A

PALA SINGH & ANR.

v.

STATE OF PUNJAB

August 23, 1972

[J. M. SHELAT, I. D. DUA AND H. R. KHANNA, JJ.] B

Code of Criminal Procedure s. 417—*Appeal in High Court against acquittal by trial court—High Court's power to reverse judgment of acquittal—Practice and procedure.*

Code of Criminal Procedure s. 157—*Delay in sending occurrence report to magistrate—Whether whole investigation to be regarded as tainted.*

C

Constitution of India 1950, *Art.* 136—*Interference by Supreme Court when justified.*

The appellants along with some other accused were tried for murder under s. 302 I.P.C. and connected offences. They were acquitted by the Sessions Judge. The High Court reversing the judgment of acquittal convicted the appellants. In appeal before this Court under article 136 of the Constitution it was contended that in appraising the evidence the D High Court had not followed the principles laid down by this Court in *Sanwant Singh* and other cases.

Dismissing the appeal,

HELD : (i) The contention that because the judgment of the trial court *prima facie* seemed reasonable there was no scope for reassessment of the evidence by the High Court was unacceptable. The Court E of appeal has full power under the statute to go into the entire evidence and all the relevant circumstances of the case for coming to its own conclusion about the guilt or innocence of the accused bearing in mind the initial presumption of the innocence of the accused person and the fact that he was acquitted by the trial court. The High Court in the present case did not commit any error in the appraisal of the evidence on the record and in arriving at its own conclusion as to the guilt of the appellants. The criticism about the insertion of s. 120B in the site plan might F raise a slight suspicion but in view of the trustworthiness of the prosecution evidence led in the case that could not in any way justify any grave suspicion of the prosecution story. It could not be said that the High Court had not followed the principles laid down in *Sanwant Singh's* case nor were its conclusions so erroneous as to justify interference by this Court under Art. 136 of the Constitution. [971-F-H; 972A-B]

G

Sanwant Singh v. *State of Rajasthan*, [1961] 3 S.C.R. 120, *Rambhapala Reddy* v. *State of A.P.*, A.I.R. 1971 S.C. 46 and *Bansidhar Mohanty* v. *State of Orissa*, A.I.R. 1955 S.C. 585, considered and applied.

(ii) Section 157 Cr. P.C. requires an occurrence report to be sent forthwith by the police officer concerned to a magistrate empowered to take congnizance of the offence. This is really designed to keep the magistrate informed of the investigation of such cognizable offence so as H to be able to control the investigation and if necessary to give appropriate direction under s. 159. But when it was found in the present case that the F.I.R. was actually recorded without delay and the investigation started on the basis of the F.I.R. and there was no other infirmity brought

A to the Court's notice, then, however, improper or objectionable the delayed receipt of the report by the magistrate concerned it could not by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It was not the appellants' case that they had been prejudicial by this delay. [970 C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. B 197 of 1969.

Appeal by special leave from the judgment and order dated May 15, 1969 of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No. 385 of 1967.

R. L. Kohli, R. C. Kohli and *J. C. Talwar,* for the appellants.

C

Harbans Singh and *R. N. Sachthey,* for the respondents.

The Judgment of the Court was delivered by

Dua, J. This appeal by special leave under Art. 136 of the Constitution of India is directed against the judgment dated May 16, 1969 of the High Court of Punjab and Haryana allowing in D part the State appeal from the order of Shri Kartar Singh, Additional Sessions Judge, Jullundur, acquitting the five accused charged under ss. 302, 302/34, 120B and 302/309, I.P.C. and convicting on appeal Trilok Singh and Pala Singh, appellants,the former under s. 302, I.P.C. and the latter under s. 302 read with s. 34, I.P.C. They were both sentenced to imprisonment for life.

