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PALWINDER SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No. 2356 of 2009)

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MAY 08, 2013

[DR. B.S. CHAUHAN AND FAKKIR MOHAMED
IBRAHIM KALIFULLA, JJ.]

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Penal Code, 1860 – s.302/34 and 392/34 – Prosecution for murder and robbery – By 4 accused including the appellant-accused – Conviction of all the accused by trial court – High Court convicting appellant-accused while acquitting rest of the accused – Held: Prosecution case proved by evidence of eye-witnesses supported by medical evidence and the recoveries made at the instance of the accused – Conviction of appellant-accused upheld.

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The appellant-accused, alongwith three other accused, was prosecuted for murder and robbery. There were two eye-witnesses (PW-3 and PW-4) to the incident. There were recoveries of weapons of offence and the articles belonging to the deceased, on the basis of confessional statements of the accused persons. Trial court convicted all the accused u/ss. 302/34 and 392/34 IPC. High Court upheld the conviction of appellant-accused, while acquitting rest of the accused. Hence the present appeal.

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Dismissing the appeal, the Court

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HELD: 1. The evidence led by the prosecution disclosed that the deceased died of ante-mortem injuries and that it was a homicidal death, which was fully supported by the version of P.W.1 (the doctor) who conducted post-mortem on the deceased. The injuries

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were all grievous in nature and the deceased met with gruesome death. The recoveries made at the instance of the appellants also fully supported the case of the prosecution. [Paras 17 and 18] [1128-G; 1130-B-C]

2. Reliance placed upon the eye-witness account of P.W.3 for convicting the appellant with the aid of other witnesses is perfectly justified. It is true that with regard to the identity of the rest of the accused other than the appellant, PW-3 stated that he could name them only at the instance of the police personnel. As far as his presence at the place of occurrence was concerned, his version read along with the evidence of P.W.4 discloses that the presence of both of them was beyond any pale of controversy. Even as regards the assault on the deceased, the version of P.W.3 was fully corroborated by P.W.4. Therefore, the presence of P.W.3 at the place of happening of the occurrence was thus fully established with the support of P.W.4. The High Court made a close scrutiny of the version of P.W.3 and found that he was a totally independent witness and he had no axe to grind against the appellant. In fact, his statement that he could not identify the other accused was a very fair statement. When he also belonged to the same village, there was no reason for him to implicate the appellant alone. Therefore, the conclusion of the High Court that such a fair statement made by the witness, namely, P.W.3 cannot be used to totally erase his version, was perfectly justified. Further, because he did not make any attempt to go to rescue of the deceased cannot be put against the witness, inasmuch as when four persons were assaulting the deceased with dangerous weapons that too in the night hour in the present day set up, one cannot expect an unarmed person to get himself entangled and suffer unnecessary harm to himself. Moreover, the occurrence took place late in the light at around 9 pm and, therefore, prudence might have dawned upon him not to fall a

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A cheap prey at the hands of such criminals who were already assaulting a person with a dagger and other weapons. Equally his conduct in having come back to the place of occurrence in the early morning at around 7.30 am along with P.W.4 only shows his earnestness in disclosing what he witnessed on the previous night to the police. [Paras 17 and 18] [1128-G-H; 1130-B-C]

Govindaraju alias Govinda vs. State by Srirampuram Police Station and Anr. (2012) 4 SCC 722: 2012 (5) SCR 67; *Lallu Manjhi and Anr. vs. State of Jharkhand* (2003) 2 SCC 401: 2003 (1) SCR 1 -- held inapplicable.

Case Law Reference:

2012 (5) SCR 67 held inapplicable Para 19

D 2003 (1) SCR 1 held inapplicable Para 19

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2356 of 2009.

E From the Judgment and Order dated 12.09.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 350-DB of 1998.

Vikas Mahajan, Vinod Sharma, Dharam Bir Raj Vohra for the Appellant.

F Bansuri Swaraj, Siddhesh Kotwal, kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

G **FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1.** This appeal is directed against the judgment of the Division Bench of Punjab & Haryana High Court at Chandigarh dated 12.09.2008 in Criminal Appeal No.350-DB of 1998.

H 2. The case of the prosecution as projected before the

Court below was that the deceased Dr. Jasbir Singh was running a chemist shop in the village Wadala Banger, that on 20.08.1996 at 08:00 pm, the cousin of the deceased P.W.2 Gurmeet Singh, along with one Baldev Singh wanted to meet the deceased, that he was proceeding from Kalanaur in his scooter and that near Mir Kachana, near a brick kiln, they found people gathered around on the road and learnt that somebody was murdered. When they went to the spot P.W.2 found that his cousin Dr. Jasbir Singh was found dead with stab wounds and blood was oozing out. He also found the scooter belonging to the deceased lying nearby. He further found 100 rupee currency notes were also lying scattered around the deceased. P.W.2, thereafter, asked his companion Baldev Singh to remain at the spot and proceeded to lodge a report, which came to be registered as FIR No.115 under Section 302, 392 read with 34 IPC on 20.8.1996.

