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DHANAJ SINGH @ SHERA AND ORS.

v.

STATE OF PUNJAB

MARCH 10, 2004

B

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

*Criminal Procedure Code, 1973:*

C

*Section 157—Investigation—Procedure for—Defective investigation—Effect on prosecution's case—Held: Even if the investigation was defective, that pales into insignificance where ocular testimony was found credible and cogent—In the case of defective investigation Court should be circumspect in evaluating the evidence—Therefore, accused should not be acquitted solely on account of defective investigation—Constitution of India, Article 136.*

D

*Evidence Act, 1872:*

*Section 45—Opinion of Experts—Blood stained earth not sent for chemical examination—Weapon of assault and pellets also not sent for ballistic examination—Effect on prosecution's case—Held: Not fatal—Criminal Trial.*

E

According to the prosecution, the appellants-accused with fire arms reached the spot of occurrence and threatened that they would teach a lesson to the complainant party for committing the murder of their relations. The appellants chased the deceased and fired three shots killing him. After the appellants departed, one of the complainants, PW-3, was left at the spot to guard the dead body. The other complainant, PW-2, reported the matter to the police. But the police charge-sheeted the complainants, suspecting them to be the murderers but they were subsequently acquitted by the trial court. In the meantime, PW-2 filed a complaint before the Chief Judicial Magistrate alleging that the Investigating Officer (IO) had made out a case as if the complainants were the murderers in order to shield the appellants. Ultimately, the trial court convicted the appellants and the High Court upheld the conviction. The High Court found overall disturbing features as to how the IO had made out a new case to save the accused persons and implicate the complainant party. Hence the appeal.

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On behalf of the appellant, it was contended that the police after thorough investigation had concluded that it was the complainant party which caused the death of the deceased; that the pellets, wads and cartridges were not recovered from the spot; that the weapons of assault were not sent for ballistic examination; that the blood stained earth was not sent for chemical examination; that many persons who could have thrown light on the incident had not been examined; and that the evidence of PWs. 2 and 3 being that of highly interested and inimical persons should have been discarded.

Dismissing the appeal, the Court

**HELD:** 1.1. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. [942-E-F]

*Karan Singh v. State of M.P.*, [1995] 5 SCC 518, *Paras Yadav v. State of Bihar*, [1999] 2 SCC 126 and *Ram Bihari Yadav v. State of Bihar*, [1998] 4 SCC 517, relied on.

1.2. Even if the investigation is defective that pales into insignificance when ocular testimony is found credible and cogent. [943-C]

*Amar Singh v. Balwinder Singh*, [2003] 2 SCC 518, relied on.

2. Both the trial Court and the High Court have analysed the evidence of PWs. 2 and 3 with due care and caution keeping in view the correct legal principles and have found the accused persons guilty. Hence there is no scope for interference under Article 136 of the Constitution. [943-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 941 of 2003.

From the Judgment and Order dated 28.1.2003 of the Punjab and Haryana High Court in CrI. A. No. 633-DB of 2000.

A.T.M. Ranganujam, B.S. Jain for Shankar Diwate for the Appellants.

Bimal Roy Jad. Ms. Sunita Pandit, A.P.S. Deol, Manjit Dalal and Kamal

A Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

B **ARIJIT PASAYAT, J.** There are some unusual cases when the complainant himself is treated as an accused and made to suffer a trial. The present appeal is a case of that nature. But the persons against whom he made accusations subsequently faced trial, and are the accused so far as the present appeal is concerned. The appellants have been convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the "IPC") and sentenced to undergo imprisonment for life and a fine of Rs. 1000 with default stipulation. The conviction made and the sentence imposed by the Additional District and Sessions Judge, Bhatinda were confirmed by the impugned judgment by a Division Bench of the Punjab and Haryana High Court.

The prosecution version as unfolded during trial is as follows:

D The present three appellants along with Jagrup Singh and Nachhattar Singh faced trial for alleged commission of murder of one Sukhmander Singh (hereinafter referred to as the "deceased"). The five accused persons including two who had been acquitted i.e. Jagrup Singh Nachhattar Singh were charge sheeted for allegedly hatching a conspiracy for committing the murder of deceased Sukhmander Singh, thereby committing the offence punishable under Section 120B IPC, and in furtherance of their common intention caused the death of deceased with fire arms and thereby committing offence punishable under Section 302 read with Section 34 IPC. The first information report was lodged on 21.10.1995 by Sukhdev Singh (PW-2) stating that while he and his nephew Bikramjit Singh @ Butta Singh (PW-3) and the deceased had gone to plough the land, suddenly the accused persons armed with fire arms reached the spot of occurrence and raised "lalkara" that they would teach a lesson to the complainant party for committing the murder of their relations. All the three appellants chased the deceased and fired three shots. The complainant (PW-2) and Bikramjit Singh (PW-3) ran away towards village. After committing the murder the accused persons went towards the village with their weapons. After they departed, PWs 2 and 3 went to the spot of the occurrence to ascertain the fate of the deceased and found that he had already died. Leaving PW-3 to guard the dead body, PW-2 reported the matter to his brother Ranjit Singh, the Sarpanch. While he and Ranjit Singh were proceeding to the police station, on the way they found police party headed by Mukhtiar Singh (PW-6) and reported the matter to him. The occurrence took place

