

[2009] 10 S.C.R. 311

JASWINDER SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 900 of 2006)

JULY 7, 2009

[DR. MUKUNDAKAM SHARMA AND
DR. B.S. CHAUHAN, JJ.]

PENAL CODE, 1860:

ss.302/34 and 307 – Accused-appellant caught hold of the victim saying that he should not be spared, while his co-accused fired at the victim resulting in his death – Accused also firing at the witness who grappled with the co-accused – Held: Accused was rightly convicted and sentenced by courts below

EVIDENCE:

Identification of accused in court – Accused refusing to participate in test identification parade on the ground that he had already been shown to witness – TIP not held – Plea of accused that in the circumstances his identity in trial court should have been held not established – Held: Witness had seen the accused at the time of occurrence at close quarters and also for a reasonable time – He also identified the accused in court – His evidence corroborated by medical evidence – There could be no dispute with regard to identity of the accused – Test identification parade.

The appellant alongwith three others faced trial for committing offences, *inter alia*, punishable u/ss.120-B, 302 and 307 IPC. The prosecution case was that one 'BS' hired contract killers to eliminate 'JS' the son of complainant's landlord, who was stated to have arranged

A the marriage of the daughter of 'BS' against his wishes. On the date of occurrence, the appellant and other co-accused 'CS' entered the house of complainant's landlord, the appellant caught hold of 'JS' and 'CS' shot at him. 'JS' succumbed to his injuries. The trial court
 B convicted and sentenced co-accused 'BS' u/ss.120-B and s.302 IPC; 'CS' was convicted and sentenced, *inter alia*, u/ss.302 and 307/34 IPC; and the appellant was convicted and sentenced, *inter alia*, u/ss. 302/34 and 307 IPC. The
 C fourth accused 'AS' was given benefit of doubt and was acquitted. On appeal, the High Court found participation of co-accused 'BS' doubtful and acquitted him, but upheld the judgment of the trial court as regards the conviction and sentences of the appellant and co-accused 'CS'.

D In the appeal filed by the appellant, it was contended that he was neither named in the FIR nor was any specific role attributed to him therein, and he was arrested only on suspicion after about 25 days of occurrence. It was
 E also submitted that no test identification parade was held as he had already been shown to prosecution witnesses, and in the circumstances, his identity in the trial was to be held as not established.

Dismissing the appeal, the Court

F HELD: 1. The solitary eye-witness, namely, the complainant (PW1) was present in the room where the incident took place. All along he was sitting with the deceased and watching television. PW1 categorically stated in his statement that he had seen accused 'CS'
 G firing with his pistol on the head of the deceased while the appellant caught hold of the deceased saying that he (the deceased) should not be spared. [Para 18] [320-E-H]

1.2. The records reveal that the accused-appellant

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has refused to take part in the TIP taking up the plea that he was already shown to PW-1 by the police. The said plea cannot be accepted for the simple reason that at the time of occurrence PW-1 had occasion to see the appellant not only when he opened the door but also when he took both of them to the room where the deceased was watching the television. Moreover, he grappled with both of them. He himself received gun shot injuries in his hand as also on leg as a result of the shot fired by the appellant. He had seen the appellant at close quarters and also for a reasonable time. He also identified the accused-appellant in the court as the person who had fired at him. His evidence is corroborated by the medical evidence of the doctor who examined him. Therefore, there could be no dispute with regard to the identity of the accused-appellant. [Para 19] [321-B-E]

1.3. The evidence of the eye-witness PW-1 is found to be convincing, reliable and trustworthy. There is no reason to disbelieve his statement. Consequently, there is no merit in the appeal. [Para 20] [321-G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 900 of 2006.

From the Judgment & Order dated 23.09.2005 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 69 of 2004.

Anu Mehta, Rubinder Pal Ghumman and Harinder Mohan Singh for the Appellants.

Kuldip Singh, R.K. Pandey and H.S. Sandhu for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. This appeal is filed

- A by the appellant who stands convicted by the Court of Addl. Sessions Judge (Ad hoc), Hoshiarpur, Punjab under Section 302 read with Section 34 of Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') and also under Section 307 IPC which is affirmed by the High Court of Punjab and
 B Haryana and aggrieved by which the present appeal is filed in this Court.