E

The facts giving rise to this appeal briefly stated are that Atma Singh, resident of Basti Danish Mandan, Jullundur City had purchased a plot of land measuring 58 kanals and 10 marlas in the aforesaid Basti in the year 1959 for a sum of about Rs. 16,000 from the Government at a public auction. This piece of land was F at that time being cultivated by Hazara Singh, one of the five co-accused in the trial court and his associates. As they were disinclined to give up possession Atma Singh appointed Ram Singh (P.W. 14) and Sham Singh (Deceased) as his attorneys to represent him in the litigation concerning the said land. These two attorneys obtained possession of the plot with the help of the police and through the intervention of the revenue authorities in June, 1963. G A few days later Hazara Singh and 7 or 8 others persons including Trilok Singh son of Surain Singh, accused no. 1 and Trilok Singh son of Inder Singh, accused no. 5, threatened the two attorneys with death unless they dissociated themselves with the litigation relating to this land. Sham Singh, deceased, thereupon applied to the City Inspector of Police complaining against this threat as a H result of which Hazara Singh and Trilok Singh son of Inder Singh were proceeded against under s. 107, Cr. P.C. The two attorneys, it appears, wanted to plough the land in question but were afraid of the accused persons. They approached the Superintendent of

Police for help which was made available to them against payment of the prescribed fee. The land in question was actually ploughed by the attorneys in the presence of the police on June 26, 1963 when Hazara Singh, Trilok Singh son of Inder Singh and Harnam Singh, father of Pala Singh, came there armed with *lathis* but were apprehended. The police stayed on the land in question for about 5 or 6 days. On August 9, 1963 the crop standing on the said land was found damaged. At the instance of Ram Singh (P.W. 14) the police prosecuted Hazara Singh, his brother Tara Singh, his employee Channan and Trilok Singh son of Inder Singh, all of whom were found guilty and convicted. In November, 1963 Hazara Singh, Harnam Singh, Bulkar Singh (brother of Pala Singh) and other persons were prosecuted for ploughing the said land but were acquited. On December 15, 1963 Hazara Singh and 17 or 18 other persons attached Sham Singh, deceased, and Ram Singh (P.W. 14). The police proceeded against Hazara Singh, his wife Piar Kaur and his brother Mahal Singh, wife of Tara Singh, brother of Hazara Singh and Mangal Singh, brother of Trilok Singh son of Surain Singh under s. 107, Cr. P.C. During the pendency of these proceedings Sham Singh, deceased, and Ram Singh (P.W. 14) were attached by six persons including Hazara Singh, the two Trilok Singhs (Trilok Singh son of Surain Singh, accused no. 1 appellant no. 2 in this Court and Trilok Singh son of Inder Singh accused no. 5 in the trial court) Channan Singh, Harnam Singh and Nangal Singh who were committed to the sessions court to stand their trial for an offence under s. 307, I.P.C. and other offences. Sham, deceased, and Ram Singh (P.W. 14) were to appear as prosecution witnesses in that case which was adjourned to June 3 1966 because of the absence of Trilok Singh, appellant. On May 25, 1966 at about 7.30 a. m. Laxman Singh (P.W.2) was coming from his coal depot in Basti Danishmandan, to his residential house situated in a lane in which Sham Singh, deceased, also resided. The deceased was at that time going ahead of Laxman Singh and Narinder Singh, brother of the deceased was following Laxman Singh about 3 or 4 yards behind. When Sham Singh reached near the shop of Babu Ram, barber, Tirlok Singh, appellant, and Dhira (accused no. 2 in the trial court) each armed with a *kirpan* and Pala Singh, accused, and Trilok Singh son of Inder Singh armed with a *Lathi* each, appeared at the spot. Trilok Singh son of Inder Singh shouted that the enemy had come and should be murdered. Dhira aimed a *kripan* blow at the head of Sham Singh, deceased, who caught hold of the *kirpan* but the same was pulled away by Dhira. Pala Singh there upon gave a *lathi* below on the head of the deceased as a result of which he feli on the ground face downwards. This was followed by three or four *kirpan* blows by the appellant Trilok Singh on the back of the next of the deceased. The occurrence was witnessed by Gokal Chand (P.W. 3) who practises in Ayurvedic system of medicine and has a

A shop nearby and Trilochan Singh (P.W. 9) a tractor driver who happened to pass that way to attend to his duties as such.

