

PIARA SINGH & ORS.

v.

STATE OF PUNJAB

October 4, 1977

[S. MURTAZA FAZAL ALI AND P. S. KAILASAM, JJ.]

Evidence—Evidentiary value of interested or inimical witnesses, explained.

Evidence Act (Act I of 1872), 1872, S. 45 Expert opinion—When there are two conflicting medical opinions, the opinion of that expert which supports the direct evidence must be accepted.

Confession—Extra-judicial confession—Whether the evidence of an extra-judicial confession should, in all cases, be corroborated.

The four appellants were charged u/s. 302 r/w. section 34, I.P.C. for the offence of murder of one Surjit Singh, a collateral of the accused on the evening of 14th November, 1967; but were acquitted by the Sessions Judge, Amritsar, on the ground that the ocular evidence of the three witnesses (P. Ws 3, 5 and 7) who spoke to the fact that the appellants inflicted the injury on the deceased with Kirpan, Gandasi, Barchhi and also with a bullet from the rifle, was inconsistent with the medical evidence of the court witness No. 1, Dr. Paramjit Singh to the effect that injury No. 11 could not have been caused by a fire-arm. The opinion of Dr. Jatinder Singh who performed the post-mortem in the case was that the gun shot injury with a wound of entry and exit on the left buttock which was found in addition to the 14 incised injuries including seven punctured wounds could be caused by a fire arm including a rifle. The High court, on appeal by the State, against the acquittal, accepted the prosecution case, set aside the acquittal, convicted Piara Singh and Gian Singh u/s. 302, I. P. C., Kashmir Singh and Joginder Singh u/s. 302/34 I. P. C. and sentenced them to imprisonment for life.

Dismissing the appeal u/s. 2 of the Supreme Court Enlargement of Criminal Appellate Jurisdiction, 1970, the Court.

HELD : (1) Taking an overall view of the facts and circumstances in the present case, the High Court was fully justified in reversing the order of acquittal passed by the learned Sessions Judge. There is sufficient evidence against the accused to prove the charge of murder against them. The evidence of the eye-witnesses is fully corroborated by the medical evidence, the evidence of the recoveries, the evidence of the Ballistic expert and the evidence of P. W. Balbir Singh who deposed regarding the extra judicial confession made by the accused Piara Singh. [599 F, 603 D-EG]

(2) The evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of evidence the court is satisfied that the evidence is credit-worthy there is no bar, in the court relying on the said evidence.

In the instant case, though P.W.s 3, 5 and 6 were the relations of the deceased and bore animus against the accused, they were the natural witnesses as the occurrence had taken place near the door of the house of the deceased and they, were, in fact sitting in the court-yard when the occurrence took place. The evidence of P.W. 7 to whom the whole occurrence was narrated immediately after the accused left the house, the extra judicial confession of Kashmir Singh to P. W. 17, the recovery of the blood-stained Kirpan from the sugar-cane field of Meja Singh and the recovery of the empty cartridge from the place of occurrence fully corroborate their evidence. [599G, 600A-C, D]

(3) The evidence of a medical man or an expert is merely an opinion which lends corroboration to the direct evidence in the case. Where there is a glaring inconsistency between direct evidence and the medical evidence in respect of

A the entire prosecution story, there is undoubtedly a manifest defect in the prosecution case. Where there is a conflict between the opinion of two experts, the courts should normally accept the evidence of the expert whose evidence is corroborated by direct evidence of the case, which according to the court is reliable. Where the opinion of a medical witness is contradicted by another medical witness, both of whom are equally competent to form an opinion, the opinion of that expert should be accepted which supports the direct evidence in the case.

