

SARUP SINGH
v.
STATE OF PUNJAB

OCTOBER 4, 2005

[S.B. SINHA AND R.V. RAVEENDRAN, JJ.]

Penal Code, 1860—Sections 302/34 & 456—House breaking by night to commit murder—Attempt to murder—Illegal use of fire-arms—Three accused including Appellant—Accused are police constables—Service rifle and live cartridges recovered pursuant to confession of Appellant—Similar recovery from other two accused—One accused married to daughter of deceased—Relationship between them strained—All accused though posted on patrol duty, found absent from place of duty at the time of incident—Conviction of Appellant by Courts below—Validity of—Held, valid—In view of the evidence, no motive was required to be proved on part of the Appellant as pleaded by defence—Evidence of eye witnesses including injured eye witness rightly accepted by Courts below—Common intention on part of Appellant with that of the two co-accused established.

According to the prosecution, three police constables- Appellant, 'B' and 'D' clothed in police uniform and armed with service rifles went to the residence of PW2 at night and scaled over the wall of court-yard; that B' and 'D' broke upon the doors of the rooms where PW2 and his wife were sleeping and fired at them and that when PW3 also reached the courtyard by scaling over the wall, a shot was fired at him by the appellant. At the relevant time, the three accused were purportedly deputed on patrol duty at a 'naka' set-up. Consequent to the incident PW2 and PW3 suffered injuries, while PW2's wife died.

Trial Judge found appellant as well as the other two accused guilty. The convictions were confirmed by the High Court in appeal. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. The Appellant made a confession leading to recovery of

A a service rifle having .303 bore alongwith 10 cartridges. A similar recovery was made from 'B' and 'D'. The arms and ammunition recovered were sent to a ballistic expert and it was opined that two of the cartridges had been fired from one of the 303 rifles and two from the other and five from the 7.62 MM rifle (SLR). The pillow, shoe and blood stained earth collected from the place of occurrence were also found to have been stained with human blood. [971-A-C]

B 1.2. Both the Trial Court as also the High Court accepted the evidence of PW1, PW2 and PW3. Both the Courts, furthermore, accepted the evidence of PW14 to the effect that he had transported the three accused. [971-D]

C 1.3. The Appellant's posting with 'B' at the 'naka' set up is not disputed. Issuance of a .303 rifle with cartridges which had been issued to him by the authorities is also not in dispute. The animosity by and between 'B' and family of his wife also stands fully established. It has also been established that the Appellant together with two co-accused were found missing from the place of his duty at 11 P.M. by their superior officers wherefor a report had been entered in the daily register at 11.30 P.M. [971-E]

D 1.4. In view of the aforementioned evidence, motive on the part of the Appellant in commission of the crime takes a back seat which was, thus, not necessary to be proved. Evidence of the eye-witnesses including the injured witnesses having been accepted by the two Courts and as nothing was pointed out on behalf of the Appellant as to why the said findings should be disturbed, this Court accepts the same. [971-F-G]

E 1.5. It is true that in the First Information Report, the name of the Appellant was not mentioned. The Appellant's complicity in the offence has been proved by Inspector, PW 15 the SHO of the concerned Police Station who categorically stated that all the three accused were found missing. It was also proved beyond reasonable doubt that they were issued official rifles which were used in the incident. [971-H; 972-A]

F 1.6. In the First Information Report, it has categorically been stated that 'B' was accompanied by two other persons in police uniform and all of them were armed with rifles. The evidence of PW1 find support from the evidence of PW2 and PW3 also. Both PW2 and PW3 had the occasion

H

to not only see 'B' but also 'D' who not only broke down the door but also dragged PW2 out from the room. It has not been disputed that the doors were found broken by the investigating officer. [972-B-C] A

2.1. All the accused who are constables came to the residence of PW2, armed with sophisticated weapons and each one of them played active role. 'B' and 'D' not only broke upon the doors of the rooms where PW2 and his wife were sleeping, they were fired at immediately. The common intention on the part of the Appellant with that of 'B' and 'D' has, thus, been established. [972-D] B

2.2. Legality of the test identification parade was questioned by 'D' and not by the Appellant. The recovery of the fire arms and the empty cartridges also go a long way in proving the culpability of the Appellant. [972-F] C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 991 of 2004. D

From the Judgment and Order dated 10.12.2002 of the Punjab and Haryana High Court in CrI.A. No. 299-DB of 1998.

