail Singh, Janta Singh, Lila Singh, Makhan Singh and Sukhdev Singh alias Chhinda at the instance of Amar Singh. At 12.25 a.m., he was medically examined by PW 9 Dr. N.Chakravarty, Medical officer at General Hospital, Fatehabad who found severe injuries on his person. On Radiological examination by Dr. S.P. Mimani, PW 10, fracture of upper end of fibula left with dislocation of left knee joint and also dislocation of right knee joint with fracture on right fibula were found. The said Doctor also found dislocation at the right elbow joint fracture of second and third meta carpal bones of right hand and dislocation of left elbow joint and fracture of left ulna. He was treated by Dr. Manmohan Pahwa, PW 15. Bhoja Ram, PW 11 visited the place of occurrence on 27.7.1993 and prepared rough site plan, lifted blood stained earth from Dhani of accused Amar Singh. He went to the General Hospital, Fatehabad and sought the opinion about the fitness of Balbir Singh and after opinion Ex. PQ/1 of Dr. Manmohan Singh, PW 15 on 27.7.1993 at 10.00 a.m. that the injured was fit to make a statement, the statement was recorded being Ex. PQ/2. Dr. N. Chakravarty declared the injuries to be greivous which could be caused by reverse side of Kulhari and also by lathi, Balla/batton and twisting of arms and legs.

7. On 28.7.1993, the injured was referred to Medical College and Hospital, Rohtak where his both legs were amputated. He was then referred Chandigarh on 1.8.1993. After taking opinion of the Doctor, a statement Ex. Py/3 was recorded by Ashwani Kumar, Executive Magistrate, PW 16 which was handed over to ASI Prem Singh, PW 17. Balbir Singh died in PGI on 10.8.1993. ASI Satbir

Singh, PW 12 reached the hospital and got post mortem conducted from Dr. Vinay Goel, PW 14 at General Hospital, Sector 16, Chandigarh who found the following injuries on the dead body:

1. Left lower limb amputated above knee. Bone and tissues exposed. Infection was present.
2. Right lower limb was amputated below knee with infected wound. Bones and tissues being exposed.
3. There was dislocation of left elbow joint with fracture ulna upper end.
- 4 There was dislocation of right elbow.
5. There was fracture of 2nd and 3rd metacarpal bones on right side.
6. Bad sores were present over back of trunk, lower part.
8. On dissection of lungs, these were found full of pus. On dissection of kidneys, these were also found full of pus. In the opinion of the doctor the cause of death in this case was septicaemia which was sufficient to cause death in the ordinary course of nature. The time that elapsed between injuries and death was 17 days as per record and between death and post mortem 24 to 48 hours. After post mortem the dead body was handed over to Satbir Singh, ASI. All the accused were sent up for trial.

9. The prosecution examined 18 witnesses briefly described below:

PW 1 - Inderjit Draftsman, who prepared scaled site plans Ex. PA to Ex. PC.

PW 2 - Kamal Singh HC, PW 3 Subh Ram tendered in evidence their affidavits Ex. PD and Ex. PE, respectively. PW 4-Inder Singh Constable had delivered special report of this case to the Ilaka Magistrate at his residence on 26.7.1993 at 11.00 P.M. PW 5-Krishan Kumar ASI simply arrested accused Lila Singh in this case on 22.10.1993. PW6 - Kuldeep Singh is the complainant, whereas PW 7-Darbara Singh is a witness in whose presence Amar Singh and Lila Singh accused had allegedly thrown out Balbir Singh alias Bhira in a badly injured condition from the jeep near the house of Major Singh Sarpanch of village Jhorar Rohi. PW8-Ruldu Singh is the brother of the deceased. PW 9 - Dr. N. Chakravarty, Medical officer, General Hospital, Fatehabad and PW 10 - Dr. S.P. Mimani, Distt. Health Officer, Fatehabad medicolegally and radiologically treated Balbir Singh alias Bhira as detailed in the earlier part of this judgment. PW11-Bhoja Ram Inspector (then SI SHO P.S. Baragudha) conducted initial investigations in this case. He recorded statement of the deceased Ex PQ/2. PW 12-Satbir Singh ASI got conducted the post-mortem on the dead body of Balbir Singh alias Bhira. PW13-Nachhatar Singh an official of PGI, Chandigarh produced the admission/treatment record (pages 1 to 171 Mark X) of Balbir Singh alias Bhira. PW 14 Dr. Vinay Goel Bhira conducted post mortem examination on the dead body of Balbir Singh alias Bhira in general hospital, Sector 16, Chandigarh on 12.8.1993. PW 15 - Dr. Manmohan Pahwa while posted as Medical officer, General Hospital, Fatehabad treated Balbir