B In the instant case (a) the trial court was not justified in throwing out the prosecution case merely on the basis of the evidence of Dr. Paramjit Singh. It was not a case of the evidence being totally inconsistent with the medical evidence but a case where there was some doubt as to whether or not injury No. 11 was caused by a rifle; (b) the evidence of Dr. Jatinder Singh corroborated, as it is by the evidence of the eye-witnesses, the evidence of the recovery of the bullet, the evidence of the Ballistic expert and the evidence given by P. W 17, Balbir Singh regarding the extra judicial confession made before him must be accepted. Dr. Jatinder Singh had the initial advantage of examining the deceased and holding his post-mortem and observing the nature of the injuries on the body of the deceased. His opinion is, therefore, based on first hand knowledge and be in any event preferable to Dr. Paramjit Singh who did not have the advantage of seeing the deceased or the injuries on his body but deposed purely on the basis of the description of the injuries given by Dr. Jatinder Singh. [600 B-H 601E, FG-602B-C]

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D (4) Law does not require that the evidence of an extra judicial confession should, in all cases, be corroborated. In the instant case the extra judicial confession was proved by an independent witness who was a responsible officer and who bore no animus against the appellants. The learned Sessions Judge committed a clear error of law by refusing to rely on the extra judicial confession when it was corroborated by the recovery of an empty from the place of occurrence. [603F-G]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 221 of 1972.

From the Judgment and Order dated 31-7-1972 of the Punjab and Haryana High Court in Criminal Appeal No. 364 of 1969.

R. L. Kohli and B. P. Singh for the Appellants.

F *Hardev Singh and R. S. Sodhi* for the Respondent.

The Judgment of the Court was delivered by

G **H** FAZAL ALI, J.—This appeal under section 2 of the Supreme Court Enlargement of Criminal Appellate Jurisdiction Act, 1970 is directed against an order of the High Court of Punjab and Haryana dated 31st July, 1972 by which the appellants Piara Singh and Gian Singh had been convicted under section 302 Indian Penal Code and sentenced to imprisonment for life and Kashmir Singh and Joginder Singh were convicted under sections 302/34 Indian Penal Code and sentenced to imprisonment for life. The appellants were tried under the afore-said sections by the Sessions Judge, Amritsar who however acquitted them of the charges framed against them. On appeal to the High Court by the State of Punjab the High Court was of the view that the judgment of the learned Sessions Judge was absolutely wrong and the High Court reversed the judgment of the Sessions Judge and convicted the appellants as indicated above.

Both the Courts below have given a complete and exhaustive narration of the details of the prosecution case and it is not necessary for us to repeat the same all over again. The present occurrence has resulted in the death of Surjit Singh a collateral of the accused and appears to be a result of a long standing enmity between the parties. Suffice it to say that on 14th November, 1967 at about 4.00 p.m. the deceased Surjit Singh had arrived at his house with a cart load of maize cobs from the side of his field. At that time Harbhajan Singh, a cousin of the deceased and his mother Kesar Kaur and two other relations, namely, Chanan Kaur and Mango were sitting inside the courtyard of their house 6 to 7 yards from the door of his house the four appellants entered the house of Piara Singh variously armed and pounced upon the deceased and assaulted him with Kirpan, Gandasi and Barchhi and also with a bullet from the rifle. According to the prosecution, Piara Singh was armed with a rifle, fired a rifle shot at the deceased on his groins as a result of which he fell down and died soon after. On hearing the alarm Kundan Singh, Gurbux Singh and Surat Singh then arrived at the spot who were apprised of the occurrence by Harbhajan Singh and other members of the family also narrated the entire incident to them. The complainant Harbhajan Singh rushed to the Police Station, Valtoha situated at about 4 miles from the place of the occurrence and lodged the F. I. R. at 4-30 p.m. giving the necessary details of the incident. The dead body of the deceased was taken to the hospital which was lying near the Manawan Canal when the Sub-Inspector came and sent the same to the mortuary for post-mortem examination. After the usual investigation a charge-sheet was submitted against the appellants as a result of which they were committed to the court of Sessions, tried and finally acquitted by the learned Trial Judge. We have heard counsel for the parties at great length and have also gone through the evidence and the judgments of the two courts. The High Court has discussed the evidence in great detail and it has also indicated clearly the important circumstances relied upon by the learned Sessions Judge in acquitting the appellants and has sought to displace them by giving, in our opinion, cogent reasons. We are clearly of the opinion that the High Court was right in reversing the order of acquittal passed by the learned Sessions Judge who had made a wrong approach to the whole case. This was not a case in which two views were reasonably possible. The judgment of the Sessions Judge is legally erroneous and is also against the weight of the evidence on the record.

