

A THE STATE OF PUNJAB

v.

SURJA RAM

AUGUST 9, 1995

B [M.K. MUKHERJEE AND G.T. NANAVATI, JJ.]

Criminal Law :

Indian Penal Code, 1860 :

C *S.302 read with s.34—Murder—Trial—Conviction by trial Court—Acquittal by High Court—Appeal against acquittal—Held in appeal against acquittal recorded by High Court. Supreme Court does not ordinarily interfere, but if relevant and reliable evidence on record found to have been ignored or brushed aside for reasons wholly unsustainable, the Court will not only justify*
D *but it will be its duty to interfere with acquittal and make amends for failure of justice—Findings recorded by High Court not sustainable—Trial Court justified in convicting accused on evidence on record—Order of acquittal recorded by High Court set aside and order of conviction and sentence of life imprisonment passed by trial Court restored.*

E Respondent no. 1 and his three sons were charged for offences under s.302 read with Section 34 IPC. The prosecution case was that the accused party and the victims were members of one family. On a family partition, a dispute arose between the parties with regard to share in standing crops. On 18.4.1982, at about 5 p.m., when the brother of respondent no. 1 was sitting outside his house, respondent no. 1 accompanied by his three sons reached there. Respondent no. 1 was armed with a spear, respondent no. 2 was armed with a pistol and the remaining two were armed with a kirpan and a soti respectively. Respondent no. 1 shouted at his brother that he should be taught a lesson for not giving the share of the crops. The latter tried to rush into his house, when respondent no. 2 fired at him, as a result of which he fell down. Respondent no. 1 inflicted a spear blow on his chest. The victim died at the spot. PW.2, daughter of the deceased, and PW.3 raised an alarm. All the four assailants then ran towards the field shouting that they would not spare the sons of the deceased. PW.2 and PW.3 also ran towards the field where the sons of the deceased were working. On
H seeing the accused- party, one of the sons of the deceased fled away but the

other could not succeed in his attempt as respondent No. 2 fired three shots at him resulting in his instantaneous death. Finding her brother dead, P.W.2 returned home and sent P.W. 3 to inform her maternal uncle in the nearby village. After P.W. 12 and P.W. 13, maternal uncles of PW2, and PW3 reached there, PW 2 and PW 13 left for the Police Station where PW 2 lodged the First Information Report which was recorded by the Sub-Inspector (PW 18). PW 18 commenced the investigation which culminated in trial of the four assailants.

The trial Court found the evidence of the two eye-witnesses, namely, PW2 and PW 3, reliable so far as it related to the first murder i.e. the murder of the father of PW 2, and convicted respondents no. 1 and 2 of the offence under s.302, read with s.34 IPC and sentence each of them to suffer imprisonment for life. However, the trial Court did not believe the prosecution case with regard to the second murder i.e. the murder of the brother of PW 2, and acquitted all the four accused of the charge. The two respondents, who were convicted and sentenced for the first murder, filed an appeal before the High Court, which allowed the appeal, holding that the FIR was not a genuine document as the same was prepared at the behest of the Investigating Officer; there was no satisfactory explanation for the delay in lodging the FIR; PW 3 was merely a chance witness; and the prosecution case that PW 2 and PW 3 followed the assailants after the first murder and witnessed the second murder was not reliable from the angle of natural course of human conduct and probabilities. Aggrieved, the State Govt. and the complainant filed the appeal by special leave against acquittal of the respondents.

Allowing the appeals, setting aside the judgment of the High Court and restoring the order of conviction and sentence passed against the two respondents by the Trial Court, this Court

HELD : 1. It is trite that while dealing with an appeal against an acquittal recorded by the High Court this Court does not ordinarily interfere with it but if it is found that relevant and reliable evidence on record has been lost sight of, ignored or brushed aside for reasons which are wholly unsustainable this Court will not only be justified, but it will be its duty - to interfere with the acquittal to make amends for the failure of justice. [597-D]

