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KESAR SINGH

v.

STATE OF PUNJAB

March 4, 1974

[M. H. BEG AND Y. V. CHANDRACHUD, JJ.]

B

Criminal Practice.

Conviction for murder—Sentence.

The appellant was charged with an offence under s. 302, Indian Penal Code of murdering three persons. The trial court found that there was enough evidence to show that the appellant was one of murderers of one of the three men and sentenced him to life imprisonment. The High Court enhanced the sentence to one for death on the grounds: that, the motive was to avenge murder of the appellant's brother-in-law committed some years prior to the occurrence so that there could be no immediate provocation; that, the three murders were committed in very cold-blooded and brutal manner when the deceased were sleeping on their cots; that, two shots from a 12 bore gun had been fired at each of the three murdered men indicating the determination to give no chance of survival to anyone; that, the time selected for the murder was such that no possible help could be rendered to prevent the death of any of the three deceased and no obstruction could be possible to carry out the design of committing these murders.

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Allowing the appeal in part,

HELD : A criminal case is not tied down to a particular version as a civil case is by the pleading of the parties. Moreover, there is so much of explicable inaccuracy often intermingled with imagination and exaggeration by witnesses who are convinced of the guilt of a particular accused person that courts dealing with criminal cases cannot throw the whole case over-board simply because parts of it are improbable. To hold that a version is improbable is not to disbelieve entirely or to find it to be false. It may be that facts are sometimes stranger than fiction. Prudence, however compels courts to test the version advanced in the light of what is reasonably to be expected from the ordinary or usual norms of human conduct and the common course of natural events so as to infer what may have actually happened. In a criminal case conviction must rest on a proof so strong that the court must be convinced that what is concluded must necessarily have happened and is not really explicable in any other way. [492A-D]

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In the instant case although the appellant was guilty of an offence punishable under s. 302 Indian Penal Code, all the reasons given by the High Court for awarding the death sentence have not been substantiated. The evidence only disclosed that it was more likely that the appellant was one of the several murderers and that he caused the death of only one man with his gun, the other having been killed by others who were not recognised, and, therefore, nothing, apart from the occurrence, proved about the character of the appellant. Nothing was disclosed about the antecedents of the appellant. Therefore, the real basis adopted by the High Court for enhancing the sentence of the appellant would disappear. [493A-C]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 167 of 1973.

Appeal by special leave from the judgment and order dated the 24th April, 1973, of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No. 29 of 1972 and Criminal Revision No. 224 of 1972.

H

Nuruddin Ahmed and *D. Goburdhun*, for the appellant.

H.R. Khanna, O. P. Sharma and *R. N. Sachthey*, for the respondent.

The Judgment of the Court was delivered by —

BEG. J.—This is an appeal by special leave filed by Kesar Singh, aged 23 years, who was convicted under Section 302 Indian Penal Code on three counts and sentenced to life imprisonment by an Additional Sessions' Judge of Patiala for having committed the murders of three persons, namely, Gurbachan Singh, Karnail Singh and Dewan Singh, one after another, during the night between 20th and 21st June, 1970, in village Dhablan. On appeal against the conviction and a revision application by the State against the lesser penalty for murder, the High Court of Punjab & Haryana dismissed the appeal of Kesar Singh, but it allowed the revision application of the State of Punjab enhancing the sentence of Kesar Singh to one of death.

The grounds given by the High Court for enhancing the sentence were: the motive was to avenge the murder of the appellant's brother-in-law Gurnam Singh committed about 7 or 8 years prior to the occurrence so that there could be no immediate provocation; the three murders were committed "in a very cold blooded and brutal manner when the deceased were sleeping on their cots"; two shots from a 12 bore gun had been fired at each of the three murdered men "indicating the determination to give no chance of survival to anyone"; "the time selected for the murder was such that no possible help could be rendered to prevent the death of any of the three deceased and no obstruction could be possible to carry out the design of committing these murders". Before giving these reasons, quoted mostly in the words of the High Court itself, the High Court had relied on observations of this Court in *Apren Joseph & Ors. Vs. The State of Kerala*:(1)

> "The determination of sentence in a given case depends on a variety of considerations, the more important being, the nature of the crime, the manner of its commission, the motive which impelled it and the character and antecedents of accuseds".