Singh alias Bhira on 27.7.1993 and then on 28.7.1993 around 10.00 A.M. referred him to Medical College, Rohtak for expert management and treatment as the condition of the patient was not fair. On 29.7.1993 on police request Ex. PL/1 followed by doctor's request Ex. PL/2 the doctor also gave opinion Ex. PL/4 stating that possibility of injuries being dangerous to life collectively cannot be ruled out. PW 16 - Ashwani Kumar, General Manager, Super Bazar, Chandigarh, was posted as Executive Magistrate, Chandigarh on 1.8.1993 and on police application Ex. PY had recorded statement/dying declaration Ex. PY/3 of Balbir Singh alias Bhira after seeking opinion Ex. PY/2 of the doctor regarding the fitness of Balbir Singh to make a statement. The said opinion was sought vide endorsement Ex. PY/1 and the witness delivered the statement of the injured patient to the concerned ASI vide endorsement Ex. PY/4. PW 18 - Dr.R.P.Dahiya while posted as Medical Officer, General Hospital/Flood Relief Camp Hospital, Sirsa gave first aid to Balbir Singh alias Bhira on 26.7.1993 and then referred him to General Hospital, Fatehabad. He had sent ruqa Ex. PZ/2 to SHO PS City Sirsa in this behalf.

10. The accused denied the prosecution allegation. Accused Pohla Singh stated that he was Sarpanch of Village Jhorar Rohi from 1988 to 1993. Amar Singh, accused was his uncle. His daughter Baldev Kaur was married to Gulab Singh son of Harnek Singh at Baragudha. Harnek Singh was contesting elections against Gurdev Singh. There was enmity between Harnek Singh and Gurdev Singh. Pohla Singh was falsely implicated at the instance of Gurdev Singh. Gurjant Singh alias Janta Singh Vice Chairman of Block Samiti, Odhan was also implicated.

11. Lila Singh alias Baldev Singh, Gurmail Singh alias Mali and Amar Singh took similar stand. Makhan Singh, Sukhdev Singh and Gurjant Singh also took identical stand. The accused examined two witnesses and produced several documents in support of their stand.

12. After considering the evidence on record, the trial Court held that the prosecution was not able to prove its case beyond reasonable doubt and acquitted the accused persons. The reasons given by the trial Court can be briefly summarized as under:

(i) There was no independent corroboration to the testimony of PW 6 Kuldeep Singh and PW 7 Darbara Singh. The first part of the occurrence took place in front of the tea shop of Roshan Lal where independent witnesses were available. In the absence of independent corroboration, testimony of PW 6 Kuldeep Singh with regard to the first part of the occurrence was required to be scrutinized closely. He made major improvements over his initial version in the FIR regarding driving of jeep by Pohla Singh accused; regarding giving of lalkara; pointing out of rifle by Pohla Singh and giving of a threat, regarding going to the police station and lodging of the report. Kuldeep Singh being close to Baldev Singh was enimical to Harnek Singh relative of the accused.

(ii) PW7 Darbara Singh was also not an independent witness and he appeared in a case against Pohla Singh. He was a chance witness. He made improvement over his version given to the police. His version was contradictory. He had previous enmity with the accused party. Major Singh could be an independent witness about the second part of the occurrence but he was not examined. Version of PW 7 Darbara Singh was not reliable as no blood stained earth was detected at the place where Baldev Singh was found.

(iii) Three dying declarations relied upon by the prosecution were not reliable.

The first dying declaration made before Ruldu Singh, PW 8 was not proved as presence of Ruldu Singh could not be believed. The injured was accompanied by Ajaib Singh, as per MLR Ex. P 12. Ruldu Singh, PW8 brother of deceased was enimical to the accused, Pohla Singh, who had appeared against him as a witness on the basis of which Pohla Singh was convicted. Father of Pohla Singh had appeared as a witness against brother of Ruldu Singh. The dying declaration was not mentioned in the statement of the witnesses before the police recorded on 12.8.1993 Ex. DB and thus, the said statement was an after thought.