The learned Additional Sessions Judge acquitted all the accused persons holding that the Assistant Sub-Inspector, Kashmiri Lal, who had investigated the offence had not performed his duties in a fair and straight forward manner and that the prosecution evidence was not trustworthy so as to bring home the offence to the accused beyond the possibility of a reasonable doubt. The trial court expressed the view that the first information report had been recorded after great delay and after there had been consultation with the interested persons. The special report had also not reached the duty magistrate till after the expiry of 8 or 9 hours though the duty magistrate lives in the same town. The inquest report prepared by A.S.I. Kashmiri Lal had also been tempered with inasmuch as there were interpolations in the statements of at least two witnesses recorded therein. Gokal Chand (P.W.3) was also disbelieved by the trial court and so was Trilochan Singh (P.W. 9). The recovery of blood-stained sword at the instance of Trilok Singh, appellant, was also discarded as unreliable. The site plan prepared by A.S.I. Kashmiri Lal was also held to have been prepared not, as it purpoted to be, before 9.45 a.m. but long thereafter when he had decided to implicate Hazara Singh also as a party to the conspiracy under s. 120B, I.P.C. As observed earlier, all the accused were acquitted by the learned Additional Sessions Judge.

On appeal by the State the High Court considered the entire evidence in great detail and examined all the material circumstances which had weighed with the trial court in disbelieving the prosecution story, and in disagreement with the trial court, came to the conclusion that the prosecution had fully proved the case against the two appellants in this Court.

Shri R. L. Kohli, the learned counsel for the appellants, took us through the relevant evidence and the judgments of the two courts below. The principal argument passed by him in support of this appeal was that the learned Additional Sessions Judge had on a consideration of the entire evidence come to a conclusion which is reasonable and had, the basis of that conclusion held that the prosecution witnesses were not reliable and that the accused were, therefore, entitled to acquittal. The High Court, according to this submission, was not justified in reappraising the evidence for itself and in disagreeing with the reasoning of the trail court for convicting the appellants on appeal against acquittal.

We would first deal with the argument that the first information report was recorded after a long delay, that the inquest report was tampered with by A.S.I. Kashmiri Lal, and that the special report was not sent to the duty magistrate with the promptitude

expected under the Code of Criminal Procedure. P.W. 13, S.I. Pritam Lal has deposed that on May 23, 1966 when he was posted as Sub-Inspector, Police Station, Kotwal Jullundur he received *ruqa* from A.S.I. Kashmiri Lal on the basis of which Ex. PD/1 was recorded by him. He thereupon went to the spot in Basti Danishmandan and reached there at 10 a.m. Dead body of Sham Singh had by that time already been despatched by A.S.I. Kashmiri Lal This witness then took over the investigation from Kashmiri Lal. There was no cross-examination worth the name of this witness suggesting that he had not told the truth in court. The F.I.R. purports to have been recorded at 9.5 a.m. on May 23, 1966. The time of occurrence is stated to be 7-30 a.m. on that very day and the distance between the place of occurrence and the Police Station is about 2¼ miles. If S.I. Pritam Lal reached the place of occurrence at 10 a.m. as deposed by him, which statement is not shaken by any cross-examination then, plainly the F.I.R. cannot be considered to have been lodged after undue delay. Nor can it be said that the dead body of the deceased was despatched from the place of occurrence after undue delay. Kashmiri Lal, A.S.I. appeared as P.W. 21. According to his testimony on May 23, 1966 when he was posted as A.S.I. in charge of police post no. 5, police station, Jullunder City at about 7.40 a.m. he was present at bus stand at Basti Gujan when Laxman Singh (P.W.3) appeared before him and made statement Ex. PD/1 which was forwarded by the witness with his endorsement to the police station Jullundur City for registration of the case at about 8.30 a.m. Kashmiri Lal accompanied Luxman Singh to the spot in Main Bazar Basti Danishmandan reaching there at about 8.40 a.m. The dead body of Sham Singh was lying near the shop of Babu Ram and Narinder Singh, Gokul Chand and several other persons were present there. He prepared the inquest report Ex. PC and recorded the statements of Narinder Singh and Gokal Chand and sent the dead body with the inquest report to the Mortuary for post-mortem at about 9.45 a.m. through constable Takhat Singh. In cross-examination it was elicited from him that he had prepared a site plan Ex. PH/1 when the dead body was still there meaning thereby that he had prepared the site plan before 9.45 a.m. The deceased was at that time wearing only a banian and a *chaddar*. The suggestion that it was he who had recorded the F.I.R. and that he had prepared the site plan in the afternoon in consultation with Luxman Singh, Narinder Singh and Ram Singh (P.Ws) in the presence of Inspector Janak Raj was denied by him. The inquest report Ex. P/C was subjected to strong criticism by Shri Kohli on three counts. In the first instance it was urged that the statements of Narinder Singh and Gokal Chand which were attached to the inquest report originally referred to two injuries caused by Trilok Singh, appellant, with his sword, but later the

