

SATBIR
v.
SURAT SINGH AND ORS.

A

FEBRUARY 12, 1997

[M.K. MUKHERJEE AND B.N. KIRPAL, JJ.]

B

Criminal Law :

Penal Code, 1860 : Sections 148 and 302 read with Section 149.

Rioting and Murder—Accused—Convicted by Trial Court—Acquitted by High Court—Validity of.

C

Evidence Act, 1872 : Section 9.

Identification of accused—Failure to identify one of the accused—Held: Benefit could go only to the person not identified and not to others.

D

Criminal Trial :

Witnesses—Chance witness—Held : His evidence was not necessarily incredible or unbelievable but only required cautious and close scrutiny.

E

Witnesses—Relation of deceased—Held : In a small village such relationship could not be made a ground to brand the witness as an interested witness—That apart mere relationship did not make the evidence of a witness suspect and unworthy of credit.

F

Appreciation of evidence—Three persons assaulted by accused at one and the same time with different weapons—Contradictions as to who assaulted whom and with what weapon—Held : Such minor contradictions could not be made a ground to reject the evidence of the eyewitnesses, if it was otherwise reliable.

G

Motive—Rioting and Murder—Proved by evidence of eyewitnesses along with FIR and medical evidence—Held : Question of motive paled into insignificance.

Constitution of India, 1950 : Article 136.

H

A *Special Leave Jurisdiction—Appeal against acquittal—Interference by Supreme Court—Held : If High Court overlooked important facts and relied upon few circumstances which did not in any way impair the probative value of evidence, Supreme Court would interfere with order of acquittal in order to do complete justice.*

B The appellants-accused were convicted for the offences under Sections 148 and 302 read with Section 149 of the Indian Penal Code, 1860. However, the High Court acquitted the appellants. Hence this appeal.

C According to the prosecution, the land belonging to the son of the deceased was sold to the appellants. The possession, however, remained with the deceased who used to cultivate it. On the fateful day while the deceased, along with two persons, was cultivating the aforesaid land, the appellants, armed with different weapons, came to the field and started beating the three deceased with their respective weapons as a result of which they fell down dead. PWs 7 and 9, who came to the field in search of their missing buffalo, witnessed the incident. PW-7 was a relative of the deceased. The incident was also witnessed by PW- 10.

D The High Court set aside the conviction on the grounds that PW-10 failed to identify one of the appellants in the test identification parade; that PWs 7 and 9 were chance witnesses and hence they were interested witnesses; that PW-7 was related to the deceased; that there were contradictions as to the type of weapons with which the appellants assaulted the three deceased; and that the appellants had no motive for committing the offences of rioting and murder.

E F Allowing the appeal, this Court

G HELD : 1. Ordinarily this Court does not interfere with an order of acquittal recorded by the High Court; but if the High Court arrives at its findings overlooking important facts and relying upon few circumstances which do not in any way impair the probative value of evidence adduced during the trial, this Court would be failing in its duty to do complete justice if it does not interfere with such order of acquittal. [6-F]

H 2. When the witness failed to identify one of the accused the benefit can go only to the person not identified and not to others. The evidence of a chance witness is not necessarily incredible or unbelievable but it only

requires cautious and close scrutiny. [7-G]

3. The High Court was wrong in discarding the testimony of PW-7, as he was a relation of the deceased. In a small village such relationship ought not to have been made a ground to brand him as an interested witness. This apart, mere relationship does not make the evidence of a witness suspect and unworthy of credit. [8-F]

4. In an incident where a number of persons assaulted three persons at one and the same time with different weapons, some contradictions as to who assaulted whom and with what weapons, were not unlikely and such contradictions could not be made a ground to reject the evidence of eyewitnesses, if it was otherwise reliable. Since the evidence of the three eyewitnesses, along with the FIR and the medical evidence, proves the rioting and murder, the question of motive pales into insignificance. [9-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 779 of 1989 Etc.

From the Judgment and Order dated 20.12.85 of the Punjab & Haryana High Court in M.R. No. 6/85 and CrI.A. No. 447-DB of 1985.

