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STATE OF PUNJAB

v.

GURDEV SINGH & ORS.

(Criminal Appeal Nos. 349-350 of 2002)

OCTOBER 17, 2008

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[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]

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*Penal Code, 1860 – s. 302 r/w s. 34 – Murder – By six accused – Parties were in inimical terms – Investigating Officer stating that he did not find blood from the scene of occurrence and found no sign of homicidal attack – Medico-Legal report stating the incident as a roadside accident – Conviction of four accused by trial Court – Acquittal of all the accused by High Court – On appeal, held: In the facts of the case, acquittal justified – Prosecution tried to project a vehicular accident into a case of homicidal death.*

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**Respondents-accused were prosecuted for causing death of one person. According to prosecution, the six accused who were in a jeep knowingly hit the scooter which the deceased was driving. When the deceased fell down, all the accused started attacking the deceased with their respective weapons i.e. rods and hockey sticks. PW5 (complainant) and PW8 were the eye-witnesses to the incident. The victim was taken to the hospital by the eye-witnesses. He died after 55 days of the occurrence. The motive behind the occurrence alleged by was that the complainant (brother of the deceased), pursuant to direction of the Court, had taken possession of their land from the accused. In the Medico-Legal Report it was mentioned that it was a roadside accident. Trial Court convicted four of the six accused for offence punishable u/s. 302 r/w 34 IPC. High court acquitted all the accused holding that the deceased died as a result of vehicular accident. Hence the present appeals.**

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**Dismissing the appeals, the Court**

**HELD: 1.1** The High Court has analysed the evidence and come to the conclusion that the prosecution has tried to make a vehicular accident's case into a case of homicidal death. The aspects highlighted by the High Court are germane and relevant. That being so, there is no scope for interference in these appeals. The Investigating Officer (PW12) clearly stated that he did not find any blood on the scene of occurrence and also found no sign of the homicidal attack as projected. Even the scooter number was wrongly mentioned. The High Court further noticed that the scene of occurrence was shifted. [Para 8] [686-G-H; 687-A-C]

**1.2** PW8 stated that about 15 to 20 injuries were inflicted by each of the accused on the person of the deceased. The High Court found it to be totally out of context and also highlighted unusual conduct of PWs 5 and 8. It was pointed out that the accused persons and the deceased, PWs. 5 and 8 were in inimical terms and some of the litigation between them had travelled upto this Court. The background facts highlighted by the defence to indicate false implication on the background facts was accepted by the High Court. [Paras 5, 6 and 7] [686-B-D]

**CRIMINAL APPELLATE JURISDICTION :** Criminal Appeal Nos. 349-350 of 2002

From the Judgment and final Order dated 14.3.2001 of the High Court of Punjab and Haryana at Chandigarh in Crl. Appeal No. 192-DB of 1997 and 596-DB of 1997

Kuldip Singh, R.K. Pandey, T.P. Mishra and H.S. Sandhu for the Appellant.

Kawaljit Kochar and Kusum Chaudhary for the Respondents.

The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in these appeals

A is to the judgment of a Division Bench of the Punjab and Haryana High Court directing acquittal of the respondents. It is to be noted that four out of six respondents were found guilty of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of imprisonment for life and fine of Rs.500/- with default stipulation. B It was awarded by learned Additional Sessions Judge, Sangrur.

2. Prosecution version as unfolded during trial is as follows:

C Gursewak Singh on 24.5.1994 reported to the police that he is the resident of village Gurdaspura and they are five brothers and he is eldest to all. Bhupinder Singh (hereinafter referred to as the 'deceased') is younger to him and Raj Kanwar Singh is younger to Bhupinder Singh and Chitranjan Singh is youngest to all. Being the eldest to all brothers, the complainant is the head of the family and is responsible for looking after the entire land belonging to them, situated in village Gurdaspura. D They took possession of 400 Bighas of land at village Gurdaspura through the orders of the Court on 22.3.1994. The said land was previously being cultivated by Mewa Singh son of Geja Singh adopted son of Keeru Singh, now resident of village E Kalaudi and by others. On 23.5.1994, he along with his brother Raj Kanwar Singh were going towards their village in Maruti Car bearing registration No .PB 138/5659, whereas his brother Bhupinder Singh was also going towards village Gurdaspura after doing his domestic work on his scooter No.HI A-870. F Bhupinder Singh was going ahead of the complainant, while he and Raj Kanwar Singh were following Bhupinder Singh on the car. When they reached near the passage going towards village Nai Wala, within the area of village Khurana, at about 2.00 p.m. a Jeep bearing registration No.PYG351 came from the side of Sangrur, which was being driven by accused Mewa G Singh son of Geja Singh. Accused Mewa Singh overtook the Car of the complainant and knowingly hit the scooter of Bhupinder Singh with an intention to kill him, as a result of which Bhupinder Singh fell down on the road and then accused Mewa H Singh stopped his jeep. Accused Mewa Singh had a rod in his