The second dying declaration Ex PQ/2 recorded by PW 11 Bhoja Ram was also not proved to have been duly recorded. PW 11 Bhoja Ram admitted that the case diary was on plain paper without any paging and they did not bear the signatures of Illaqa Magistrate. According to PW 19 Dr. N. Chakravartey, patient was unconscious and pulse rate was unrecordable. He was in shock. The statement Ex. PQ/2 was in such a great detail that a person in seriously injured condition could not have made such a statement.

The third dying declaration Ex. PY/3 recorded on 1.8.1993 by PW 3 Ashwani Kumar, Executive Magistrate, Chandigarh was also not reliable. The said statement was contradictory to the statement Ex. PQ/2. The statement was in Hindi. While according to PW 16, Ashwani Kumar, Executive Magistrate he recorded the statement in the language of the victim in mixed-Hindi and Punjabi.

(iv) Testimony of PW6 Kuldeep Singh as well as PW 7 Darbara Singh did not inspire confidence. According to these witnesses, the accused were having fire arms but did not use the same. They did not cause injuries on the vital part to cause death.

13. We have heard Sh, J.S. Toor, learned Additional Advocate General Haryana and Sh. Baldev Singh, Senior Advocate for the accused and perused the record.

14. The main question for consideration is the reliability of evidence of the two eye witnesses. PW 6 Kuldeep Singh and PW 7 Darbara Singh and reliability of dying declarations. oral declaration before PW 8 Ruldu Singh, dying declaration Ex. PQ/2 recorded by PW 11 Bhoja Ram and dying declaration Ex. Py/3 recorded by PW 16 Ashwani Kumar, Executive Magistrate, Chandigarh. We are in agreement with the view taken by the trial Court.

15. PW 6 Kuldeep Singh did not name all the accused in the initial version. He

deposed that Pohla Singh accused was armed with a rifle while Gurjant Singh and Gurmail Singh were armed with .12 bore guns. He further deposed that he along with Teja Singh tried to rescue Baldev Singh but they were threatened by Pohla Singh. Many persons had gathered at that place. He along with Teja Singh went to Police Station Baragudha but SHO was not available. He and Teja Singh went to Police Station Baragudha after taking Gurdev Singh, Sarpanch to lodge the FIR. In cross-examination, he was confronted with contradictory part of his version in the statement before the police. He admitted that he was convicted for the murder of a harijan. He also admitted that he was challaned under Section 107/151 and he could not deny that Gurdev Singh, Sarpanch had also been challaned along with him. His father was facing trial under Excise Act.

16. Darbara Singh deposed about the second part of the occurrence of throwing of the injured in front of the house of Major Singh, Sarpanch.

17. Major Singh, Sarpanch was not examined. His version also suffers from several contradictions compared to his version before the police. He was also a party to the earlier litigation and he admitted that he was challaned in a case under Section 376 IPC at the instance of the accused person.

18. As regards the dying declaration before Ruldu Singh on 27.7.1993, his version was not mentioned in the statement Ex DB given to the police on a much later date. His presence was not recorded in any contemporary document.

19. As regards the dying declaration made before Bhoja Ram, it is seen that detailed statement has been recorded, even though injured in such a serious condition, could have hardly made a statement, even if conscious. As regards dying declaration recorded by Ashwani Kumar PW 16, the said witness admitted that he did not record that he had disclosed his identification nor he has recorded that the statement was exactly in the same version or language, He admitted that the injured was speaking Punjabi dialect or mixed dialect but statement Ex. PY/3 was in Hindi.

20. It is well settled in appeal against acquittal that the appellate Court interferes only if the reasons given by the trial Court are perverse and interference is not permissible merely on the ground that another view may be possible. The view taken by the trial Court that eye witnesses Kuldeep Singh, PW 6 and Kartar Singh PW 7 were not reliable in absence of corroborative evidence and that the dying declarations were not proved to have been duly recorded, cannot be held to be perverse. There being no other evidence on record acquittal of the respondents is not liable to be interfered with.

21. The parameters for interfering with the order of acquittal are well-known and reference may be made to a recent judgment of the Hon"ble Supreme Court in Jaswant Singh v. State of Haryana AIR 2000 SC 1833, wherein it was observed:

21. The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and

substantial reasons for doing so. If the order is clearly unreasonable it is a compelling reason for interference see Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, . The principle was elucidated in Ramesh Babulal Doshi Vs. State of Gujarat, :

While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions.

The appeal is dismissed.