As the High Court has given detailed reasons for setting aside the order of acquittal passed by the Sessions Judge, it is not necessary for us to discuss the matter in great detail.

The central evidence against the appellants consisted of the three eye-witnesses, namely, P.W. 3 Harbhajan Singh, P.W. 5 Chanan Kaur and P. W. 6 Kesar Kaur. It is true that the three witnesses were relations of the deceased and bore animus against the accused but as the occurrence had taken place near the door of the house of the deceased these persons were the natural witnesses and were in fact sitting in the court-yard when the occurrence took place. It may be difficult to get witnesses from the village when an assault of the type suddenly takes

- A** place in the house of the deceased. It is well settled that the evidence of interested or inimical witnesses is to be scrutinised with care but cannot be rejected merely on the ground of being a partisan evidence. If on a perusal of the evidence the Court is satisfied that the evidence is credit-worthy there is no bar in the Court relying on the said evidence. The High Court was fully alive to these principles and has in fact found that the evidence of these three witnesses has a ring of truth.
- B** After having perused the evidence ourselves also we fully agree with the view taken by the High Court. In fact, the learned Sessions Judge has not made any attempt to dwell into the intrinsic merits of the evidence of these witnesses but has rejected them mainly on general grounds most of which are either unsupportable in law or based on speculation. The evidence of the eye-witnesses is sought to be corroborated by the evidence of P. W. 7 Kundan Singh to whom the whole occurrence was narrated immediately after the accused left the house.
- C** There is also the evidence of Balbir Singh P. W. 17, who is a Sarpanch of the village and an independent witness and who proves that the appellant Piara Singh had made an extra judicial confession before him in which he admitted to have committed the murder of the deceased Surjit Singh along with his companions Kashmir Singh, Gian Singh and Joginder Singh. This witness also proves that Kashmir Singh on being narrated by the details made a disclosure which resulted in the recovery of the Kirpan from the sugar-cane field of Meja Singh for which a search list was prepared and the Kirpan was also found stained with human blood. According to the Investigating Officer an empty cartridge was also found at the spot and he sent the same to the Ballistic Expert along with the rifle recovered from Piara Singh who was a constable in the Border Security Force and the Ballistic Expert found that the empty could have been shot from the rifle in question.
- E** These circumstances fully corroborate the evidence of the eye-witnesses. Finally, there is the medical evidence of Dr. Jatinder Singh who performed the post-mortem examination on the deceased and he found as many as 7 incised wounds on the various parts of the body of the deceased and 7 incised punctured wounds on some vital parts of the body. Apart from these injuries the deceased had also sustained a gun shot injury with a wound of entry and exit on the left buttock, which according to Dr. Jatinder Singh could be caused by a fire-arm including a rifle. The Doctor further deposed that the contusions and abrasions were caused by a blunt weapon and the other incised wounds were caused by a sharp cutting instrument like the Gandasa. Another Doctor was examined by the Sessions Judge as Court Witness No. 1 who on seeing the post-mortem report of Dr. Jatinder Singh was of the view that Injury No. 11 could not have been caused by a rifle and much capital was made by the accused out of the evidence given by Dr. Paramjit Singh.
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- The learned Sessions Judge appears to have disbelieved the prosecution case mainly on the ground that the ocular evidence was inconsistent with the medical evidence, in that, according to the evidence of Dr. Paramjit Singh, Injury No. 11 could not have been caused by a fire arm. In giving this finding the learned Sessions Judge completely overlooked the fact that a substantial number of injuries being incised and punctured wounds were fully supported by Dr. Jatinder Singh and
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not contradicted by Dr. Paramjit Singh. It was not therefore a case of the evidence being totally inconsistent with the medical evidence but a case where there was some doubt as to whether or not Injury No. 11 was caused by a rifle. Here also two experts were examined one of whom had undoubtedly supported the prosecution case and categorically stated that Injury No. 11 could have been caused by a rifle. Injury No. 11 is described in the evidence of Dr. thus :