hand. Accused Geja Singh son of Kartar Singh Jat, Resident of Village Kalaudi was armed with rod and accused Gurdev Singh son of Geja Singh was armed with hockey stick, accused Ram Singh son of Surjit Singh was armed with hockey stick, Jagtar Singh accused son of Chhaju Singh Ghumar, resident of Gurdaspura was armed with soti and accused Gurmit Singh alias Gala, son of Bachan Singh, Ghumar resident of Gurdaspura was armed with rod. They got down from the jeep and at once started causing injuries to Bhupinder Singh. Accused Mewa Singh gave Rod blow on the head of Bhupinder Singh. Accused Geja Singh also gave Rod blow on the forehead of Bhupinder Singh. Thereafter, accused Gurdev Singh gave hockey stick blow to Bhupinder Singh, which hit on his chin. Accused Ram Singh then gave Hockey stick blow which hit on the nose of Bhupinder Singh. Thereafter accused Jagtar Singh gave soti blow to Bhupinder Singh, which hit on the right side of his temple and then accused Gurmals Singh alias Gela, abovesaid, gave Rod blow, which hit in the left side of chest of Bhupinder Singh. Accused Geja Singh, raised Lalkara that Bhupinder Singh should not be left alive and he be killed and be taught a lesson. Thereafter all the accused again caused injuries to Bhupinder Singh with their respective weapons, which hit him on his legs, arms, hands, chest, abdomen also on the abdomen, the complainant and his brother Raj Kanwar Singh raised alarm, which attracted Charanpal Singh son of Har Narain, resident of village Nai wala and he also raised alarm "NA MARO NA MARO". On this all the accused ran away from the spot with their respective weapons towards Bhawani Garh side in their jeep. Being afraid the complainant and his brother Raj Kanwar Singh stood at a distance and watched the occurrence. Due to the injuries received by Bhupinder Singh, he became unconscious and he was taken to Civil Hospital, Sangrur by the complainant and his brother Raj Kanwar Singh and Charan Pal Singh in the car of the complainant for treatment, but due to his serious condition, Bhupinder Singh was referred to Rajindera Hospital, Patiala, but he was taken to D.M.C. Ludhiana for better treatment by the complainant and his brother

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A Raj Kanwar Singh and Charan Pal Singh. They stayed to D.M.C. Ludhiana as the condition of Bhupinder Singh was very serious and they were to look after him. On 24.5.1994 the complainant was going to give information to the police when S.I. Ashok Mohan, S.M.O of Police Station, Sadar Sangrur met him and

B he got recorded his aforesaid statement. Further stated by the complainant that in this connection security proceedings are also pending in the Court of S.D.M. Sangrur. The motive behind the occurrence is that the complainant party had taken possession of their land from the accused in pursuance to the orders of

C the Court in village Gurdaspura on 22.2.1994. After recording the above statement (Ex. PE) of complainant Gursewak Singh, S.I. Ashok Mohan made his endorsement (Ex. PE/1) and sent the same to the Police Station through Om Parkash, on the basis of which formed F.I.R. (Ex. PE/2) was registered by MMC

D Swaran Singh under Sections 307/323/148/149 IPC. Thereafter, S.I. Ashok Mohan along with the complainant went to the place of occurrence, inspected the spot and prepared rough site plan (Ex.PJ) with correct marginal notes. From the place of occurrence, scooter bearing registration number HI A-870 with madguard having dents and broken back lights, was taken into

E possession through recovery memo (Ex. PF), which was attested by ASI Lachhman Dass(P29) and Gursewak Singh (PW6). Thereafter, the Investigating officer went to C.M.L. Ludhiana, where the injured was declared unfit to make statement. On this, the investigating officer recorded the statement

F of Raj Kanwar Singh (PW6). He requested for opinion of the Doctor vide his application (Ex. PW12). On 25.5.1994, another application (Ex. PW12/B) was given before the doctor and the Doctor declared injured Bhupinder Singh unfit to make statement. On 5.6.1994 accused Geja Singh, Mewa Singh, Gurmali

G Singh and Jagtar Singh were arrested in the area of village Kalwarh Kalan when they were going in Jeep No.HYG-351. The personal search memo (Ex. PW9) was prepared and two rods were recovered from the jeep. The said jeep along with its registration certificate and the rods (Ex.P1 and P2) were taken

H into possession through recovery memo (Ex. PW9/A) attested

by the aforesaid PWs. Statements of the recovery witnesses were recorded by the investigating officer.