3. P.W.11 the Assistant Sub-Inspector visited the place of occurrence, examined the body of the deceased, prepared the inquest report and sent the body for postmortem. He also collected the currency notes, which were in 100 rupee denomination, the scooter and a rope measuring about 24 feet, which was lying near the dead body. Blood stained earth was also collected from the spot.

4. P.W.1 Dr. Kulwant Singh, conducted the postmortem examination on the body of the deceased on 21.08.1996. Exhibit PA is the postmortem certificate issued by him wherein, as many as 8 injuries were noted by him. At the instance of P.W.14, Om Prakash, P.W.12, the Investigating Officer, arrested four accused including the appelland on 26.08.1996. Based on the admissible portion of the confessional statement of the appelland, as well as the other accused, various recoveries were made including weapons, cash, two gold rings with the inscription 'JSK' and one wrist watch.

5. The prosecution examined 15 witnesses and marked PA postmortem certificate, PV and PX Report of Chemical

- A Examiner and PY and PZ report of Serologists. When the incriminating circumstances were put against the appellant and the other accused under Section 313, they denied the same and pleaded that they have been falsely implicated. They also examined D.Ws.1 and 2 on their side. P.Ws.3 and 4 were
 B examined as eye-witnesses of whom P.W.4 was treated hostile.

6. Having considered the evidence of the prosecution, in particular the version of P.Ws.1 to 4, the medical report, the serologist report, chemical examiner's report and the recoveries
 C made at the instance of the accused, the trial Court found all the accused guilty of the offences alleged against them and while convicting them for the said offences, imposed the sentence of life with fine of Rs.2500/- each and in default to undergo further rigorous imprisonment for six months under
 D Section 302 read with 34 IPC. For the offence proved under Section 392 read with 34 IPC, sentence of 10 years rigorous imprisonment with a fine of Rs.1000/- and in default to undergo rigorous imprisonment for three months was imposed. The sentences were directed to run concurrently.

- E 7. On appeal by all the four accused, the High Court by the judgment impugned in this appeal confirmed the conviction and sentence imposed on the appellant and acquitted the rest of the accused from all the charges.

- F 8. We heard Mr. Vikas Mahajan, learned counsel for the appellant and Ms. Bansuri Swaraj, learned counsel for the respondent/State. Learned counsel for the appellant mainly contended that there were too many contradictions in the version of P.W.3, the so-called eye-witness, that when the High Court chose to disbelieve his version, insofar as it related to
 G the other three accused on the same reasoning, it ought to have acquitted the appellant as well. The learned counsel contended that the arrest of the appellant based on the version of P.W.14, was not true, that since the appellant was involved in some other criminal case earlier, he was falsely implicated in the case on
 H hand. Learned counsel contended that there was no evidence

to show that there was any matching of blood group in order to hold that the appellant was involved in the murder of the deceased. A

9. As against the above submissions, Ms. Bansuri Swaraj, learned counsel for the State contended that though P.W.4 was treated hostile, his version insofar as his going along with P.W.3 to the place of occurrence and the factum of the deceased being attacked by certain persons as stated by PW-3 was fully corroborated and consequently the conclusion reached by the trial Court based on the eye-witness account of P.W.3, supported by the version of P.W.4 to that extent read along with the medical evidence for convicting appellant and the confirmation of the same by the High Court in the impugned judgment, does not call for interference. B C

10. Having heard learned counsel for the appellant as well as the respondent/State and having bestowed our serious consideration to the case pleaded and on perusal of the material papers including the judgment of the High Court, as well as the trial Court, we are also convinced that the conviction and sentence imposed on the appellant cannot be assailed. D E

11. The thrust of the submission of the learned counsel for the appellant was that the whole case of the prosecution was built upon P.W.3 and his version was wholly unreliable. The learned counsel in support of his submission, placed reliance upon the decisions reported in *Govindaraju alias Govinda v. State by Srirampuram Police Station and another* - (2012) 4 SCC 722 paragraph 25 and *Lallu Manjhi and another v. State of Jharkhand* - (2003) 2 SCC 401. By relying upon the above-said decisions, learned counsel contended that P.W.3 could not have witness the occurrence as deposed by him. F G

12. We perused the evidence of P.W.3. The version of P.W.3 was that on the date of occurrence, namely, 20.08.1996, he went to Batala to see his sister who was married in H