R.L. Kohli and Swaraj Kaushal, R.C. Kohli, Prem Malhotra, Ajai Siwach, Harinder Mohan Singh, Ranbir Yadav, Sanjiv K. Pabbi, A.K. Mahajan and Ashok K. Mahajan for the appearing parties.

The Judgment of the Court was delivered by

M.K. MUKHERJEE, J. These appeals stem from an incident that took place in the morning of June 20, 1984 in village Misri, under the jurisdiction of Police Station Bondkalan, in the district of Bhiwani, in which three residents of the Village, namely Prabhu, his son Bir Singh @ Mir Singh and Suraj Bhan, one of their distant relations, were killed. Over the incident a case was registered by the police on a report lodged by Stabir Singh, a resident of the same village, and on completion of investigation police submitted charge-sheet against thirteen persons. As one of them was a 'child', his case was separated for trial by the Children's Court and the other twelve were arraigned before the Sessions Judge, Bhiwani pursuant to an order of commitment made under Section 209 Cr.P.C. Against nine of them, namely, Surat Singh, Balwant Singh, Dola Ram, Subh Ram, Udey Ram, Suresh Kumar, Chhajju Ram, Smt. Chameli and Smt. Giarsi, charges

A under Sections 148 and 302/149 IPC were framed. Against Surat Singh and two others, namely, Ran Singh and Bishambhar a charge of criminal conspiracy to commit the three murders was framed. The remaining accused, namely, Dr. Satyavart Arya, the then doctor in charge of the local primary health centre, was asked to answer charges under Sections 193, 218 and 466 IPC, which were based on the allegations that to make out a defence of alibi in favour of Surat Singh he made false documents to show the he (Surat Singh) was a patient in the health centre between the period from June 19 to June 21, 1984. The trial ended with an order of conviction and sentence recorded against them in respect of all the charges framed. While six of the nine accused persons convicted under Sections 302/149 IPC were sentenced to suffer imprisonment for life, the other three, namely, Surat Singh, Balwant Singh and Dola Ram were sentenced to death. For the other convictions different terms of imprisonment and fine were imposed upon them.

D 2. Aggrieved thereby they preferred appeals in the High Court which were heard alongwith the reference made by the trial Judge under Section 366 Cr.P.C. for confirmation of the sentence of death. By a common judgment the High Court allowed all the appeals, set aside the order of conviction and sentence recorded against the twelve accused persons and rejected the reference. The above judgment of the High Court is under challenge in these appeals : one of which has been filed by Satbir who lodged the F.I.R., and the others by the State of Haryana. During the pendency of these appeals Dr. Satyavart Arya died and therefore the appeals as against him abate. All the appeals have been heard together and this judgment will dispose of them.

F 3. Briefly stated, the prosecution case is that land bearing killa No. 31/17 in village Misri belonged to Partap, son of Prabhu (the deceased). After death of Partap, his widow Surjit sold it to accused Surat Singh, Balwant Singh and Dola Ram, who are all sons of the deceased Chhajju Ram. The possession, however, remained with Prabhu and he used to cultivate it. In the early morning of the fateful day Prabhu along with Bir Singh and Suraj Bhan went to plough the aforesaid land; and at or about 8 A.M. Raj Kumari (PW-10), grand-daughter of Prabhu, came to the field with meals for them. Soon after her arrival, Surat Singh armed with a *jelli*. Balwant Singh with a *farsa*, Dola Ram with a *Kulhari* and Krishan, Subha Ram, Udey Ram, Suresh Kumar and Chhajju Ram with *lathis* came to the field