2.1. The finding of the High Court that the FIR was doctored at the

A behest of the Investigating Officer to fit in with the injuries he found on
the person of the deceased at the time of inquest must be attributed to its
non-consideration of material evidence. The affidavit of PW.11 admitted
by the trial Court, to which the accused had no objection, show that the
FIR and the special report in respect of the crime had reached the
B Magistrate in accordance with s.157 of the Code of Criminal Procedure
before departure of the Investigating Officer from the police station for
spot. The Investigating Officer, categorically stated in his statement, which
has not been controverted, that he completed the formalities regarding the
recording of FIR by 9.15 P.M. and proceeded for the spot at 10 P.M. on
18.4.1982. [599-C, B]

C
2.2. There was no delay whatsoever in lodging the FIR, for it was
lodged by PW.2 at 8 P.M. on 18.4.1982, i.e. within three hours of the incident,
after covering a distance of 5 miles. This apart, the sequence of events as
deposed to by P.W. 2 clearly demonstrates that she had gone to the police
station at the earliest opportunity. According to her, she first sent message
D to her maternal uncles through PW.3 and only after their arrival, she went
to the police station. Her evidence in this regard stands fully supported by
PW.12 her maternal uncle, who testified that at 6.30 P.M. PW.3 had gone to
his village and reported the incident to him. Thereafter he left for the place
of occurrence accompanied by PW.13. It is to be seen that PW.2 who was
E aged only 19 years, had lost her father and brother just then and it was not
unlikely of her first to apprise her relations of the same and seek their help
at that hour of her distress. [599-D-F]

2.3. The High Court ought not to have brushed aside the evidence of
F PW.3 solely on the ground that being a resident of another village it was
not expected of him to be present at the spot just at the right time for,
there are, besides his own evidence and that of PW.2, other materials on
record which confirm his presence at the time of the occurrence. PW 12
stated in his evidence that PW.3 had come to his house on April 18, 1982
at about 6.30 P.M. and gave a detailed version of the incident. He further
G stated that accompanied by PW.3, he went to village of the deceased on a
motor cycle. In cross-examination, it was not even suggested to PW.12 that
his statement were incorrect. Another significant fact is that the name of
PW3 finds place in the FIR as a witness to the occurrence. Therefore, there
is no reason to leave the evidence of PW.3 out of consideration on the
H ground that he was a chance witness. [599-H; 600-A-C]

2.4. The High Court was not at all justified in rejecting the evidence of PW.2 and PW.3 so far as it related to the murder of the father of PW 2 on the ground that their claim that they had seen the murder of the brother of PW 2 was highly improbable. Law is well settled that when evidence of a witness is rejected in part a duty is cast upon the court to sift his evidence with more than ordinary care and caution to find out whether the rest of the evidence is fully trust-worthy, either intrinsically or by reason of corroboration from other trustworthy sources. Indeed, the High Court has upheld the view of the trial Court that the maxim "*Falsus in uno, Falsus in omnibus*" has not been applied by the Courts in India, and has rightly negated the plea raised on behalf of the respondents that since the trial court had totally rejected the evidence of P.W. 2 ad P.W. 3 in respect of the second murder, there was no guarantee of truth attached to the self-same evidence in respect of the first murder. [600-D-F]

3. The reasons which weighed with the High Court in recording the order of acquittal in favour of the two respondents cannot be sustained. The trial Court was justified in convicting them solely relying on the evidence of PWs.2 and 3. After going through their evidence carefully it is evident that they fully supported the prosecution case including the specific roles played by the two respondents in the murder of father of P.W.2. Considering the fact that the incident took place just in front of the house of the deceased, PW.2 was the most natural and probable witness. The claim of PW.3 that he was in the house of the deceased at the material time has already been found to be a genuine one. He must, therefore, also be held to be a probable witness. Though both of them were cross-examined at length nothing could be elicited to discard their evidence or materially contradict them. The medical evidence fully supported their testimony. This apart, the F.I.R., which has been promptly lodged, contains a detailed outline of the prosecution case and thus corroborates the evidence of PW. 2, Human blood found near the house of the deceased also in a piece of corroboration of the evidence of P.Ws.2 and 3. Both the witnesses are wholly reliable and their evidence stands corroborated by other evidence on record. [600-F-H; 601-B-C; H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 448 of 1984 Etc.

From the Judgment and Order dated 23.5.83 of the Punjab &

A Haryana High Court in 71-DB of 1983.