“Irregular wound with inverted margin 2“ × 1½” was on the left middle inguinal region with counter wound 4“ × 3” on the back left buttock crease. Fractured femur and lacerated muscles were seen at the depth of the wound. Further dissection showed injury to the femoral vessels of the leg”.

The nature, position and content of this injury clearly shows that it was a fire-arm injury which could have been inflicted by a rifle. There was a wound on entrance and another on exit which could be only possible if the deceased was injured by a bullet. There is the positive evidence of P.Ws. 3, 5 and 6 that Piara Singh had shot the rifle which hit the deceased. The bullet was found at the spot and the rifle which was recovered from the possession of Piara Singh was sent to the Ballistic Expert within a very short interval. The Ballistic Expert was of the opinion that the empty found could be discharged from the rifle of the appellant Piara Singh. These circumstances therefore speak volumes in support of the prosecution case. The learned Sessions Judge has completely overlooked the effect of these circumstances in relying on the testimony of Dr. Paramjit Singh alone. It is well settled that the positive evidence in the case is that of the eye-witnesses who had seen and narrated the entire occurrence. The evidence of a medical man or an expert is merely an opinion which lends corroboration to the direct evidence in the case. Where there is a glaring inconsistency between direct evidence and the medical evidence in respect of the entire prosecution story, that is undoubtedly a manifest defect in the prosecution case. This however is not the position here. There is no inconsistency between the direct and the medical evidence. What has happened is that two experts, namely, Dr. Jatinder Singh and Dr. Paramjit Singh had differed in their opinions. The High Court rightly observed that in view of difference of opinion between the two experts the evidence of Dr. Jatinder Singh must be preferred as it is supported by the evidence of the eye-witnesses whose evidence is both reliable and trust-worthy and is also supported by other circumstances proved in the case. It seems to us that where there is a conflict between the opinion of two experts the Court should normally accept the evidence of the expert whose evidence is corroborated by direct evidence of the case which according to the court is reliable. In the case of *The Queen v. Ahmed Ally & Ors.*(1) a Division Bench of the Calcutta High Court in a some-what similar situation observed as follows :—

“Dr. Duncan may have given his evidence like an intelligent man, but it is not the proper way to try on mere theories

(1) 11 Sutherland Weekly Reporter Criminal 25.

A of medical men, or skilled witnesses of any sort against facts positively proved”.

“The evidence of a medical man, or other skilled witness, however eminent, as to what he thinks may, or may not have taken place under a particular combination of circumstances, however confidently he may speak, is ordinarily a more fallible. Human knowledge is limited and imperfect”.

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We find ourselves in complete agreement with the observations made by the Calcutta High Court in the aforesaid case and hold that where the opinion of a medical witness is contradicted by another medical witness both of whom are equally competent to form an opinion the opinion of that expert should be accepted which supports the direct evidence in the case. Apart from this, in the instant case it appears that Dr. Jatinder Singh had the initial advantage of examining the deceased and holding his post-mortem and observing the nature of the injuries on the body of the deceased. His opinion is therefore based on first hand knowledge and would be in any event preferable to Dr. Paramjit Singh who did not have the advantage of seeing the deceased or the injuries on his body but deposed purely on the basis of the description of the injuries given by Dr. Jatinder Singh. For all these reasons therefore we would prefer the evidence of Dr. Jatinder Singh to the evidence of Dr. Paramjit Singh.