along with accused Smt. Chameli and Smt. Giarsi. While Chameli was carrying a bag containing red chilli powder and stones Giarsi was having some stones in her hands. Reaching there Surat Singh raised a *Lalkara* that they would exterminate Prabhu and his companions as they were ploughing the land purchased by them. To this Prabhu retorted that it was his ancestral land and he was in its possession for long. Hearing this Smt. Chameli took out stones and chilli powder from her bag and started throwing the same towards the three deceased. Smt. Giarsi also threw stones which she was carrying in her hands. All the other accused persons then started beating the three deceased with their respective weapons as a result of which they fell down. Finding Satbir (P.W. 7) and Harbilas (P.W. 9) of their village, who had by then reached there while in search of the missing buffalo of the latter, and Raj Kumari (P.W. 10) present there, the above accused persons asked them to leave the place; and out of fear they took shelter behind a cluster of bushes nearby wherefrom they saw that they were still beating the three deceased. Soon thereafter the appellants fled away along with their weapons. After they had gone, the above three witnesses returned to the place of occurrence and found that all the three victims had succumbed to their injuries. Harbilas (P.W. 9) then went to their village, *abadi* and informed the Chowkidar who came to the spot. After deputing the Chowkidar to guard the dead bodies, Satbir proceeded to the Police Station to lodge a report. On the way he met ASI Dalip Singh (P.W. 24) at the bus stand and reported the incident. Dalip Singh recorded his statement (Ext. PX) and, after forwarding the same to the Police Station for registering a case, took up investigation. Dalip Singh went to the place of occurrence accompanied by Satbir and prepared inquest reports in respect of the three dead bodies which were lying there. He then sent the dead bodies for post mortem examination. From the spot he seized some blood stained earth and chillies and made them into separate sealed parcels.

4. The autopsy on the dead body of Suraj Bhan was performed by Dr. R.P. Sharma (P.W. 3) who found seven injuries on his person, out of which three were incised wounds and other four lacerated. Dr. R.A. Mittal (P.W. 4) performed autopsy on the body of Bir Singh and found eight lacerated wounds, besides some contusions and abrasions. Autopsy on the dead body of Prabhu was performed by Dr. Suraj Bansal (P.W. 5) and he found two incised wounds, some lacerated wounds and some abrasions and bruises. The doctors opined that the injuries they found on the dead bodies were sufficient in the ordinary course of nature to cause death. In course

A of investigation the police arrested the accused persons and pursuant to the statements made by them recovered some of the weapons allegedly used in the assault.

B 5. The other part of the prosecution case is that on the day prior to the incident accused Surat Singh, Ran Singh and Bishambhar were seen together and heard to talk about exterminating Prabhu.

C 6. The accused persons pleaded not guilty to the charges levelled against them and contended that they had been falsely implicated out of enmity. Accused Surat Singh and his brothers asserted that the land in question was in their possession on the date of the incident.

7. In support of their respective cases the prosecution examined twenty four witnesses and the defence one.

D 8. The learned Courts below considered the medical evidence and concluded that the prosecution succeeded in proving that Prabhu, Bir Singh and Suraj Bhan were murdered. Since the above concurrent finding, being based on proper appreciation of evidence is not to be disturbed, the only question that falls for our consideration (consequent upon the death of accused Satyavart) is whether the High Court's findings that the prosecution failed to conclusively prove the involvement of the accused persons in the murders and that the evidence regarding conspiracy was unreliable, are proper or not.

F 9. Ordinarily this Court does not interfere with an order of acquittal recorded by the High Court; but if the High Court arrives at its findings over looking important facts and relying upon few circumstances which do not in any way impair the probative value of the evidence adduced during trial, this Court would be failing in its duty to do complete justice if it does not interfere with such order of acquittal. Having carefully gone through the impugned judgment in the light of the evidence on record we find that this case, so far as it relates to the acquittal of some of the accused persons of the charges of rioting and murder, calls for such interference. As regards the charge of conspiracy however we are in complete agreement with the High Court that the evidence adduced by the prosecution in proof thereof does not inspire confidence.

