

MUKHTIAR SINGH & ANR.

v.

STATE OF PUNJAB
(Criminal Appeal No. 448 of 2007)

JANUARY 20, 2009

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

PENAL CODE, 1860:

s.302 r/w s.34 – Murder – Eye witness account of widow and son not believed by trial court – Accused acquitted – Acquittal set aside by High Court – On appeal, Held: High Court discussed the law laid down by Supreme Court with respect to the formalities and pre-conditions required to be followed and had given reasons in support of the setting aside the acquittal – Hence no interference called for.

The appellants-accused were charged with the murder of the deceased. Trial Court acquitted both the appellants on the ground that the testimony of the two eye witnesses could not be believed as the circumstances confirm absence of the eyewitness at the place of occurrence and that the prosecution case was nothing but a got up story, knitted after due deliberation between the police and the named eye witnesses. On appeal by the State the High Court set aside the order of the trial court. It held that the trial court had discarded the testimony of two eye witnesses on feeble grounds and had entertained unnecessary doubts despite there being clear and sufficient evidence pointing towards the guilt of the accused. Hence the appeal.

Dismissing the appeal, the Court

HELD: 1.1. Though the trial court acquitted both the

A accused persons, the order of acquittal was, however, set
aside by the Division Bench of the High Court. While
doing so, reasons have been given by the High Court
and that too after discussing the law laid down by this
Court with respect to the formalities and pre-conditions
B required to be followed by the court before setting aside
the order of acquittal. The reasons given for setting aside
the acquittal of the accused persons are cogent and
strong. There are two eye witnesses to the occurrence,
namely, PW-2, who happened to be the son of the
C deceased, and PW-3, widow of the deceased. On the day
of the alleged occurrence the deceased was going to
meet his son 'B' and was at the Kahangarh Railway
Station to catch a train at 5.00 a.m. Since 'B' was in jail,
therefore, it was natural that not only the father, the
D deceased, but also his wife, son and other family
members were accompanying the deceased so as to
meet 'B', one of the family members in the jail. Much was
said about the absence of any train ticket with the alleged
eye witnesses but absence of the same was well
E explained. The train was late from its scheduled time due
to which the ticket counter was also not opened, and
therefore, there was no question of purchasing the
tickets for traveling in the train and production of the
same in the trial. [Para 6] [369-B-H; 370-A]

F 1.2. It cannot be expected that a lady and a small boy
of 15-16 years would dare to intervene in the attack made
by the two accused persons being armed with sharp
edged weapons in their hands. PW-5, SPO reached the
scene of the occurrence immediately after the occurrence
G and in fact he ran after and pursued the accused persons
but was unable to catch them. While scrutinizing the
evidence of PW-5, one could find no reason to disbelieve
the statement of the said officer. He was not an
investigating officer nor has he any connection with the
H case apart from being a witness. He also flashed the

initial information which was received by PW-4, the investigating officer, at Railway Police Station, Bathinda. Much was said about the aforesaid information, which was sent to the investigating officer stating only that a dead body is lying at the Railway Station, Kahangarh. There is no dispute that the aforesaid information was very sketchy since the details of the incident were not given in the aforesaid information. But as it was a telegraphic information, therefore, it cannot be said that the absence of material information in any manner destroy the case of the prosecution. [Para 7] [370-B-F]

2. PW-5 has clearly stated in his statement that no telephone was installed at the Railway Station, Kahangarh but there was a telephone installed at the Railway Control Room at the Railway Station which, however, was found to be out of order. He also stated that he had gone to GRP Police Post at Budhlada from where he sent a message to the Control Room at Bathinda on telephone about the occurrence. The aforesaid statement clearly explains the delay in sending the information and also explained as to why detailed information regarding all materials leading to the occurrence was not mentioned by him. He cannot be called in any manner an interested witness; in fact he was a most dis-interested witness. Nothing has been brought on record to show that he is inimical to the accused persons. He has specifically stated in his depositions that he saw the aforesaid accused running towards the village side carrying weapons. His presence at the spot cannot be doubted as it is established that he was at duty at the Railway Police Post, Kahangarh, which is the place of occurrence. He has also stated in his depositions that he had in fact chased the two accused persons up to a certain distance but could not manage to nab them and that when he returned to the scene of occurrence, PW-3, disclosed to him about the occurrence. This shows that he did not see

A the accused persons attacking the deceased but learnt
about the same from an eye witness and the said
information about the dead body lying at the platform
was flashed by him, for he knew that on receipt of the
B aforesaid information the police should start investigation
and during that course police would definitely ask eye
witnesses and get all the information from them. In any
case, his information would be hearsay evidence, but as
the same corroborates the substantive evidence of PW
2 and PW 3 the same would be admissible. [Para 8] [370-
C G-H; 371-A-E]

Pawan Kumar v. State of Haryana, (2003) 11 SCC 241,
referred to.