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It is true that the High Court has relied on a number of books on medical jurisprudence to support the evidence of Dr. Jatinder Singh. We feel that it was not necessary for the High Court to do so unless the books were put to the expert. Recitals in the books do not provide a sufficient guide to determine the truth or falsity of the testimony of an expert. Having regard to the facts and circumstances indicated above we are clearly of the opinion that the evidence of Dr. Jatinder Singh corroborated as it is by the evidence of the eye-witnesses, the evidence of the recovery of the bullet, the evidence of the ballistic Expert and the evidence given by P.W. Balbir Singh regarding the extra judicial confession made before him must be accepted. The trial Court was therefore not justified in throwing out the prosecution case merely on the basis of the evidence of Dr. Paramjit Singh.

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Another ground on which the learned Sessions Judge sought to falsify the prosecution evidence was that whereas Dr. Jatinder Singh has found that there were some injuries on the person of the deceased which were caused by a blunt weapon the witnesses have not at all stated in their evidence as to how these injuries were caused to the deceased. The High Court, in our opinion, has given a very convincing explanation for this omission. The High Court has explained that there was the direct evidence to show that one of the appellants, namely, Joginder Singh was armed with a gandasa and the deceased was assaulted by all the four persons even after he had fallen on the ground. It is quite possible that Joginder Singh might have assaulted the deceased from the blunt portion of the gandasa which explains the simple injuries on the person of the deceased. In view of the evidence of Dr. Jatinder Singh there can be no doubt that the deceased had contusions and abrasions. It is also proved that the deceased had

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been assaulted by the appellants and by no others. In these circumstances therefore the irresistible inference would be that the deceased must have been assaulted by one of the appellants by a blunt portion of the gandasa. This was therefore not a good ground in law on the basis of which the Sessions Judge could have rejected the prosecution case or held that the evidence of the eye-witnesses was falsified.

Another circumstance relied upon by the learned Sessions Judge was that according to the evidence of the eye-witnesses the deceased died 25 to 30 minutes after the occurrence whereas according to the Doctor he would have died within 4 to 5 minutes after the assault. This appears to be very trivial circumstance and is of no consequence. Two of the eye-witnesses were ladies and the other was a villager. They did not have any watches with them and if they gave the time which elapsed between the assault and the death of the deceased it was purely by guess. The villagers had no idea of time. Moreover, the villagers were not medical experts so as to know as to when the actual death of the deceased took place. Even though the deceased may have died after 5 or 10 minutes the witnesses may have taken him to be alive for another 10 or 20 minutes. This is hardly a circumstance which would go to falsify the evidence of the eye-witnesses and the trial Court was not at all justified in throwing out the prosecution case on this ground. There are other circumstances mentioned by the learned Sessions Judge which do not appear to be material and which are based mainly on speculation and have been rightly displaced by the High Court.

Thus taking an over-all view of the picture presented by the prosecution case we find that there is sufficient evidence against the accused to prove the charge of murder against them. The evidence of the eye-witnesses is fully corroborated by the medical evidence, the evidence of the recoveries, the evidence of the Ballistic expert and the evidence of P. W. Balbir Singh who deposed regarding the extra judicial confession made by the accused Piara Singh. The learned Sessions Judge regarded the extra judicial confession to be a very weak type of evidence therefore refused to rely on the same. Here the learned Sessions Judge committed a clear error of law. Law does not require that the evidence of an extra judicial confession should in all cases be corroborated. In the instant case, the extra judicial confession was proved by an independent witness who was a responsible officer and who bore no animus against the appellants. There was hardly any justification for the Sessions Judge to disbelieve the evidence of Balbir Singh particularly when the extra judicial confession was corroborated by the recovery of an empty from the place of occurrence.

On a careful consideration therefore of the facts and circumstances in the present case we are of the view that the High Court was fully justified in reversing the order of acquittal passed by the learned Sessions Judge and this was certainly not a case in which it could be said that the view taken by the learned Sessions Judge was reasonably possible. We find no merit in this appeal which fails and is accordingly dismissed.

S. R.

Appeal dismissed.