Learned Counsel for the appellant has taken us through the evidence of the two eye witnesses Gurdev Singh, P. W. 3, and Nachhattar Singh, P. W. 4, whose testimony had been accepted wholly by the Trial Court and the High Court about the murder of three men by the appellant singly, although the Trial Court had disbelieved the very reason given for Gurdev Singh to wake up in time to see the murder of Gurbachan Singh, and, therefore, had acquitted the co-accused Kishori.

It may be mentioned here that Gurdev Singh, P. W. 3, was shown to be sleeping on the roof of the house of his uncle Dewan Singh, from where he could see his cousin, Gurbachan Singh, and brother Gurmel Singh, P. W. 5, sleeping on the roof of the next house where Gurbachan Singh was murdered on a full moon night. The prosecution version was that, when Kesar Singh and the acquitted accused, Kishori, went up the stairs to the roof, Gurmel Singh, P. W. 5, who was totally blind from birth, woke up and heard Kesar Singh, whom he recognised by voice, telling Kishori to catch hold of the blind man who was awake.

(1) A.I.R. 1973 S.C. 1.

A He alleged that Kishori gave him two blows whereupon he cried out: "Mar Ditta Mar Ditta". It is these cries which are said to have awakened Gurdev Singh. There were two abrasions on the body of Gurmel Singh, one on the forehead and another on his wrist, indicating that he had fallen down and hurt himself. The Trial Court had, very rightly, held that he must have got up and shouted only after the two shots had been fired at Gurbachan Singh. There was
B no point in assaulting him merely because he was awake. If that was done he was sure to raise a hue and cry and wake up others. Therefore, the prosecution version that Gurdev Singh, P. W. 3, had got up because of Gurmel Singh's cries and had seen the appellant firing twice at Gurbachan Singh had to be discarded as too transparent an embellishment with an obvious purpose behind it. The High Court, however, had not analysed the evidence of any of the wit-
C nesses. It had observed rather mechanically:

> "Both Gurdev Singh and Nachhattar Singh have given consistent version of the incident and their statements are wholly free from inaccuracies or discrepancies, even though both these witnesses were cross-examined at considerable length. Nothing at all has been brought out in their cross-examination
D which would show that the story set up by them in the examination-in-chief was not true".

Apart from the fact that the High Court had not even noticed the very good reasons given by the Trial Court for discarding the evidence of Gurmel Singh, P. W. 5, including the fact that this witness, who claimed to have identified Kesar Singh by voice, could not
E recognise Kesar Singh's voice when the Presiding Judge spoke to Kesar Singh, during the trial, to test the correctness of the claim of the witness, the High Court had overlooked a number of features brought out by cross-examination of the two eye witnesses which made the version given out by them very difficult to believe totally.

Gurdev Singh had described Kesar Singh as wearing a blue tur-
F ban whereas Nachhattar Singh had described it as a cream coloured ("Badami") turban. While Gurdev Singh had said that Kesar Singh wore a white shirt, Nachhattar Singh had said that he was draped in a chadar with stripes on it and wore a shirt of several colours. Considering that Nachhattar Singh was said to be sleeping in a remote corner of the enclosure around the house on the roof of which Gur-
G bachan Singh was murdered and Dewan Singh and Karnail Singh were asleep at some distance from him in this enclosure, it is difficult to believe that Nachhattar could have made out not only the colour of the turban but also the stripes on the chadar and shirt of Kesar Singh even on a full moon night. These varying descriptions could indicate that perhaps two different but similar men with guns had been seen shooting but only Kesar Singh was identified as the mur-
H derer with a gun.