Sudhir Walia for R.S. Suri for the Appellants.

Dr. Meera Aggarwal for the Appellant in CrI. A.No. 346/84.

B Ganpat Ram and R.C. Kohli for the Respondent.

The Judgment of the Court was delivered by

C **M.K. MUKHERJEE**, J. Surja Ram and his three sons Mohan Lal, Vinod Kumar and Pramod Kumar, all residents of village Puran Patti under the police station of Fazilka (Sadar), were placed on trial before the Sessions Judge, Ferozepore to answer charges under Section 302 read with Section 34 of the Indian Penal Code for the murders of Tulsa Ram, the elder brother of Surja Ram, and his son Brij Lal. On conclusion of the trial, the learned Judge acquitted all of them of the charge relating to the murder of Brij Lal and also acquitted Vinod Kumar and Pramod Kumar of the other charge but convicted Surja Ram and Mohan Lal and sentenced each of them to suffer imprisonment for life. Against their conviction and sentence, Surja Ram and Mohan Lal preferred an appeal which was allowed by the High Court. Assailing their acquittal these two appeals have been preferred; one by the State of Punjab (Criminal Appeal No. 448 of 1984) and the other (Criminal Appeal No. 346 of 1984) by Kamla Devi, daughter of the deceased Tulsa Ram. Both the appeals have been heard together and this judgment will dispose of them.

F The case for the prosecution, briefly stated, is as under: Ishar Ram, father of Surja Ram and Tulsa Ram had divided his lands in three equal shares, one of which was given to Surja Ram (the respondent no. 1), another to Tulsa Ram (the deceased) and the third was retained by him. In terms of the said division, a field known as 'Diggiwala' fell in the share of Tulsa Ram and he used to sow *Moongi* crops thereon. Surja Ram, however, was demanding a share out of the *Moongi* crops from Tulsa Ram, but the latter told him that as he (Surja Ram) was already in possession of more land than that fell in his share, he should first give him (Tulsa Ram) a part of it before he could claim any share in the *Moongi* crops. This proposal was however not acceptable to Surja Ram.

H On April 18, 1982 at or about 5 P.M. Tulsa Ram was sitting in an open space outside his house while his two sons Ram Gopal (PW 4) and

Brij Lal (the deceased) were away to the field for raising crops. At that time Surja Ram accompanied by his three sons came there and started shouting that Tulsa Ram should be taught a lesson for not giving the share of *Moongi* crops. Surja Ram was carrying a spear, Mohan Lal a pistol, Vinod Kumar a *kirpan* and Pramod Kumar a *soti*. Apprehending danger, Tulsa Ram got up and tried to rush into his house when Mohan Lal fired from the pistol hitting him on the back. As a result thereof Tulsa Ram fell down with his face upwards. Surja Ram then inflicted a blow, with the spear he was carrying, on the chest of Tulsa Ram. Immediately thereafter Tulsa Ram died. Kamla Devi (PW 2), daughter of Tulsa Ram, and Ram Swarup (PW 3) who were inside the house and had earlier come out on hearing the shouts realised by Surja Ram, cried out for help. All the four miscreants then ran towards the field shouting that they would not spare the sons of Tulsa Ram also. Kamla Devi and Ram Swarup then rushed towards the field where Brij Lal and Ram Gopal were working. Sighting the miscreants Ram Gopal fled away but Brij Lal could not succeed in his attempt as Mohan Lal fired three shots at him resulting in his instantaneous death. Finding Brij Lal dead, Kamla Devi came back home and sent Ram Swarup to inform her maternal uncles, who lived in a nearby village. After Ram Swarup returned with her maternal uncles Raja Ram (PW 12) and Kanshi ram (PW 13), Kamla Devi left for the police station accompanied by Kanshi Ram. There she lodged a First Information Report, (Ext. PJ) which was recorded by Sub-Inspector Bhagwan Singh (PW 18).