Anil Kumar Srivastava, (A.C.) for the Appellant.

Arun K. Sinha, Rakesh Singh and Mukesh Kumar Sinha for the Respondent. E

The Judgment of the Court was delivered by

S.B. SINHA, J. The Appellant herein with one Dilbagh Singh and Baljit Singh were tried and convicted for commission of offence of house breaking by night, to commit murder of Kans Kaur; for attempts on the lives of Joginder Singh and Avtar Singh and also for the illegal use of their fire arms. They were found guilty and were sentenced to undergo imprisonment for life for the murder of Kans Kaur and lesser sentences for the other offences. All the sentences were directed to run concurrently. F G

Baljit Singh was married to Sukhwinder Kaur, daughter of Joginder Singh (PW-2) and Kans Kaur. Owing to alleged demand of dowry, Sukhwinder Kaur came back to her parents from her matrimonial home which gave rise to strained relationship between the parties. Baljit Singh tried to forcibly take away Sukhwinder Kaur on a few occasions but her parents did not permit her H

A to go with him whereupon Panchayat intervened resulting in execution of a purported agreement of informal divorce.

The said Baljit Singh, Dilbagh Singh as also the Appellant herein were constables. All of them were deputed on patrol duty at a naka set up at Fatuwal, GT Road. Their duty hours were between 8 P.M. on 20th February, 1995 to 8 A.M. on 21st February, 1995. Nachhatarpal Singh (PW 14) was working as a helper in a vehicle bearing registration No. PB-08-4886. He along with the driver, Paramjit Singh of the said vehicle was on his way back to Jalandhar from Jandiala Guru after unloading paper. When the said vehicle reached Fatuwal, allegedly the accused stopped the same and asked the driver to take him and other accused persons to Kot Budha. Baljit Singh was armed with self-loading rifle and the Appellant and Dilbagh Singh were armed with .303 rifles. It is not in dispute that the said rifles were issued to the accused persons with ammunition. Kot Budha is situated at a distance of 45 Kms. from Fatuwal. All the three accused at that time were in police uniform. On reaching the informant's (Joginder Singh's) house, they scaled over the wall of the court yard. Gurpreet Kaur (PW1) was sleeping with her mother Kans Kaur, deceased. Joginder Singh was sleeping in another room. While Sukhwinder Kaur, Inderjit Kaur and Sarabjit Singh were sleeping in a third room. Baljit Singh and Dilbagh Singh knocked at the door of the room where Gurpreet Kaur and Kans Kaur were sleeping and then at the door of the Joginder Singh's room. On hearing the voice of Joginder Singh, they broke down the door with the butts of their rifles and fired at him. Thereafter, they broke down the door of the room where Gurpreet Kaur was sleeping and dragged Kans Kaur out. Despite pleas from Sukhwinder Kaur and her two sisters not to kill their mother, they fired shots at Kans Kaur. Avtar Singh, a cousin of Gurpreet Kaur also reached the courtyard by scaling over the wall. A shot was fired at him by the Appellant herein. The three accused thereafter ran away. The death of Kans Kaur and injuries suffered by Avtar Singh and Joginder Singh is not in dispute.

Before the learned Trial Judge, the prosecution examined Gurpreet Kaur, PW1, Joginder Singh, PW2 and Avtar Singh, PW3. Dr. Gural Singh, PW4 performed autopsy and submitted a report therefor Nachhatarpal Singh, PW 14, as noticed hereinbefore, was a helper of the vehicle wherein the Appellant, Dilbagh Singh and Baljeet Singh travelled from Fatuwal to Kot Budha.