H 10. To prove the charges of rioting and murder the prosecution

rested its case primarily upon the evidence of the three eye witnesses, namely, Satbir (P.W. 7), Harbilas (P.W. 9) and Raj Kumari (P.W. 10). All three of them gave an ocular version of the incident detailed earlier, including the roles of the nine accused played in the murders. In dealing with the testimony of Raj Kumari (P.W. 10), who at the material time was aged about ten years, the High Court observed that it was hazardous to place reliance on the same for it was not expected of her to go to the field at 8 A.M. with the meals of Prabhu and Bir Singh. On making the above comment the High Court relied upon the evidence of the doctors who found semi digested food in their stomachs. According to the High Court, since they had, before leaving their house, taken their meals, it was doubtful that P.W. 10 would again take meals for them at 8 A.M. for she admitted, the meals were to be eaten by them at noon. We have not been able to appreciate the above steps of reasoning of the High Court. It is common knowledge that villagers go to cultivate their lands in the early morning and therefore there was nothing unusual in P.W. 10's carrying the meals at or about 8 A.M. for their consumption sometimes later. We cannot also lose sight of the fact that it was the peak of the summer then and therefore it was not unlikely that to avoid the heat the family members of Prabhu and Bir Singh had sent the young girl in the morning so that she could return home early. On mere surmise and conjecture therefore the High Court was not justified in discarding her evidence. The other comment the High Court made about her testimony was that as she was not a resident of the village Misri and occasionally came there she was not expected to be acquainted with the villagers. This comment is based on the fact that she failed to recognise three of the accused persons, namely, Subh Ram, Udey Ram and Suresh Kumar in the test identification parade that was held by a Magistrate (D.W. 1). This comment of the High Court is also not a proper one for, out of the above three Udey Ram and Suresh Kumar were accused of conspiracy and not of rioting and murder, to which only she was a witness; and when she had failed to identify one of the nine accused the benefit can go only to the person not identified, namely Subh Ram, and not others. Having gone through her evidence we find no reason to disbelieve her more so when we find that nothing was elicited in cross examination to discredit.

11. So far as the other two eye-witnesses are concerned, namely P.W. 7 and P.W. 9, both of them stated that they had reached the place of

A occurrence on their way to village Sonf-Kasni to search the buffalo of the
latter which was missing from the morning. The High Court observed that
it was by sheer chance that the buffalo of Harbilas got astray and he along
with Satbir happened to reach the place of occurrence when the accused
persons are said to have arrived and perpetrated the crime. According to
B the High Court one does not come across such coincidence in the ordinary
course of life and, therefore, it was difficult to believe their claim about
their presence at the time on the incident. The only other ground which
prompted the High Court to disbelieve these two witnesses was that Satbir
was related to the deceased and Harbilas belonged to the party of the
deceased. On perusal of their evidence and correlating the same with that
C of P.W. 10 we find that the High Court was not at all justified in doubting
their presence at the time of the incident. It was elicited in their cross
examination that while in search of the buffalo they got information that it
had gone towards village sonf-Kasni. It was further elicited that the place
where the incident took place was on the route to village Sonf-Kasni. There
D was nothing unusual therefore in their being present at the material time,
more so, when there is nothing on record to disbelieve their statement that
the buffalo of one of them, namely, P.W. 9 was missing since the morning.
Even if we were to accept the observation of the High Court that P.W. 7
and P.W. 9 were chance witnesses still then we would not have been
justified in rejecting their evidence altogether on that score alone, for the
E evidence for a chance witness is not necessarily incredible or unbelievable
but it only requires cautious and close scrutiny. The High Court was also
wrong in discarding the testimony of P.W. 7 as he was a relation of
deceased Suraj Bhan, for we find that the relationship is of the fifth degree
and in a small village like the one to which P.W. 7 and deceased Suraj Bhan
F belonged such relationship ought not to have been made a ground to brand
him as an interested witness. This apart, this Court has repeatedly pointed
out that more relationship does not make the evidence of a witness suspect
and unworthy of credit. Equally untenable is the High Court's reasoning
that Harbilas belonged to the party of the deceased as we find no evidence
from which such a conclusion could have been drawn. However the post
eloquent proof of their presence at the material time has been furnished
G by P.W. 10 who stated about their presence and further stated that all of
them left the site of incident on being threatened by the assailants and took
shelter behind a bush, wherefrom they saw the further assault.

H 12. The High Court disbelieved the ocular evidence also on the

ground that medical evidence contradicted it so far as assault on Bir Singh was concerned, in that, whereas the eye witnesses claimed that Balwant Singh assaulted Bir Singh with a *pharsa* a sharp edged weapon to the injuries that the doctor found on his body could be caused by blunt weapons only. On the facts of the instant case this finding of the High Court is, in our view, wholly untenable. The High Court ought to have appreciated that in an incident where a number of persons assaulted three persons at one and the same time with different weapons, some contradictions as to who assaulted whom and with what weapon, were not unlikely and such contradictions could not be made a ground to reject the evidence of eye-witnesses, if it was otherwise reliable, if in the instant case no incised wound, which is caused by a sharp edged weapon, was found on the body of any of the victims it might have made the prosecution case suspect but, as earlier noticed, the other two victims had incised wounds on their persons.