around 11.00 a.m. and the first information report was recorded at 4.30 P.M. and was sent to the Area magistrate at a distance of about 20 KMs from the police station and was received by him at 8.40 p.m. It was indicated that the motive of the crime was certain killings where the deceased and family members of PWs 2 and 3 were involved and with a view to take revenge the murder took place. Investigation started in the line as reflected in the FIR, but strangely the police took a view and proceeded as if PWs 2 and 3 were the murderers and had falsely implicated the accused persons. Accordingly they challaned them for trial, but they were acquitted. In the meantime, a complaint was filed by Sukhdev Singh (PW-2) in the Court of Chief Judicial Magistrate, Bhatinda alleging that investigating officer had yielded to political pressure and had made out a case as if the complainant was the murderer. The trial Court considering the evidence on record, found the accused persons guilty. The High Court by the impugned Judgment upheld the conviction and found several disturbing features as to how IO had made out a new case to save the accused persons and implicate the complainant party.

In support of the appeal, learned senior counsel submitted that both the trial Court and the High Court have lost sight of the actual *scenario*, and have erroneously come to hold the accused persons guilty. On the highly tainted evidence of PWs 2 and 3 the conviction should not have been done. When the police after thorough investigation had concluded that it was the complainant party which caused the death of the deceased Dr. S.K. Rajkumar (PW-1) had stated that pellets were recovered; but they were not sent for test by ballistic expert. Weapons were stated to have been recovered pursuant to the information given in terms of Section 27 of the Indian Evidence Act, 1872 ( in short the "Evidence Act"). That is really of no consequence because the discovery statement does not show any incriminating statement. It only says that the guns can be found at some place. The complaint is bald and even the relevant details have not been given, though in evidence it has been stated as to the type of gun that was used, both the trial Court and the High Court have noted that they were not sent for chemical test. Many persons who could have thrown light on the incident have not been examined. No footprints were found. The pellets, wads and cartridges were not recovered from the spot. Merely because the FIR was lodged very promptly, the trial Court and the High Court should not have termed a highly exaggerated and manipulated version to be truthful. The ballistic examination should have been done to find out whether the guns allegedly produced were in fact used. Failure of PW-6 to even smell the guns to find out whether they were recently used provides the foundation for doubt. As the blood stained earth

A was not sent for chemical examination. The situs of assaults has not been established. The guns were also not sent for ballistic examination. Such examination would have provided authenticity of the fire arms purported to have been used. The evidence of PW2 and 3 being that of highly interested and inimical persons should have been discarded.

B In reply, learned counsel for the State submitted that faulty investigation cannot be a ground to affect the credibility of the eye-witnesses. It is a fairly settled position in law that when witnesses are branded as partisan or inimical, their evidence has to be analysed with care and scrutiny. That has been done in the present case and both the trial Court and the High Court have found the evidence to be credible. Even if the investigation was faulty, both the trial Court and the High Court have acted only in the permissible way i.e. to weigh the evidence carefully and come to an independent conclusion. As rightly noted by the High Court, the investigation seems to be slip shod. The highly improbable stand that the complainant and his relatives killed the deceased who was their close relative can hardly be accepted with even a pinch of salt. Though the deceased and the complainant had criminal track records that *per se* will not affect the evidence of witnesses if it is otherwise credible and cogent. Both the trial Court and the High Court after analysing the evidence found it to be credible, cogent and trustworthy. The plea that the primary duty to investigate the evidence is that of the police and when the police has given clean chit, that should *prima facie* be accepted is clearly without substance.

D In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.*, [1995] 5 SCC 518).

F In *Paras Yadav and Ors. v. State of Bihar*, [1999] 2 SCC 126 it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

G As was observed in *Ram Bihari Yadav v. State of Bihar and Ors.*, [1998] 4 SCC 517 if primacy is given to such designed or negligent

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investigation, to the omission or lapses by perfunctory investigation to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v. Balwinder Singh and Ors.*, [2003] 2 SCC 518. As noted in *Amar Singh's* case (supra) it would have been certainly better if the fire arms were sent to the forensic test laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eye-witnesses corroborated by the medical evidence fully establishes the prosecution version failure or omission or negligence on part of the IO cannot affect credibility of the prosecution version.

The stand of the appellants relate essentially to acceptability of evidence. Even if the investigation is defective, in view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets etc. in the background of defective investigation have been considered in *Amar Singh's* case (supra). In the case at hand, no crack in the evidence of the vital witnesses can be noticed.

Both the trial Court and the high Court have analysed the evidence of PWs 2 and 3 with due care and caution keeping in view the correct legal principles and have found accused persons guilty. We find no scope for interference with the conclusions so arrived in an appeal under Article 136 of the Constitution of India. The appeal is dismissed.

V.S.S.

Appeal dismissed.