The prosecution also examined Inspector Dharam Singh to prove the absence of the three accused from duty from 11 P.M. on 20th February,

1995. Issuance of fire arms and ammunitions to all them was proved by Head Constable, Gurmail Singh (PW16). The injuries on the person of Avtar Singh and Joginder Singh were proved by Dr. Rana Verma. Although a plea of breach of procedures as regard holding of test identification parade was raised by Dilbagh Singh, no such plea was taken by the Appellant herein. A

The contention of the Appellant herein before the Trial Court was that he having not been named in the First Information Report, the prosecution cannot be said to have proved its case against him beyond all reasonable doubt. The learned Trial Judge as also the High Court laid emphasis on the evidence of issuance of fire arms to the three accused and their absence from duty at about the time when the incident occurred. Nachhatarpal Singh was also found to be a trust-worthy witness to prove that the three accused used the vehicle wherein they travelled from Fatuwal to Kot Budha. Nine cartridges were recovered from the place of occurrence and the report of the ballistic expert established that the same had been fired from the rifles issued to the accused. Dilbagh Singh was also identified in the test identification parade by both Gurpreet Kaur and Avtar Singh. B C D

The learned Trial Judge found the Appellant and other two co-accused guilty of commission of the said offences. The appeals preferred by all the accused including the Appellant herein were dismissed by the High Court by reason of the impugned judgment. E

The short question which has been raised in this appeal on behalf of the Appellant is that the prosecution has not proved any motive on the part of the Appellant herein and no reason has been assigned as to why the Appellant being a constable would accompany Baljit Singh for committing the murder of Kans Kaur and cause injuries to Joginder Singh and Avtar Singh. It was further submitted that the Appellant was not identified by anybody. F

The death of Kans Kaur and the injuries sustained by Joginder Singh and Avtar Singh is not disputed. During the post-mortem the following injuries were found on the person of Kans Kaur by Dr. Gurpal Singh, PW4: G

"1. Lacerated penetrating wound 3/4x 3 cm on the left and lateral part of left mammary gland, 3 cm lateral of left nipple. Margins were inverted and blackening was not present. H

2. Lacerated penetrating wound 2 = x 1 cm on the medial side of left mammary gland, margins were everted, the bullet was passing through

A left breast fat.

3. Lacerated penetrating wound $\frac{3}{4}$ x $\frac{3}{4}$ cm on the lower part of neck and upper part of chest just 1 cm below trachial notch. Margins were inverted.

B 4. Lacerated wound $1\frac{1}{2}$ = $\frac{1}{2}$ cm on the back of right chest just below posterial axillary fold in the middle of scapula. On dissection of chest injury No. 3 bullet was passing through upper part of chest injuring right lung, right pleural cavity and lung cavity was full of blood and the bullet was coming out posterially as injury No. 4 described above.”

C Avtar Singh was examined by Dr. D.S. Nagpal and he was found to have suffered the following injuries:

“1. A lacerated wound 0.8 cm x 0.7 cm in size, with inverted margins on lower part of right glutal region. Oozing of blood present from the wound. Probing not done.

D 2. A lacerated wound 3.5 cm x 3 cm in size with everted edges over upper antero medial aspect of right thigh. Oozing of blood present from the wound. Probing not done. Reg. Expert advice of surgical/ Ortho. Specialist for injuries 1 & 2.

E 3. A lacerated wound 0.5 cm x .03 cm in size with skin loss over lower half of outer bone of right pinna (external ear). Oozing of blood present from the wound.

F 4. A grooved lacerated wound with skin los 4 cm x 0.9 cm in size over right portion of occipital region of scalp. Oozing of blood present from the wound which is skin deep.”

Joginder Singh was examined by Dr. D.S. Nagpal and he was found to have suffered the following injuries:

G “1. A lacerated wound 0.8 cm x .08 cm in size with inverted margins over lower part of left chest on anterior aspect. Oozing of blood present from the wound. Probing not done.