3. During the course of examination a kirpan and
D takua were recovered pursuant to the disclosure
statement made by the accused. The aforesaid weapons
were shown to PW-1, Doctor, who gave his opinion that
the injuries on the person of the deceased could be
E inflicted by the said weapons. In the opinion of the doctor,
the death was caused due to shock and hemorrhage as
a result of the injuries received, which were ante-mortem
and were sufficient to cause death in the ordinary course
of nature. The aforesaid fact of recovery of the weapons
and also blood stained clothes sufficiently prove and
F establish involvement of the accused in the occurrence
as alleged by the prosecution. There is no reason to
disbelieve the eye-witnesses, namely, PW-2 and PW-3 nor
is there any reason to discard the evidence of PW-5, who
had reached the place of occurrence immediately after
G the attack on the deceased and in fact he chased the two
accused persons for some distance. [Para 9] [371-G-H;
372-A-B]

4. Upon taking all the facts into consideration
including that of the fact of recovery of the alleged
H weapons at the instance of the accused would explicitly

prove and establish that the accused persons are guilty of the offence alleged against them. The High Court was justified in setting aside the order of acquittal and also convicting the accused persons for the offence under Section 302 IPC and sentencing them to undergo rigorous imprisonment for life. [Para 10] [372-C-E]

Case Law Reference:

(2003) 11 SCC 241 referred to **Para 8**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 448 of 2007.

From the final Judgment and Order dated 16.11.2006 of the High Court of Punjab and Haryana at Chandigarh in CrI. Appeal No. 368-DBA of 1997.

Aman Lekhi, Ajay Kumar Jain, Meenakshi Lekhi, Rajan K. Chourasia, Jaspreet S. Rai, Rakesh Kumar, Rohit Nagpal, Vaibhav Vats, B.S. Rajesh Aggrawal and Naresh Kumar for the Appellants.

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

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Challenge in this appeal is to the judgment and order of the Division Bench of Punjab and Haryana High Court, allowing the appeal filed by the respondent State. By the impugned judgment the Division Bench set aside the order of acquittal passed by the learned Sessions Judge, Bhatinda and convicted both the appellants for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC'). The appellants-accused were sentenced to suffer imprisonment for life and to pay a fine of Rs. 10,000/- each with default stipulation.

2. The prosecution version as unfolded during the trial is

A as follows:

A land dispute had been going on between Mukhtiar Singh and his brother Babu Singh (hereinafter referred to as 'deceased') which had ended in favour of the deceased.

B Mukhtiar Singh was aggrieved thereby. His two sons Gurmail Singh and Harbans Singh had caused injuries to the deceased which resulted into fracture of his leg and thereafter Harbans Singh son of Mukhtiar Singh was murdered by deceased and his son Buta Singh.

C On 15.04.1994, the deceased and his family members which included his wife Surjit Kaur, son Makhan Singh, daughter-in-law Jasvir Kaur and father-in-law of daughter of deceased Balwant Singh decided to visit Bathinda jail where the son of the deceased was lodged. In order to catch a train

D to Bathinda they reached Kahangarh Railway Station which was next to their village at about 5:00 AM and waited there for the arrival of the Train. Since the train was late from its scheduled time the ticket counter at the Station was closed.

E Except the deceased all had seated themselves on a bench while the deceased was standing nearby. In the meantime Mukhtiar Singh armed with a kirpan and his son Gurmail Singh armed with a takua came there. Mukhtiar Singh gave two kirpan blows one on the neck of the deceased and another on his head. Consequently, he fell down. Immediately thereafter

F Gurmail Singh gave blows on the chin, right shoulder, left shoulder and chest of the deceased. The family members of the deceased raised an alarm. Mukhtiar Singh accused exclaimed that they had avenged murder of his son.

G One SPO Gurdas Singh who was posted on the Assault Post, Kahangarh Railway Station came running and challenged the accused but both the accused managed to escape. A wireless message was received in the railway station Bathinda at 11:50 AM upon which ASI Gurdip Singh accompanied by other police officials reached the Kahangarh Railway Station

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where he found Surjit Kaur, Makhan Singh, Jasvir kaur, Balwant Singh and SPO Gurdas Singh present. He prepared the inquest report Ex. PC which was attested by Surjit Kaur and Makhan Singh. Thereafter statement Ex. PM, of Surjit Kaur was recorded at 5.15 PM, on which he made an endorsement Ex. PM/1, upon which formal FIR EX. PM/2 was registered in the concerned Police Station. The ASI Gurdip Singh went to the spot, lifted the blood stained earth and put it into a container. After sealing the same, the container was taken into possession vide recovery memo Ex. PK which was attested by the witnesses.