2. Briefly stated the prosecution case is that a criminal case was registered on the basis of the statement of Jasprit Singh, the complainant and PW-1, who stated in his report that
 C he was residing in village Parowal for the last 12 years in the house of Joginder Singh and on 17.01.2001 at about 7.00 p.m. when he was sitting with his landlord's son Jasbir Singh alias Tota and watching television while sitting on a double bed in the room, somebody from outside called Tota whereupon the
 D complainant opened the door and found two young persons standing outside. Both of them enquired about Jasbir Singh alias Tota upon which the complainant took them inside where Tota was sitting. Then Jasbir Singh alias Tota asked the complainant to bring tea for those persons and the complainant
 E went inside the house to tell the mother of Jasbir Singh alias Tota to prepare tea. In the meantime he heard gun shot fire from the room and hearing the shot he immediately went to that room. On entering the room he saw the young man firing shots on the head of Tota and the other young man saying that Tota
 F should not be left alive. The complainant alleged that he caught hold of the young man who fired at Tota and then the other young man, who was wearing a 'Patka', told the complainant pointing pistol towards him that he would also be killed along with Tota and then he fired the shot which hit the complainant on the finger
 G of his left hand and left ankle as the complainant had caught the hand of that man in which he was holding the pistol. Upon complainant raising the alarm Joginder Singh, the father of Jasbir Singh alias Tota, the deceased namely and Shiv Charan Singh, the father of Jasprit Singh, the complainant reached

there. The man wearing patka ran away from the spot while firing shots and the other young man who also tried to run away was overpowered and the pistol was snatched away from his hand. The said young man was identified later as Charanjit Singh and the other young man with a patka accompanying Charanjit Singh was identified as Jaswinder Singh. In the meantime, Jasbir Singh alias Tota fell on the bed and number of villagers collected there. He was taken to the Civil Hospital, Garhshankar along with complainant where he succumbed to the injuries whereas complainant was medically examined. Sub-Inspector Gian Chand came to the hospital and recorded the statement of complainant on the basis of which the criminal case was registered.

3. During the course of investigation Sub-Inspector Gian Chand took into possession the pistol and the licence of Charanjit Singh, the accused. He visited the place of incident on 18.01.2001, prepared a rough site plan and recorded the statements of the witnesses. He took into possession three empty cartridges, two led bullets of the cartridges, bloodstained bed sheet from the spot along with cap and a scooter bearing Registration No. PI Q-68. He also prepared inquest report on the dead body of Jasbir Singh alias Tota, the deceased. The post-mortem examination was conducted by the doctor.

4. On completion of the investigation he submitted charge-sheet against Charanjit Singh, Jaswinder Singh, Balbir Singh, Avtar Singh and Amarjit Singh. It transpired that Balbir Singh, Avtar Singh and Amarjit Singh had conspired with Jaswinder Singh and Charanjit Singh to commit the murder of Jasbir Singh as he was instrumental in arranging the love marriage of daughter of Balbir Singh.

5. According to the prosecution, Balbir Singh had hired the contract killers for eliminating Jasbir Singh alias Tota for arranging marriage of his daughter with one Jugraj Singh because Balbir Singh did not want his daughter to marry that man. The police could, however, arrest only Charanjit Singh,

A Jaswinder Singh and Balbir Singh initially. Therefore, Charanjit Singh, Jaswinder Singh and Balbir Singh were challaned and Avtar Singh and Amarjit Singh were declared as proclaimed offenders. Later on Amarjit Singh was also arrested and his supplementary challan was presented and committed to the court. Those four accused persons namely Charanjit Singh, B Jaswinder Singh, Balbir Singh and Amarjit Singh were, therefore, tried whereas Avtar Singh was still a proclaimed offender.

C 6. After submission of the charge-sheet, charges were framed under Section 120-B, 302/34, 307/34, 449 IPC and under Section 27 of the Arms Act. When the charges were read over and explained to the accused they pleaded not guilty and claimed to be tried.

D 7. During the course of trial the prosecution examined as many as 11 witnesses and at the end of their deposition the accused persons were examined under Section 313 of the Criminal Procedure Code, 1973 (for short 'the CrPC'). The defence examined the witness Satnam Singh as DW-1. The trial court, namely the Court of the Addl. Sessions Judge (Ad E hoc), Hoshiarpur, Punjab, after hearing the arguments of the counsel appearing for the parties and on examination of the entire records including the depositions and all the statements found accused Charanjit Singh, Jaswinder Singh and Balbir F Singh guilty and convicted and sentenced them by its judgment and order dated 18.09.2003.