After registering the case Bhagwan Singh left for the place of occurrence accompanied by Kamla Devi and Kanshi Ram. Reaching there he found the dead body of Tulsa Ram lying in front of his house. He held inquest thereupon and sent it for post-mortem examination. He also collected and seized some blood stained earth from the spot. He then went to the field where the dead body of Brij Lal was lying. After holding inquest he forwarded the dead body for post-mortem examination. From the field he also collected and seized some blood stained earth. Thereafter he recorded the statements of witnesses including Ram Swarup and Ram Gopal. In course of the investigation he arrested the accused persons and interrogated them. Pursuant to the statement made by Surja Ram he recovered a spear which was lying under a heap of cotton sticks in his house. The other accused Mohan Lal (respondent No. 2) also made a disclosure statement and pursuant thereto PW 18 recovered a country-made pistol and three cartridges, which were wrapped in a piece of cloth

A and kept buried in a field. On completion of investigation he submitted charge-sheet and in due course the case was committed to the Court of Session.

B The accused persons pleaded not guilty to the charges levelled against them and stated that they have been falsely implicated. They, however, admitted their relationship inter-se as also with the deceased and the factum of partition.

C To bring home the charges levelled against the accused the prosecution relied principally upon the ocular version of the incident as given out by Kamla Devi (PW 2) and Ram Swarup (PW 3). PW 2 also testified about her having lodged the F.I.R. at the police station and PW 3 spoke about his having gone to village Sabuana immediately after the incident to fetch Raja Ram and Kanshi Ram. To corroborate the testimonies of the above two witnesses the prosecution relied upon the evidence of Dr. S.N. Mittal D (PW 1) who held post-mortem examination upon the two dead bodies and found a number of injuries on their persons. Besides, prosecution laid evidence to prove that pursuant to the statements made by Surja Ram and Mohan Lal (the two accused- respondents) the offending spear and pistols were recovered. The reports of the Forensic Science Laboratory, which indicated that earth seized from near the house of the deceased Tulsa Ram E contained human blood, and of the Ballistic Expert indicating that the recovered pistol was used in recent firing were also exhibited. On discussion of the evidence so adducted by the prosecution, the trial judge firstly held that even if it might be concluded that there was no proof of motive it would not adversely affect the direct evidence of the eye-witnesses. The F trial Judge then discussed the evidence of the two eye-witnesses and found the same reliable, so far as it related to murder of Tulsa Ram 'near his house, notwithstanding some discrepancies which, according to him, were of a minor nature. The trial Judge further held that the injuries found on the dead body of Tulsa Ram by the doctor conformed with the eye-witnesses' narration of the incident. As regards the other murder the trial G Judge held that the account of the incident as given but by the two eye-witnesses stood contradicted by the medical evidence. In drawing the above conclusion he observed that the fire-arm injuries sustained by Brij Lal were the result of a single shot but both the eye-witnesses stated that he had been shot at thrice. Another reason which weighed with him in recording H the order of acquittal in respect of the murder of Brij Lal was the unnatural

conduct of the two eye-witnesses following the murder of Tulsa Ram. According to the trial Judge if PWs 2 and 3 had heard from the accused about their intention to go after the sons of Tulsa Ram and if they had in fact seen the accused going towards the fields where Brij Lal and Ram Gopal were working it was expected of them to raise hue and cry and seek others' help. He also doubted the presence of Ram Gopal in the field. Having perused the evidence on record we find that none of the grounds canvassed by the trial Judge for recording the acquittal in respect of the charge for the murder of Brij Lal is sustainable. However, we need not detail the reasons for our above conclusion for, no appeal was preferred against that acquittal and in these appeals we are only concerned with the question whether the High Court was justified in acquitting the two respondents of the charge relating to the murder of Tulsa Ram.

It is trite that while dealing with an appeal against an acquittal recorded by the High Court this Court does not ordinarily interfere with it but if it is found that relevant and reliable evidence on record has been lost sight of, ignored or brushed aside for reasons which are wholly unsustainable this Court will not only be justified - but it will be its duty - to interfere with the acquittal to make amends for the failure of justice.

From the impugned judgment of the High Court we first find that it negated - and in our view rightly - the plea raised on behalf of the two respondents (the appellants therein) that since the trial Court had totally rejected the evidence of the two eye-witnesses in respect of the murder of Brij Lal there was no guarantee of truth attached to the self-same evidence in respect of the murder of Tulsa Ram, with the following observation :-

"There is no gainsaying and the trial Court has also held that the maxim *Falsus in uno, Falsus in omnibus*" has not been applied by the courts in India but at the same time, what is required to be judged is as to whether the eye-witnesses are otherwise reliable, or not".