SPO Gurdas Singh also produced a pair of shoes which was taken into possession vide memos Ex.P.U. and a sum of Rs. 165/- which was recovered from the person of the deceased. A rough site plan Ex.PR of the place of occurrence was prepared by the Investigating Officer. The autopsy on the dead body of the deceased was conducted on the next day (16.4.1994) by Dr. Kuldip Rai.

Thereafter, Sub-Inspector Hukam Chand arrested both the accused on 20.4.1994. The investigation was taken up by ASI Gurdip Singh and during interrogation accused Mukhtiar Singh suffered a disclosure statement Ex.PU about concealing of kirpan and blood stained clothes. Thereafter, the accused Mukhtiar Singh got recovered his kirpan and blood stained clothes. Kirpan was taken into possessin vide memo Ex.P.U./ 1 and its sketch Ex.P.U./2 was also prepared. The blood stained clothes were also taken into possession vide separate recovery memos. Similarly Gurmail Singh accused also suffered a disclosure statement Ex.P.V. about concealment of takua and blood stained clothes. Thereafter, he also got recovered takua which was taken into possession vide recovery memo Ex.P.V. and its sketch Ex.P.V./2 was also prepared. His blood stained clothes were also taken into possession.

After the completion of the investigation, challan was filed

A against both the accused and they were charged under Section
302/34 IPC. During the trial Dr. Kuldip Rai was examined as
PW 1, Makhan Singh, son of the deceased was examined as
PW 2; Surjit Kaur, wife of the deceased was examined as PW
3; ASI Gurdip Singh was examined as PW 4 and SPO Gurdas
B Singh was examined as PW 5.

C The trial Court acquitted both the accused of the charges
on the ground that the testimony of two eye witnesses cannot
be believed as the circumstances confirm absence of the
eyewitness at the place of occurrence. It was further stated by
the trial Court that the prosecution case was nothing but a got
up story, knitted after due deliberation between the police and
the named eye witnesses. On appeal by the State the High
Court set aside the order of the trial Court. It held that the trial
D Court had discarded the testimony of two eye witnesses on
feeble grounds and had entertained un-necessary doubts
despite there being clear and sufficient evidence pointing
towards the guilt of the accused.

E 3. Mr. Aman Lekhi, learned senior counsel appearing for
the appellant very eloquently argued that it was a blind murder
and the appellants have been falsely implicated due to the
previous animosity. While elaborating his argument he
submitted that there was significant delay in giving the
information to the police and that the alleged eyewitness were
F not present at the time of the incident and came to the railway
station at 3:00 PM only. He submitted that story knitted by the
prosecution is belied which is established from the very fact
that before recording the statement of the eye witness who were
well present there the ASI proceeded to prepare the inquest
G report.

H 4. On the other hand Mr. Kuldip Singh, learned counsel
appearing for the State while supporting the judgment of the
High Court submitted that the Trial Court committed grave error
while acquitting the accused appellants, in as much as, the
presence of the eye witnesses was natural and the delay in

communicating the offence and lodging the First Information was well explained by the prosecution. A

5. We heard the learned counsel appearing for the parties and have also perused the testimonies on record in addition to other documents. B

6. Before proceeding with the discussion on the merit of the appeal, we would like to mention that the trial court acquitted both the accused persons. The aforesaid order of acquittal was, however, set aside by the Division Bench of the High Court. While doing so, reasons have been given by the High Court and that too after discussing the law laid down by this Court with respect to the formalities and pre-conditions required to be followed by the court before setting aside the order of acquittal. We have very carefully perused the aforesaid reasons and on careful perusal we found that the reasons given for setting aside the acquittal of the accused persons are cogent and strong. There are two eye witnesses to the occurrence, namely, Makhan Singh, PW-2, who happened to be the son of the deceased, and Surjit Kaur, PW-3, widow of the deceased. Although the counsel appearing for the appellant strongly submitted that none of the aforesaid eye-witnesses were present at the time of occurrence but we are unable to accept the said statement for the simple reason that on the day of the alleged occurrence the deceased was going to meet his son Buta Singh and was at the Kahangarh Railway Station to catch a train at 5.00 a.m. Since Buta Singh was in jail, therefore, it was natural that not only the father, the deceased but also his wife Surjit Kaur, son Makhan Singh and other family members were accompanying the deceased so as to meet Buta Singh, one of the family members in the jail. Much was said about the absence of any train ticket with the alleged eye witnesses but absence of the same in our considered opinion was well explained. The train was late from its scheduled time due to which the ticket counter was also not opened, and therefore, there was no question of purchasing the tickets for traveling in C
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A the train and production of the same in the trial.