Further, the case of the prosecution is that Bhupinder Singh died in C.M.C Ludhiana, on 17.7.1994. ASI Kulwant Singh went to C.M.C. Ludhiana and prepared inquest report (Ex. PG) and the offence was changed to under Sections 302/148/149 I.P.C. The dead body of Bhupinder Singh was postmortemed in Civil Hospital, Sangrur. Statements of P.W.s were recorded. Rough site plan was prepared. Accused Gurdev Singh, Sh. Ram Singh surrendered themselves in the Court of Shri S.M.S. Mahial, Chief Judicial Magistrate, Sangrur on 18.8.1994 and they were formally arrested by ASI Kulwant Singh. After completion of the investigation and other formalities, the report u/s 173 Cr.P.C. was prepared by S.I. Ranjit Singh on 21.8.1994 and was submitted in the Court on 1.9.1994.

Since the trial court had accepted the prosecution version and had convicted the accused persons, appeals were filed by them before the High Court. Primary stand before the High Court was that the evidence on record does not show that the deceased lost his life on account of any homicidal attack, on the contrary the evidence on record clearly establish that he died as a result of vehicular accident. The High Court found the defence version to be acceptable and directed acquittal.

3. In support of the appeal learned counsel for the appellant-State submitted that the High Court has attached unnecessary importance to certain notings made in the medical record at the time of admission of the deceased. It is stated that the medical opinion did not rule out homicidal attack.

4. Learned counsel for the respondent on the other hand submitted that the deceased lost his life after about 55 days of the alleged occurrence on account of Septicemia. It is pointed out that the High Court has referred to the evidence on record and found that the prosecution has tried to project a death on account of vehicular accident to be homicidal death. It is to be noted that the High Court took note of several factors which have

A considerable significance. Firstly it was noted that there was delayed lodging of the First information report. PW 5 who is an advocate even did not choose to make a statement either to the police or to the medical officer about the alleged homicidal attacks. He actually appeared on the scene very late and tried to change the factual position.

5. Raj Kunwar Singh PW 8 stated that about 15 to 20 injuries were inflicted by each of the accused persons on the person of the deceased. The High Court found it to be totally out of context and unusual conduct of PWs 5&8 was also highlighted.

6. It was pointed out that the accused persons and the deceased PWs. 5&8 were in inimical terms and some of the litigation have been travelled upto this Court.

7. The background facts highlighted by the defence to indicate false implication on the background facts was accepted by the High Court. It is to be noted that one of the factors was the following entry:

"In the entry in the Medico Legal Report Ex.PW6/A, it is mentioned that it was a road side accident case when the deceased was taken to the hospital first of all. So according to the learned counsel for the appellants, the occurrence right from the beginning was described as a case of accident. He has read over the portion of the bed head ticket Ex.PD which is reproduced hereunder:

"40 years old male came with closed head injury, blunt trauma chest and abdomen following RTA at about 2.30 PM near Sangrur. Details of accident not known but he was going on a scooter. He was taken to Civil hospital, Sangrur by labourers from where he is referred here."

8. The Investigating Officer (PW 12) clearly stated that he did not find any blood on the scene of occurrence and also found no sign of the homicidal attack as projected. Even the scooter number was wrongly mentioned. The High Court further noticed

that the scene of occurrence was shifted. With reference to the  
evidence on record the High Court concluded that this was a  
case where injuries were received in a motor accident and it  
was given the colour of homicidal death. The High Court has  
analysed the evidence and, as noted above, came to the con-  
clusion that the prosecution has tried to make a vehicular  
accident's case into a case of homicidal death. The aspects  
highlighted by the High Court are germane and relevant. That  
being so we find no scope for interference in these appeals,  
which are accordingly dismissed.

K.K.T.

Appeals dismissed.