A digit 4 in one and the word four in the other were added in those statements so as to make them read as if two or four injuries were inflicted by Trilok Singh by his sword. According to Shri Kohli's suggestion the medical examination disclosed that there were five injuries on the person of the deceased. From this it was sought to be concluded that the inquest report was tampered with by A.S.I. B Kashmiri Lal so that the number of injuries mentioned therein may not differ from the number suggested by the medical evidence. The second criticism related to the insertion in the site plan of s. 120B which only relates to Hazara Singh, whose name had not been mentioned by anyone up to that stage. From the insertion of s. 120B in the site plan it was inferred that Kashmiri Lal had C some enmity with Hazara Singh and that he had, therefore, already made up his mind to falsely rope Hazara Singh in. On this line of reasoning it was suggested that the investigation carried out by Kashmiri Lal was far from honest, faithful and fair. It was contended that when cross-examined Kashmiri Lal admitted that he had inserted the offence under s. 120B in the site plan at the D same time, when the offence under s. 302/34, I.P.C., was mentioned. The denial by this witness that he had recorded the first information report and prepared the site plan late in the evening in consultation with Laxman Singh, Narinder Singh and Ram Singh, P.Ws. argued Shri Kohli, was not correct. In our opinion the criticism levelled by Shri Kohli does not justify the rejection of the F.I.R. or of the site plan and the inquest report, as sug- E gested by Shri Kohli. It is noteworthy that in Laxman Singh's information to P.W. 21 there is a clear reference to Hazara Singh's grievance and his interest in the land in dispute. It cannot, therefore, be said that in the site plan mention of Hazara and of an offence under s. 120B, being a later interpolation, is a suspicious circumstance suggesting unfairness of the investigation.

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P.W. 21, when asked, denied that he had made interpolations by adding figure 4 in the statement of Narinder Singh and word four in the statement of Gokal Chand. Now as stated by P.W. 13, whom we see no reason to disbelieve, that the inquest report was sent along with the dead body then that G report was prepared with due dispatch and sent in due course without any delay. It was not improperly retained for any sinister purpose of finalising it after consulting other prosecution witnesses. It was suggested by Shri Kohli that after the post-mortem examination, inquest report was handed over to the police H officers and they must have made the necessary insertions in the two statements so as to make them conform to the medical report. If that was the object, when one would have expected the statements to convey that there were five injuries and not merely two or four. However, assuming without holding, that in the

inquest report the figure 4 and word four were added afterwards, in our view, this by itself does not detract from the general trustworthiness of the inquest report nor does it render the investigation suspicious so as to be fatal to the prosecution.