7. Argument was also advanced by the senior counsel appearing for the appellant regarding the conduct of the eye-witnesses in not intervening while the accused persons were allegedly attacking the deceased. PW-3, the widow of the deceased was a lady whereas Makhan Singh, PW-2, was aged only 15-16 years at the time of the alleged occurrence. Therefore, it cannot be expected that a lady and a small boy of 15-16 years would dare to intervene in the attack made by the two accused persons being armed with sharp edged weapons in their hands. PW-5, Gurdas Singh, SPO reached at the scene of the occurrence immediately after the occurrence and in fact he ran after and pursued the accused persons but was unable to catch them. While scrutinizing the evidence of PW-5, we find no reason to disbelieve the statement of the said officer. He was not an investigating officer nor has he any connection with the case apart from being a witness. He also flashed the initial information which was received by PW-4, Gurdeep Singh, the investigating officer, at Railway Police Station, Bathinda. Much was said about the aforesaid information, which was sent to the investigating officer stating only that a dead body is lying at the Railway Station, Kahangarh. There is no dispute that the aforesaid information was very sketchy since the details of the incident were not given in the aforesaid information. But as it was a telegraphic information, therefore, it cannot be said that the absence of material information in any manner destroy the case of the prosecution.

8. PW-5 has clearly stated in his statement that no telephone was installed at the Railway Station, Kahangarh but there was a telephone installed at the Railway Control Room at the Railway Station which, however, was found to be out of order. He also stated that he had gone to GRP Police Post at Budhlada from where he sent a message to the Control Room at Bathinda on telephone about the occurrence. The aforesaid statement clearly explains the delay in sending the information

and also explained as to why detailed information regarding all materials leading to the occurrence was not mentioned by him. He cannot be called in any manner an interested witness; in fact he was a most dis-interested witness. Nothing has been brought on record to show that he is inimical to the accused persons. He has specifically stated in his depositions that he saw the aforesaid accused running towards the village side carrying weapons. His presence at the spot cannot be doubted as it is established that he was at duty at the Railway Police Post, Kahangarh, which is the place of occurrence. He has also stated in his depositions that he had in fact chased the two accused persons up to a certain distance but could not manage to nab them and that when he returned to the scene of occurrence, Surjit Kaur, PW-3, disclosed to him about the occurrence. This shows that he did not see the accused persons attacking the deceased but learnt about the same from an eye witness and the said information about the dead body lying at the platform was flashed by him, for he knew that on receipt of the aforesaid information the police should start investigation and during that course police would definitely ask eye witnesses and get all the information from them. In any case, his information would be hearsay evidence, but as the same corroborates the substantive evidence of PW 2 and PW 3 the same would be admissible, as was held in the case of *Pawan Kumar v. State of Haryana*, [(2003) 11 SCC 241], wherein it was observed that evidence of such nature could be used to corroborate the substantive evidence. However, in that case, as there was no substantive evidence the benefit of said evidence was not granted.

9. During the course of examination a kirpan and takua were recovered pursuant to the disclosure statement made by the accused. The aforesaid weapons were shown to Dr. Kuldip Rai, PW-1, who gave his opinion that the injuries on the person of the deceased could be inflicted by the said weapons. In the opinion of the doctor, the death was caused due to shock and hemorrhage as a result of the injuries received, which were

- A ante-mortem and were sufficient to cause death in the ordinary course of nature. The aforesaid fact of recovery of the weapons and also blood stained clothes sufficiently prove and establish involvement of the accused in the occurrence as alleged by the prosecution. We find no reason to disbelieve the eye-witnesses,
- B namely, PW-2 – Makhan Singh and PW-3 – Surjit Kaur nor do we find any reason to discard the evidence of PW-5, who had reached the place of occurrence immediately after the attack on the deceased and in fact he chased the two accused persons for some distance.
- C 10. Upon taking all the facts into consideration including that of the fact of recovery of the alleged weapons at the instance of the accused would explicitly prove and establish that the accused persons are guilty of the offence alleged against them. We are of the considered opinion that the High Court was
- D justified in setting aside the order of acquittal and also convicting the accused persons for the offence under Section 302 IPC and sentencing them to undergo rigorous imprisonment for life. With the aforesaid findings we find no infirmity in the impugned order, which we uphold and
- E consequently dismiss the appeal.

G.N.

Appeal dismissed.