G 8. Balbir Singh was found guilty under Section 120-B read with Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month. Charanjit Singh was found guilty under Section 302 and 307/34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for H offence under Section 302 and to undergo rigorous

imprisonment for five years and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for offence under Section 307/34 IPC. Jaswinder Singh was found guilty under Section 302/34 and 307 IPC and sentence to undergo life imprisonment and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for offence under Section 302/34 IPC and to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1000/- and in default of payment of fine to further undergo rigorous imprisonment for one month for offence under Section 307 IPC.

9. The trial court also found both Charanjit Singh and Jaswinder Singh guilty under Section 449 IPC and under Sections 27/54/59 of Arms Act and sentenced each of them to undergo rigorous imprisonment for five years and to pay a fine of Rs. 1000/- each and in default of payment of fine to further undergo rigorous imprisonment for one month for offence under Section 449 IPC and to undergo rigorous imprisonment for three years each and to pay a fine of Rs. 500/- each and in default of payment of fine to further undergo rigorous imprisonment for 15 days each.

10. All the aforesaid substantive sentences were, however, ordered to run concurrently. Amarjit Singh was, however, given benefit of doubt and he was acquitted of all the charges leveled against him.

11. Being aggrieved by the aforesaid judgment and order of conviction and sentence accused Balbir Singh, Charanjit Singh and Jaswinder Singh have filed three separate appeals in the High Court of Punjab and Haryana. The said appeals were entertained and disposed of by a common order dated 23.09.2005 passed by the High Court.

12. After hearing the counsel appearing for the parties, the appeals filed by accused Charanjit Singh and Jaswinder Singh were dismissed thereby upholding the order of conviction and

A sentence passed against them by the trial court. So far accused Balbir Singh is concerned, his participation in the commission of crime was held to be highly doubtful and so was his conviction under Section 120-B IPC. Consequently, the impugned judgment and order of conviction and sentence passed against him was set aside and he was acquitted of all the charges framed against him.

13. During the course of hearing learned counsel appearing for the parties submitted before us that to their information Charanjit Singh has not filed any appeal and only accused Jaswinder Singh has filed the present appeal.

14. We heard the learned counsel appearing for the parties and have also gone through the entire records.

15. It was very forcefully argued before us by Ms. Anu Mehta, learned counsel appearing for the appellant that the appellant was neither named in the first information report nor any specific role and description of his participation had been given therein and that he was arrested from his house only on 10.02.2001, i.e. about after 25 days of the date of incident. It was submitted that the appellant was arrested only on suspicion and without there being any material or specific evidence against him and that the entire prosecution case against him is a got up story and therefore he was liable to be acquitted of all the charges. She also submitted that the Test Identification Parade (for short 'the TIP') was not held because the appellant was shown to the prosecution witnesses before any TIP could be held and consequently there was no justification for holding a TIP and in absence of the same both the courts below should have held that the identity of the accused was not established in the trial. Counsel appearing for the appellant also had taken us through the evidence on record and on the basis thereof she submitted that so far the appellant is concerned, there are a number of contradictions in the prosecution case and, therefore, he is required to be acquitted. It was also submitted that the role ascribed to the appellant in the incident was highly

improbable and unreliable in as much as while holding Jasbir Singh alias Tota, the deceased as alleged by the prosecution, the appellant was using both his hands and, therefore, he could not have brought out his pistol and fired from the said pistol on the injured witness, P.W.1. A

16. Counsel appearing for the respondent-State, however, refuted all the aforesaid submissions contending inter alia that the identity of both the accused persons namely Charanjit Singh and Jaswinder Singh, the sole appellant herein were clearly established in trial. He heavily relied on the evidence of Jasprit Singh, PW-1, the injured eye-witness and also on medical evidence to substantiate that the appellant is guilty of the charges framed against him. B C