The High Court then posed the question as to whether the two eye-witnesses were reliable or not and answered the same in the negative with the following findings :

(i) The F.I.R. was not a genuine document as it was prepared at the behest of the Investigation Officer, after he held inquest, to dovetail with

A the injuries found by him on the person of Brij Lal. Consequently, no reliance could be placed upon the testimony of Kamla Devi, who lodged the same;

B (ii) There was no satisfactory explanation for the delay in lodging the F.I.R. at the police station which was at a distance of hardly 4 or 5 miles from the spot;

C (iii) Ram Swarup was merely a chance witness as he was a resident of a different village and it was a strange coincidence that he had come from his own village to see Kamla Devi at exactly 5 P.M. when the incident took place; and

D (vi) Considering the matter from the angle of natural course of human conduct and probabilities, the two eye-witnesses would not have dared to follow the appellants to the fields, after seeing Tulsa Ram being put to death, in order to witness the murder of Brij Lal and if they had really followed the assailants, as claimed by them, it was more likely that they would have been attacked by the accused persons but no such claim was even made.

E After a close look to the entire evidence on record we are constrained to say that each of the above findings is untenable. Prosecution laid evidence, through P.W. 2 and PW 18 - which was not controverted - that the F.I.R. was lodged at the police station at 8 P.M. on 18.4.82. We next get from the record of the trial Court that on 11.1.1983 the Public Prosecutor tendered the evidence of a number of witnesses, including Constable Sukhwant Singh (PW 11), through affidavits, as he considered
F their evidence to be formal. On such tendering of evidence the trial Judge recorded the following order :

G "The accused have no objection to the admissions to the statements of P.W. 5 to P.W. 11 on affidavits. They do not wish to cross examine them. I hereby order that the statements of formal witnesses P.W. 5 to P.W. 11 be admitted on affidavits."

H The procedure so adopted by the trial Judge was clearly in consonance with Section 296 of the Code of Criminal Procedure. Coming now to the affidavit of PW 11 we get therefrom that on 18.4.1982 at 9.45 P.M. he delivered the special report to Shri D.R. Arora, the Judicial Magistrate

in charge of Fazilka. PW 11 asserted that he did not delay the delivery of the special report. The endorsement in the FIR also corroborates the above uncontroverted statement of PW 11. Then again it is the categorical statement of the Investigation Officer - which again has not been controverted - that he completed the formalities regarding the recording of FIR by 9.15 P.M. and proceeded for the spot at 10 P.M. Having regard to the fact that the FIR and for that matter the special report in respect thereof had reached the Magistrate in accordance with Section 157 of the Code of Criminal Procedure before departure of the Investigating Officer from the police station for the spot, the finding of the High Court that the FIR was doctored at the behest of the Investigating Officer to fit in with the injuries he found on the person of Brij Lal at the time of inquest must be attributed to its non-consideration of material evidence.

Regarding the second finding we can only say that there was no delay whatsoever in lodging the F.I.R. for it was lodged by PW 2 within three hours of the incident after covering a distance of 5 miles. This apart, the sequence of events as deposed to by PW 2 clearly demonstrates that she had gone to the police station at the earliest opportunity. According to her she first sent message to her maternal uncles through Ram Swarup and only after they came she went to the police station and her evidence in this regard stands fully supported by Raja Ram (PW 12), her maternal uncle. PW 12 testified that at 6.30 P.M. Ram Swarup had come to his village and reported the incident to him. Thereafter he left for Kamla's place accompanied by Kanshi Ram. We cannot lose sight of the fact that PW 2, who was aged only 19 years, had lost her father and brother just then and it was not unlikely of her first to apprise her relations of the same and seek their help at that hour of her distress. The High Court, however, observed that if really PW 3 was there nothing prevented PW 2 to go to the police station accompanied by him as he was the sarpanch of his village instead of getting in touch with her maternal uncles. Simply because PW 2 did not react in the way the High Court thought she should have, it ought to have been made a ground for drawing adverse conclusions against her conduct, which was clearly normal and natural. While on this point it will be also pertinent to point out that PW 3 was not a sarpanch of Kamla's village.