H 2. Stomach & large parts of small & large intestines are protending (sic protruding) out of abdomen through its left side along with oozing of blood. The wound over left size of abdomen is not visible as its view has been obstructed by viscera coming out & hence its size &

type cannot be described.”

A

It is not in dispute that the Appellant herein was arrested on 18th March, 1995. Baljit Singh was also arrested on the same date whereas Dilbagh Singh surrendered before Judicial Magistrate on 19th March, 1995. The Appellant made a confession leading to recovery of a service rifle having .303 bore along with 10 live cartridges from the bank of river Beas. A similar recovery was made from Baljit Singh and Dilbagh Singh. The arms and ammunition recovered were sent to a ballistic expert and it was opined that two of the cartridges had been fired from one of the .303 rifles and two from the other and five from the 7.62 MM rifle (SLR). The pillow, shoe and blood stained earth collected from the place of occurrence were also found to have been stained with human blood.

B

C

Both the Trial Court as also the High Court accepted the evidence of Gurpreet Kaur, PW1, Joginder Singh, PW2 and Avtar Singh, PW3. Both the courts, furthermore, accepted the evidence of Nachhatarpal Singh, PW14 to the effect that he had transported the three accused from Fatuwal to Kot Budha.

D

The Appellant's posting with Baljit Singh at the 'nake' set up at Fatuwal is not disputed. Issuance of a .303 rifle with cartridges which had been issued to him by the authorities is also not in dispute. The animosity by and between Baljit Singh and family of his wife also stands fully established. It has also been established that the Appellant together with two co-accused were found missing from the place of his duty at 11 P.M. by their superior officers wherefor a report had been entered in the daily register at 11.30 P.M. on 20th February, 1995.

E

In view of the aforementioned evidence, motive on the part of the Appellant herein in commission of the crime takes a back seat which was, thus, not necessary to be proved the motive. Evidence of the eye-witnesses including the injured witnesses having been accepted by the two courts and as nothing was pointed out by the learned counsel appearing on behalf of the Appellant as to why the said findings should be disturbed by us, we accept the same.

F

G

It is true that in the First Information Report, the name of the Appellant was not mentioned. The Appellant's complicity in the offence has been proved by Inspector Dharam Singh, PW 15 who was the SHO of the Beas Police Station who categorically stated that all the three accused were found missing.

H

- A It was also proved beyond reasonable doubt that they were issued official rifles which were used in the incident.

B In the First Information Report, it has categorically been stated that Baljit Singh was accompanied by two other persons in police uniform and all of them were armed with rifles. The evidence of Gurpreet Kaur find supports from the evidence of Joginder Singh and Avtar Singh also. We have noticed hereinbefore that both Joginder Singh and Avtar Singh had the occasion to not only see Baljit Singh but also Dilbagh Singh who not only broke down the door but also dragged Joginder Singh out from the room. It has not been disputed before us that the doors were found broken by the investigating officer.

C All the accused who are constables came to the residence of the first informant armed with sophisticated weapons and each one of them played active role. Baljit Singh and Dilbagh Singh not only broke upon the doors of the rooms where Joginder Singh and Kans Kaur were sleeping, they were fired at immediately. The common intention on the part of the Appellant with that of Baljit Singh and Dilbagh Singh has, thus, been established.

D So far as the contention of identification of the Appellant is concerned, the High Court in its impugned judgment recorded:

E “Sarup Singh had not claimed identification, therefore, it is not understandable why he was included in the parade.”

F Legality of the test identification parade was questioned by Dilbagh Singh and not by the Appellant herein. The recovery of the fire arms and the empty cartridges also go a long way in proving the culpability of the Appellant herein.

For the reasons aforementioned, we do not find any merit in this appeal which is dismissed accordingly. No costs.

B.B.B.

Appeal dismissed.