Another broad feature, brought out from the cross-examination of the witnesses, may be pointed out here. Kesar Singh was shown to

have first climbed to the roof of the house where Gurbachan Singh was asleep and then to have come down the stairs to shoot at Karnail Singh on his cot, and, thereafter, to have shot Dewan Singh on his cot. It does appear rather unlikely that, while even a blind man had got up, and Gurdev Singh, P. W. 3, sleeping on the roof of the next house, and Nachhattar Singh, P. W. 4, Puran Singh, P. W. 6, declared hostile, who were also sleeping near Karnail Singh and Dewan Singh, had got up, neither Karnail Singh nor Dewan Singh could get up from their cots and try to either grapple with or run away from the assailant who was permitted to quietly reload his double barrelled gun to shoot at each of the three men twice each time. Dewan Singh was, however, said to be awake and sitting up in his bed when shot. But, no empty cartridges were recovered from the scene of occurrence. The witnesses, who claimed to have observed everything so closely, did not depose that Kesar Singh took out and put the spent cartridges into a pocket.

Another difficulty in accepting the prosecution version totally, as put forward by the two eye witnesses, is that Gurdev Singh, P. W. 3, was shown to have rushed out of the house on the roof of which he was sleeping and to have taken up his stand at the bottom of the stairs down which the murderer and his companion are shown to have descended although Gurdev Singh was empty handed and admitted that he was afraid of Kesar Singh who had a gun in his possession. We find it very difficult to believe that Gurdev Singh would have rushed and taken up his stand here to see the murders of Karnail Singh and Dewan Singh if he had actually seen Kesar Singh shoot twice at Gurbachan Singh on the roof. We think that it is very likely that Gurdev Singh woke up, like the others nearby, at hearing the gun shots and took up his stand near the stairs from where he could have seen Kesar Singh murdering Karnail Singh and Dewan Singh. It is only because he had not seen the murder of Gurbachan Singh that he could be expected, to act like this and come and stand at the bottom of the stairs, without apprehending danger to himself, down which the murderer descended. If he had rushed at once to this spot in this fashion he was, more likely, than not, to have virtually intercepted the murderer.

The broad probabilities which we have mentioned above certainly make it difficult to accept unhesitatingly, as the High Court had done, the version that Kesar Singh alone shot at each of the three men and killed them. We have, however, no doubt that Kesar Singh was seen by the witnesses running away with a double barrelled gun and had actually killed at least one of the three men murdered on the night between 20th and 21st June, 1970, and could have been seen doing so. It is likely that more than that is due to the not uncommon propensity of witnesses to speculate, imagine, and exaggerate.

Evidence shows that the appellant had two brothers at least one of whom was a resident of village Dhablan at the time of the shooting. If implication was only due to a desire to take revenge for three murders, the appellant would not have been the only one who would have

A been alleged to have used a gun to shoot when there was opportunity to implicate others too in the same position as the appellant so far as any enmity goes. It is difficult to hold that either Gurdev Singh or Nachhattar Singh, who had both been prosecuted for the murder of their step brother Gurnam Singh but acquitted about seven years before the occurrence, could have any grudge for this reason only B either against Kesar Singh or his brother Bhajan Singh both of whom were residing with and looking after the land of Tej Kaur the widow of Gurnam Singh. If the witnesses had implicated Kesar Singh merely out of suspicion they would have involved Bhajan Singh also for the same reason.

The statements of the two eye witnesses find corroboration from the fairly detailed account of the occurrence of about 3 a.m. in the C F.I.R. lodged at Police Station Sadar Patiala about 10 miles away at 8·25 a.m. on 21-6-1970.

It appears that Lal Singh Sarpanch and Jag Singh Panch, had also come to the scene of occurrence after it had taken place and had gone to the Police Station so that the F.I.R. was lodged in their presence although they did not sign it because there was no need for D that. It was contended that they ought to have been produced by the prosecution because the eye witnesses gave their accounts to them first. They were neither eye witnesses nor essential for unfolding of the prosecution version. If the eye witnesses had said anything before them which could help the accused, they could have been produced in defence, or, in any case, the accused could have applied for their examination under Section 540 Criminal Procedure Code. We do not think that the failure to examine these witnesses either by E the prosecution or by the Court, *suo moto*, can cast a doubt on the prosecution case.