Coming now to the third finding it must be said that the High Court ought not to have brushed aside the evidence of Ram Swarup (PW 3) solely on the ground that being a resident of another village it was not expected

A of him to be present at the post just at the right time for, there are, besides
his own evidence and that of PW 2, other materials on record which
confirms his presence at the time of the occurrence. Raja Ram (PW 12)
stated in his evidence that Ram Swarup had come to his house in village
Sabuana on April 18, 1982, at or about 6.30 P.M. and gave a detailed
B version of the incident. He further stated that accompanied by Raja Ram
he went to village Puran Patti on a motor cycle. In cross-examination it was
not even suggested to PW 12 that his above statements were incorrect.
Another significant fact is that PW3's name finds place in the FIR as a
witness to the occurrence. We do not, therefore, find any reason to leave
the evidence of PW 3 out of our consideration on the ground that he was
C a chance witness.

The last finding of the High Court is solely based on the ground that
the claim of the two eye-witnesses that they had seen the murder of Brij
Lal was highly improbable. Even if we proceed on the assumption that the
D finding is unexceptionable still then the High Court was not at all justified
in rejecting their evidence so far as it related to the murder of Tulsa Ram
on that score alone for law is well settled that when evidence of a witness
is rejected in part a duty is cast upon the court to sift his evidence with
more than ordinary care and caution to find out whether the rest of the
evidence is fully trustworthy, either intrinsically or by reason of corrobora-
E tion from other trustworthy sources. Indeed, as noticed earlier, the High
Court itself negated an identical threshold contention raised by the
respondents based on the maxim "Falsus in uno, Falsus in omnibus".

Now that we have found that the reasons which weighed with the High
F Court in recording the order of acquittal in favour of the two respondents
cannot be sustained we have to ascertain whether the trial court was
justified in convicting them solely relying on the evidence of PWs 2 and 3.
After going through their evidence carefully we find that they fully sup-
ported the prosecution case as detailed earlier, including the specific roles
G played by the two respondents in the murder of Tulsa Ram. Considering
the fact that the incident took place just in front of the house of Tulsa Ram,
PW 2 was the most natural and probable witness. The claims of PW 3 that
he was in the house of Tulsa Ram at the material time has already been
found by us to be a genuine one. He must, therefore, also be held to be a
probable witness. Though both of them were cross-examined at length
H nothing could be elicited to discard their evidence or materially contradict

them. Dr. Mittal (P.W. 1) testified that the deceased (Tulsa Ram) had an incised wound on the right chest, and an incised wound below base of neck. He also found four pellet wounds on the dead body besides some abrasions. When P.W. 1 was shown a spear (Ex. P.1) which was seized during investigation he opined that the two incised wounds might have been caused by one blow with that instrument as the two wounds communicated with each other. He further opined that the pellet wounds might have been the result of a single shot from a firearm. The evidence of the Doctor, therefore, fully supports the evidence of the two eye-witnesses. This apart, the F.I.R., which has been found by us to have been promptly lodged contains a detailed outline of the prosecution case and thus corroborates the evidence of P.W. 2. The find of human blood near the house of Tulsa Ram also is a piece of corroboration of the evidence of P.Ws. 2 and 3. The trial judge, however, did not lend any importance to the factum of recovery of the spear and the pistol pursuant to the statements made by the respondent nos. 1 and 2 respectively, on the ground that no blood was found on the spear and the Ballistic Expert's report only indicated that the pistol had been used before it was recovered by such user could not be connected with the commission of the crime. We also, therefore, do not find it prudent to take into consideration the above evidence. However such non-consideration does not in any way deter us from accepting the prosecution case as we find that both P.Ws. 2 and 3 are wholly reliable and their evidence stands corroborated by other evidence on record.

On the conclusions as above we allow both the appeals, set aside the impugned judgment of the High Court and restore the order of conviction and sentence recorded against the two respondents under Section 302/34 I.P.C. by the learned trial Judge. The respondents who are on bail will now surrender to their bail bonds to serve out the sentence.

R.P.

Appeal allowed.