

KAMALJIT SINGH

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v.

STATE OF PUNJAB

OCTOBER 16, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

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Criminal Trial :

Appreciation of evidence—Medical and ocular evidence—Minor variations between—Effect of—Held : Ocular evidence takes primacy over medical evidence notwithstanding minor variation between them unless medical evidence completely rules out all possibilities of injuries—Penal Code, 1860, Ss. 302 and 307.

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The appellant-accused was tried for allegedly committing the homicidal death of two persons and also for causing grievous injuries to another person. The trial court held that the prosecution case was suspect and directed acquittal primarily on the grounds that there was delay in lodging the FIR; that the medical evidence was at variation with the ocular evidence; and that PW-5 was an interested witness and his evidence was not wholly reliable. However, the High Court convicted the appellant under Sections 302 and 307 of the Penal Code, 1860. Hence the appeal.

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Dismissing the appeal, the Court

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HELD : 1. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses the testimony of eyewitnesses cannot be thrown out. [790-G]

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Solanki Chimabhai Ukabhai v. State of Gujarat, AIR (1983) SC 484 and State of U.P. v. Krishna Gopal, AIR (1988) SC 2154, relied on.

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A 2. When the acquittal by the trial court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High Court cannot in this case be found fault with for its well-merited interference. [791-A-B]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1286 of 2002.

C From the Judgment and Order dated 31.5.2002 of the Punjab and Haryana High Court in Crl.A. No. 493-DBA of 1992.

Ranjan Lakhanpal, K.S. Barsi, Vipin Gogia and Mrs. Jaspreet Gogia for the Appellant.

D Bimal Roy Jad for the Respondent.

The Judgment of the Court was delivered by

E **ARIJIT PASAYAT, J.** : Appellant-Kamaljit Singh was tried for allegedly having committed homicidal death of two persons named Gurcharan Singh and Sucha Singh (hereinafter referred to as 'the deceased' by their respective names). He was also allegedly guilty of causing grievous injuries on one Udhain Goshal.

F Prosecution version as unfolded during trial is as follows :

G On 17.5.1989, Devinderpal Singh (PW-5) made statement before SI Harinderjit Singh, SHO PS Sadar, Patiala, near the gate of Punjabi University, Patiala. In the said statement it was alleged by Devinderpal Singh (PW-5) that he was working as a Foundry Engineer in Goetz Factory, Bahadurgarh, Patiala for the last six years and that his father Gurcharan Singh-deceased was also working in the said factory for the last 30-32 years and was working as a Manager of Time and Labour Office. It was alleged that in the said foundry, the workers used to perform their duties in shifts. It was alleged that on that day i.e. 17.5.1989, his shift timings were from 6.30 a.m. to 3.00 p.m. At about 10.30 a.m. when he

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was working in the plant, at that time, his Incharge Udain Goshal, (PW-6) was also present in the plant. In the meantime accused Kamaljit also an employee of the said factory, while wearing a gatra Kirpan around his neck, came there and told Udain Goshal (PW-6) that he would teach him a lesson for getting him charge sheeted. Immediately thereupon, accused Kamaljit Singh took out his Kirpan from the gatra and thrust the same on the right side of abdomen of Udain Goshal (PW-6). On receipt of the said thrust blow, he (Udain Goshal) raised an alarm and on hearing it, Harjot Singh, another Foundry Engineer, B.V. Raju, Deputy Manager Foundry and he (Devinderpal Singh-complainant) rushed towards Udain Goshal (PW-6). On raising alarm by them, accused-Kamaljit Singh ran from the spot and they followed him. It was alleged that when his (Devinderpal Singh's) father-Gurcharan Singh, deceased came out from the time office on hearing the raula, accused Kamaljit Singh gave a Kirpan blow on the back of his father (deceased-Gurcharan Singh), who ran towards the foundry and on reaching there, fell down. Deceased Sucha Singh, Senior Personal Manager was also standing near his father Gurcharan Singh. When they were raising an alarm, accused gave a Kirpan blow on the chest of deceased Sucha Singh as a result of which he also fell down. Thereafter Devinderpal Singh (PW-5) along with Harbans Singh and Rajinder Sharma took Gurcharan Singh, Sucha Singh and Udain Goshal, in injured condition to Rajindera Hospital, Patiala. Sucha Singh and Gurcharan Singh succumbed to their injuries in the said hospital, while Udain Goshal (PW-6) was admitted in the emergency ward. After leaving Harbans Singh and Rajinder Sharma near the dead bodies of his father Gurcharan Singh and Sucha Singh, Devinderpal Singh (PW-5) was returning to the factory when police met him in front of the Punjabi University and he narrated the entire occurrence to the police and his statement was recorded. After the occurrence accused-Kamaljit Singh along with weapon had run away from the spot. Motive for the crime was that a few days before accused-Kamaljit Singh had gone to the house of Udain Goshal (PW-6) and had threatened him that he would kill him. After this accused-Kamaljit Singh was charge sheeted. Since deceased Gurcharan Singh and Sucha Singh were from personnel department, as such they were supporting Udain Goshal (PW-6) and for this reason accused Kamaljit Singh had grudge against him. Devinderpal Singh, Harjot and B.V. Raju, had witnessed the entire occurrence. After recording the aforesaid statement of Devinderpal Singh-

A complainant, SI Harinderjit Singh sent the same to the police station, with his endorsement at 1.00 p.m. on the basis of which formal FIR was recorded in PS Sadar, Patiala at 1.15 p.m. on 17.5.1989. Investigation was undertaken. Devinderpal Singh (PW-5) and Udain Goshal (PW-6) were stated to be the eyewitnesses. On completion of investigation, charge sheet B was placed and case was placed for trial. Accused pleaded false implication. The Trial Court held that the prosecution case was suspect and directed acquittal primarily on the following grounds :

(1) There was delay in lodging FIR;

C (2) The medical evidence was at variation of the ocular evidence;

(3) PW-5 was an interested witness and his evidence was not wholly reliable.