13. In disbelieving the prosecution case the High Court next observed that there was an unusual and unexplained delay of four and half hours in lodging the F.I.R. We are constrained to say that this finding is without any basis whatsoever. Evidence on record proves that after the incident was over at or about 8 A.M. P.W. 7 stayed back to guard the dead bodies while P.W. 9 along with P.W. 10 went to the village *abadi*, which was at a distance of 1.1/2 kms., to inform the Chowkidar, After the Chowkidar came P.W. 7 left for the Police Station and on the way he meet P.W. 14 at the bus stand, which was also at a distance of 1.1/2 kms. from the place of incident, and gave the report at 12.30 P.M. From the above sequence of events it is obvious that before the information was lodged with the police, Harbilas, the Chowkidar and Satbir covered a distance of about 1.1/2 kms. each i.e. a total distance of about 4.1/2 kms. Judged in that context it must be said that there was no delay whatsoever in lodging the F.I.R. On the contrary, the fact that the F.I.R., with the entire substratum of the prosecution case incorporated therein, was lodged promptitude goes a long way to corroborate the testimony of Satbir. The High Court also commented upon non-examination of the Chowkidar but, when P.W. 7 gave information to the police at the earliest opportunity his non-examination was not of much moment.

14. The High Court lastly observed that the prosecutions failed to

A prove the motive it alleged for the crimes and for that purpose the High Court referred to the claim of the respective parties regarding the land. Since the evidence of the three eye-witnesses along with the F.I.R. and the medical evidence proves the rioting and murders the question of motive pales into insignificance. We need not, therefore, dilute on the question whether the finding of the High Court in this regard is proper or not. For the self same reasons we need not discuss the other circumstantial evidence led by the prosecution in support of its case.

15. Coming now to the individual roles of the accused persons in the rioting and murders we find that P.Ws. 7 and 9 named all the nine accused persons as the miscreants. P.W. 10 also named all of them but had earlier failed to identify accused Subh Ram in the T.I. Parade. Such failure however does not affect the prosecution case in any way in view of the evidence of the other two eye witnesses. Though there is no reason to disbelieve the testimonies of the eye witnesses particularly P.Ws. 7 and 9 regarding individual roles of the accused persons in the above offences, we feel the accused Udey Ram and Suresh Kumar are entitled to the benefit of reasonable doubt as their names do not find place in the F.I.R. Accused Smt. Chameli and Smt. Giarsi are also entitled to a similar benefit for it cannot be said with certainty that, though present, they shared the common object of committing the murders. So far as the other five accused namely, Surat Singh, Balwant Singh, Dola Ram, Subh Ram and Chhajju are concerned, the evidence clearly establishes that they committed rioting and in course thereof committed the three murders. The trial Court was therefore fully justified in convicting them under Sections 148 and 302/149 IPC.

16. On the conclusions as above, we upheld the acquittal of Surat Singh, Bishambhar and Ran Singh of the charge under Section 120 B IPC and of Smt. Chameli, Smt. Giarsi, Udey Ram and Suresh Kumar of the charges under Sections 148 and 302/149 IPC, but set aside the acquittal of Surat Singh, Balwant Singh, Dola Ram, Subh Ram and Chhajju under Sections 148 and 302/149 IPC and convict them of the above offences. Considering the fact that since the offences were committed more than 10 years have elapsed we do not feel inclined to restore the sentence of death imposed upon Surat Singh, Balwant Singh and Dola Ram by the Trial Court. We therefore sentence all the above five accused persons to suffer

imprisonment for life each for their conviction under Section 302/149 IPC. A
For their conviction under Section 148 IPC we however do not pass any
separate sentence. Of the above eleven, accused persons, who are all on
bail, Surat Singh, Balwant Singh, Dola Ram, Subh Ram and Chhajju shall
now surrender to their bail bonds to serve out the sentence now imposed
on them and the remaining six shall stand discharged from their respective B
bail bonds.

V.S.S.

Appeal allowed.