17. On a careful analysis of the facts and circumstances of the present case we find that Jasprit Singh, PW-1 as also the complainant, is the person who opened the door so as to enable both the accused persons namely Charanjit Singh and Jaswinder Singh to enter the house of Joginder Singh at the time when the incident took place. He himself took both of them to the room where Jasbir Singh alias Tota, the deceased was watching television with the complainant just before the occurrence. He also categorically stated in his statement that he had seen Charanjit Singh firing a shot with his pistol on the head of Jasbir Singh alias Tota, the deceased while the other young man wearing a patka was catching hold of the deceased and saying that he (the deceased) should not be spared that day. On seeing that situation Jasprit Singh, the complainant caught hold of Charanjit Singh and at that stage Jaswinder Singh, the present appellant who was wearing a patka took out a pistol from the fold of his trouser and fired at Jasprit Singh, the complainant. It has also come in evidence that when the present appellant was about to fire his pistol the complainant pulled his pistol downward and as such fire shot from his pistol had hit at the finger of his left hand and left foot near his ankle. In the meantime, on hearing a noise raised by the complainant, D E F G H

A Joginder Singh, the father of Jasbir Singh alias Tota, the
deceased and Shiv Charan Singh, the father of Jasprit Singh,
the complainant immediately came to the spot from inside the
house and on their arrival Charanjit Singh and Jaswinder Singh,
B the present appellant tried to run away from there. While fleeing
away, the present appellant fired shots from his pistol but the
other accused person was overpowered and given beatings
with fists and his pistol was also snatched. The nabbed
C accused person came to be identified as Charanjit Singh. The
driving license of Charanjit Singh was with him which was
recovered and which gave his complete identity. In the
D meantime, Jasbir Singh alias Tota, the deceased fell down on
the bed and blood started oozing out from his head. Jasprit
Singh, the complainant was also bleeding from his left finger
and ankle. The deceased was taken to the hospital along with
Jasprit Singh, the complainant. Jasbir Singh, the deceased
E died on way to the hospital and accordingly his post-mortem
was conducted in the hospital whereas Jasprit Singh, the
complainant was medically examined and treated by the doctor
of the hospital.

E 18. We have a solitary eye-witness namely Jasprit Singh,
the complainant as well as PW-1, who was present in the room
where the incident had taken place. All along he was sitting with
Jasbir Singh alias Tota, the deceased and watching television.
He opened the door for both the accused persons to enable
F them to come inside the house, took both of them to the room
where Jasbir Singh alias Tota, the deceased was sitting. He
saw Charanjit Singh firing upon the deceased and also grappled
with him whereupon he was fired upon by the co-accused
G namely Jaswinder Singh (the appellant herein), who however,
managed to flee away after the occurrence by firing from his
pistol. The evidence of the solitary eye-witness is also
supported by the medical evidence and, therefore, there is no
reason as to why such evidence should not be held to be
H trustworthy and reliable. Jasprit Singh (PW-1) is the lone eye-
witness of the crime who had seen the actual occurrence of the

incident. He vividly described the whole occurrence that has occurred inside the room. The said evidence on record, according to us, inspires confidence in the facts and circumstances of the present case. A

19. A very strong argument was made before us by the defence in respect of the identity of the appellant particularly on the ground that he was shown to the witness before any TIP could be held. On going through the records we find that the accused-appellant has refused to take part in the TIP taking up the plea that he was already shown to Jasprit Singh, PW-1 by the police. We cannot accept the aforesaid plea taken by the accused-appellant for the simple reason that PW-1 had occasion to see the appellant not only when he opened the door but also when he took both of them to the room where Jasbir Singh alias Tota, the deceased was watching the television. Moreover, he grappled with both of them. He himself received gun shot injuries in his hand as also on leg from the gun fired by the appellant. He described the whole incident in his deposition as to how he received those injuries. He had seen the appellant accused from close quarter and also for a reasonable time. He has also identified the accused-appellant in the court as the person who had fired upon him. His evidence is corroborated by the medical evidence of the doctor who examined him. Therefore, there could be no dispute with regard to the identity of the accused – appellant. B C D E

20. On reading the evidence of the aforesaid eye-witness namely Jasprit Singh (PW-1) we find the same to be convincing, reliable and trustworthy. We find no reason to disbelieve the aforesaid statement of PW-1 and consequently, we find no merit in this appeal, which is dismissed accordingly. F G

R.P.

Appeal dismissed.