D State of Punjab aggrieved at the acquittal, preferred appeal. A revision was also filed by the informant. The High Court held that the conclusions of the trial Court were clearly erroneous and set aside the acquittal and held the accused guilty of offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentenced him to undergo imprisonment for life. He was also sentenced to undergo 10 years E imprisonment for offence punishable under Section 307 IPC. The revision filed by the informant was disposed of along with the appeal by the State.

In support of the appeal, learned counsel for the appellant submitted that the High Court should not have lightly interfered with the well-reasoned and elaborately discussed judgment of the Trial Court. The three F reasons indicated by the Trial Court who found the prosecution version untrustworthy have been upset by the High Court without supportable basis. Presence of PWs at the time of occurrence is doubtful. Attendance register which could have shown whether PW-5 was present at the work G place was not produced. Even the production sheets which would have substantiated the claim that he was working were not produced without any explanation for such non-production.

PW6 who was supposedly assaulted in the same occurrence did not H support the prosecution version and this significant aspect has been lost

sight of by the High Court. It is strange that though several telephones were available, no information was given to the police and only when PW5 was allegedly returning from the hospital he met police near Punjabi University and report was given. It is most unnatural that the person who saw his father dead in the hospital would come to factory and not to his house or to the police station. The medical evidence does not fit in with the manner of assaults as described by PW5. The accused had suffered injury as stated by DW1 and since he was not in a position of mobility he could not have inflicted injuries on three persons leaving two dead and seriously injuring one as stated by PW5. The alleged recovery of weapon was disbelieved by the Trial Court and the High Court did not interfere with the finding on that aspect.

In response, learned counsel for the respondent-State submitted that the presence of PW5 at the factory has been established by the evidence on record. Though attendance register was not produced, a certificate certifying his presence at the factory was brought on record and the same has not been disbelieved. Though injured (PW6) resiled from the statement during investigation, he clearly supported the presence of PW5. Merely because this witness made a departure from what he stated at time of investigation, his entire evidence did not get wiped out. It is always open to a court to act on a portion of evidence tendered by a witness who does not support the prosecution. So far as first information report is concerned, the occurrence took place at 10.30 a.m. inside the factory premises. Three senior officers were seriously injured and PW-5 took to them so that medical treatment could be administered. It is only to save life of the injured they were taken to hospital. First information report was recorded at the police station at 1.15 p.m. It was not PW5 alone who took the injured person to the hospital. The mere fact that nobody else tried to inform police does not cast a shadow of doubt on the authenticity of the first information report. When the occurrence was inside the factory complex and that too involving senior officers not all or any one on his own including PWs would dare to rush to the police, to call them inside the factory and it was too much for the trial Court to overlook this relevant aspect and entertain any suspicion about the case of the prosecution. The High Court, therefore, was justified in holding that the first information report was immediately

A lodged.

The Trial Court was of the view that PW5 was a “transplanted” witness and he was introduced after consultation and confabulations. No relevant or just reason was indicated by the Trial Court to so conclude.

B Though effort was made to show that he was interested in the conviction of the accused, the High Court analysed the evidence of his with great care and caution, taking note of the fact that he was son of deceased-Gurcharan Singh. After detailed analysis his evidence was found credible and the reasons which weighed with the High Court in this regard are not shown to suffer any infirmity to warrant our interference. The other factor which weighed with the trial Court is the alleged variation between the medical and the ocular evidence. Here again, the trial Court’s judgment was practically not based on any acceptable reason. From perusal of statement of Devinderpal Singh (PW-5) and the medical evidence, referred to above, in our opinion, it cannot be said that there was any contradiction between the ocular and medical evidence. There was absolutely no occasion for the trial court to have observed that the evidence of PW5 Devinderpal Singh was not exactly in tune with the medical evidence. Gurcharan Singh, deceased had a stab wound on the back of the chest on “left side, 22 cms. Below the neck and 1 cm. from the midline”, whereas Devinderpal Singh (PW-5) had stated that blow was given to his father on the back towards the right side. In our opinion, it could not be said that there was any contradiction between the ocular and medical evidence when sufficient materials were produced to prove the presence of the accused as well as PW5 at the factory at time of occurrence, the fact that some or more of records which could have been produced but not shown to be deliberately withhold cannot by itself cast any shadow of doubt on the veracity of the prosecution version.

It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses the testimony of eyewitness cannot be thrown out. (See *Solanki Chimabhai Ukabhai v. State of Gujarat*, AIR (1983) SC 484. The position was illuminatingly and exhaustively re-iterated in *State of U.P. v. Krishna Gopal*

and Anr., AIR (1988) SC 2154. When the acquittal by the Trial Court was found to be on the basis of unwarranted assumptions and manifestly erroneous appreciation of evidence by ignoring valuable and credible evidence resulting in serious and substantial miscarriage of justice, the High Court cannot in this case be found fault with for its well merited interference. A
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Above being the position, the conclusions of the High Court are on terra firma. There is no scope for interference with the impugned judgment. The appeal fails and is dismissed.

V.S.S.

Appeal dismissed.