Apart from the motive to murder, we think that the prosecution case against the appellant finds corroboration fom the statement of the Investigating Officer, Kuldev Singh, P. W. 12, who deposed that when he went to the house of Tej Kaur, looking for the appellant, F he found it locked. The appellant could be arrested only on 27-6-1970 after a "Nakabandi" at the canal bridge of village Dhakraba and was found in illegal possession of the gun No. 60780 loaded with live cartridges and with powder lining inside the barrel so that it must have been used. At the trial, the appellant falsely denied this recovery and circumstances of his arrest. His conduct was certainly very suspicious.

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The manner in which the witnesses describe the infliction of the injuries is also corroborated, according to the High Court, by the medical evidence. On the whole we agree with this view.

Although we are not impressed by the rather ready and facile acceptance by the High Court of the whole prosecution version, H which suffers from the improbabilities mentioned above, we find the evidence to be enough to establish beyond reasonable doubt that Kesar Singh was at least one of the possibly several murderers.

Learned Counsel for the appellant has submitted that it would not be prudent, while discarding the case of triple murder against Kesar Singh, to uphold his conviction on the assumption that he committed at least one murder as this would be contrary to the prosecution version. It is also urged that a witness who has been disbelieved because he has falsely implicated an accused for one murder could not be relied upon for convicting the accused for another murder. We think that a criminal case is not tied down to a particular version as a civil case is by the pleading of the parties. Moreover, there is so much of explicable inaccuracy often inter-mingled with imagination and exaggeration by witnesses who are convinced of the guilt of a particular accused person that Courts dealing with criminal cases cannot throw the whole case over-board simply because parts of it are improbable. To hold that a version is improbable is not to disbelieve it entirely or to find it to be false. It may be that facts are sometimes stranger than fiction. Prudence, however, compels Courts to test the version advanced in the light of what is reasonably to be expected from the ordinary or usual norms of human conduct and the common course of natural events so as to infer what may have actually happened. In a criminal case a conviction must rest on a proof so strong that the Court must be convinced that what it concludes must necessarily have happened and is not reasonably explicable in any other way. We think that the version given by the two eye witnesses, even though it suffers from improbabilities mentioned above, so as to make its total truthfulness doubtful, must be true at least so far as participation of Kesar Singh in the murder of three men by shooting at least one of them, if not both Karnail Singh and Dewan Singh before their eyes is concerned. This much cannot, we think, be disbelieved. As pointed out above, the participation of Kesar Singh in the occurrence is sufficiently corroborated by other facts and circumstances mentioned above. Thus, the testimony of the two eye witnesses does not stand alone against the appellant. We are unable to conclude that the two eye witnesses belong to the category of wholly unreliable witnesses so that their testimony cannot be acted upon even when corroborated by other facts.

It may be mentioned here that Kesar Singh's sister, Tej Kaur, with whom he was said to be residing and who was the owner of the licensed double barrelled gun recovered from the appellant's possession, was also challaned as an instigator, but she was discharged. It may be that the appellant had grown up from childhood hearing the woeful story, from his widowed sister, of the murder of his brother-in-law, Gurnam Singh, who was a step-brother of Gurdev Singh. The appellant, who is a young man, may have been impelled or goaded on by the grief of his widowed sister to participate in the murder of three men as a part of a vendetta. It had come in evidence that two of the murdered men, Karnail Singh and Dewan Singh, had been prosecuted for the murder of Gurnam Singh the brother-in-law of Kesar Singh and had been acquitted.

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Therefore, although we hold that Kesar Singh was guilty of an offence punishable under Section 302 I. P. C., we do not consider all the reasons given by the High Court for awarding the death sentence to have been substantiated. The High Court had overlooked facts which we have mentioned above. It had also overlooked that
B there was nothing, apart from the occurrence, proved about the character of the appellant. Nothing was disclosed about the antecedents of the appellant. If it was more likely, as we think it was, that the appellant was one of the several murderers and that he had caused the death of only one man with his gun, the others having been killed by others who were probably not recognised, the real
C basis adopted for awarding a death sentence to him would disappear.

The result is that, although we uphold the conviction of the appellant for an offence punishable under Section 302 I. P. C., we set aside the sentence of death and substitute it by life imprisonment. The appeal is thus partly allowed to the extent indicated above.

P.B.R. *Appeal allowed in part.*