Shri Kohli strongly criticised the fact that the occurrence report contemplated by s. 157, Cr.P.C. was sent to the magistrate concerned very late. Indeed, this challenge, like the argument of interpolation and belated despatch of the inquest report, was developed for the purpose of showing that the investigation was not just, fair and forthright and, therefore, the prosecution case must be looked at with great suspicion. This argument is also unacceptable. No doubt, the report reached the magistrate at about 6 p.m. Section 157, Cr. P.C. requires such report to be sent forthwith by the police officer concerned to a magistrate empowered to take cognisance of such offence. This is really designed to keep the magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction under s. 159. But when we find in this case that the F.I.R. was actually recorded without delay and the investigation started on the basis of that F.I.R. and there is no other infirmity brought to our notice, then, however improper or objectionable the delayed receipt of the report by the magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It is not the appellants case that they have been prejudiced by this delay.

Shri Kohli took us through the evidence of the eye witnesses and pointed out certain minor discrepancies. But his main contention was based on the argument that the judgment of the trial court was reasonable and it was open to a court to come to the conclusion to which it came. The High Court was, therefore, not justified in reversing the judgment of acquittal into one of conviction. In support of his submission he relied on three decisions of this Court.:

1. *Sanwat Singh* v. *State of Rajasthan*(1).

2. *Ramabhupala Reddy* v. *State of A.P.*(2).

3. *Bansidhar Mohanty* v. *State of Orissa*(3).

In the latest decision of this Court in *Ramabhupala Reddy* (supra) it has been observed that the controversy in regard to the scope

(1) [1961] 3 S.C.R. 120. (2) A.I.R. 1971 S.C. 460. (3) A.I.R. 1955 S.C. 585.

A of an appeal against an order of acquittal has been settled by this Court in *Sanwant Singh* (supra) in which the legal position was summarised thus :

> "1. An appellate Court has full powers to review the evidence upon which the order of acquittal is founded;
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> B
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> 2. the principles laid down in *Sheo Swarup's* case (61 I.A. 398) afforded a correct guide for the appellate court's approach to a case disposing of such an appeal;
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> 3. the different phraseology used in the judgments
> C of this court such as :
>
> (a) 'substantial and compelling reasons';
>
> (b) 'good and sufficiently cogent reasons';
>
> (c) 'strong reasons' are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the
> D entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the
> E reasons in its judgment which led it to hold that the acquittal was not justified."

This, in our view, correctly summarises the legal position as finally settled by this Court. The submission urged by Shri Kohli, therefore, that merely because the judgment of the trial court
F *prima facie* seems reasonable there is no scope for reassessment of the evidence by the appellate court is unacceptable. The court of appeal has full power under the statute to go into the entire evidence and all the relevant circumstances of the case for coming to its own conclusion about the guilt or innocence of the accused bearing in mind the initial presumption of the innocence of an accused person and the fact that he was acquitted by the trial
G court. We do not think that the High Court committed any error in the appraisal of the evidence on the record and in arriving at its own conclusion as to the guilt of the appellants. The criticism about the insertion of s. 120B in the plan Ex PH/1, in our view, may raise slight suspecion but in view of the trustworthiness of the prosecution evidence led in the case we do not think that
H in any way justifies any grave suspicion of the prosecution story.

Besides, the case is now before us under Art. 136 of the Constitution. We allowed Shri Kohli not only to state the case broadly

and to take us through the judgments of the two courts below but also to take us through such evidence as he considered proper for persuading us to hold that the High Court had not followed the principals laid down in *Sanwant Singh's* case (supra) or that its conclusions were otherwise so erroneous as to justify interference by this Court under Art. 136 of the Constitution. We are not persuaded to hold that there is any ground for differing with the conclusion of the High Court.

The result, therefore, is that this appeal must fail and is dismissed.

G.C. *Appeal dismissed.*