- A Sagarpura adjoining Batala, that around 8.00 p.m. he started from his sister's house and on the way he met P.W.4 who agreed to provide a lift to P.W.3. It is his further version that when both of them reached a brick kiln at Mir Kachana around 8.45 or 9.00 p.m. they saw the deceased as well as the accused in a melee among whom the appellant was one of them. He, however, stated that he was not able to identify the rest of the accused. He also stated that appellant and the three other persons were attacking the deceased by giving dagger blows and that he saw the appellant giving such specific dagger blows on the palm of the right hand of the deceased, as well as, wrist on the chest. He also stated that further dagger blows were also inflicted upon the deceased. According to P.W.3, he could notice the above incident with the aid of the head lamp of the scooter.
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- D 13. In the cross-examination, he stated that the other accused muffled their faces and he was able to mention their names with the help of the police personnel. He also stated that it was 10 p.m. and, therefore, he left that place and on the next day morning he first informed his family members and along with P.W.4 he met police officials by around 8 or 8.40 a.m. at the place of occurrence where the body was still lying where he also gave his statement. According to him, none of the relatives of the deceased met him. He also fairly stated that he did not make any attempt to rescue the deceased.
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- F 14. P.W.4 who was treated as hostile supported the version of P.W.3 upto the factum of assault on the deceased by 4 or 5 persons near brick kiln of Mir Kachana, including the lift which he extended to P.W.3 on Dera Baba Nanak Road near Tonga stand. He also mentioned that both of them were going to village Wadala Banger. He, however, stated that he could not identify any of the accused who were assaulting the deceased. He also expressed his inability to identify the appellant.
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15. P.W.1, Dr. Kulwant Singh identified the postmortem certificate issued by him as Exhibit PA and deposed that he noticed the following injuries on the body of the deceased:

"1. An incised wound C shaped 4 cm x ¼ cm on the Palmer side of right wrist joint, muscle deep.

2. An incised wound 1½ x ¼ cm on the palmer side of right hand in the middle, muscle deep.

3. An incised penetrating (both sides) wound spindle shaped 3 cm x 1 cm on the front of right shoulder joint, muscle deep.

4. An incised penetrating (both sides) wound spindle shaped 2 ½ cm x 1 cm on right lateral side and lower part of the chest on the interior axillaries line 17 cm from the axilla.

On dissection underlying liyar was ruptured and whole abdominal cavity was full of blood.

5. An incised penetrating wound (both side) spindle shaped 2 ½ cm x 1 cm on the front and upper part of left side of chest, 6 cm from midline 2 cm below clavical.

On dissection: underlying left lung was ruptured and thorax cavity is full of blood

6. An incised penetrating wound (both side) spindle shaped 2 ½ cm x ½ cm on the front and left side of chest 2 cm medial to the left nipple.

On dissection: underlying chest wall and pericardium was pierced. Heart was ruptured and pericardium was full of blood.

7. Incised penetrating wound ¾ cm x 1 ½ cm (both

A side) spindle shaped on the left side of abdomen
19 cm from the umbilicus and parallel) do it.

On dissection: The abdominal cavity was ruptured. Colon
on left side was ruptured. Abdominal cavity was full
of blood.

B 8. 6 incised penetrating wounds (spindle shaped,
sharp from both sides) 2 cm x 1 cm, 3cm x 1½ cm,
2 ½ cm x 1cm, 2cm x ½ cm, 2 cm x ½ cm, 2cm x
½ cm on the back and left side of chest. All were
C muscle deep."

16. The Investigating Officer, P.W.12, deposed that based
on the interrogation, the appellant made a confessional
statement and the admissible portion of which was to the effect
D that he had concealed one dagger used in the crime near a
Shisham tree near brick kiln of Mir Kachana, apart from the
concealment of one ring, one shirt and pant and Rs.1200/- in
the iron box lying in his house, which were recovered under
Exhibit PQ attested by Harjinder Singh. P.W.14 Om Prakash
deposed that all the four accused met him and confessed about
E the killing of the deceased and that he produced them before
the police. P.W.5, the wife of the deceased Jasbir Singh stated
that her husband used to wear two gold rings with the
impression 'JSK', one Titan wrist watch and one purse and that
above articles were missing from the dead body of her
F husband.

17. The above evidence led by the prosecution, disclosed
that the deceased died of ante-mortem injuries and that it was
a homicidal death, which was fully supported by the version of
G P.W.1 Dr. Kulwant Singh. The injuries were all grievous in
nature and the deceased met with gruesome death. When we
come to the evidence of P.W.3 it is true that with regard to the
identity of the rest of the accused other than the appellant, he
stated that he could name them only at the instance of the police
H personnel. As far as his presence at the place of occurrence

was concerned, his version read along with the evidence of P.W.4 discloses that the presence of both of them was beyond any pale of controversy. Even as regards the assault on the deceased, the version of P.W.3 was fully corroborated by P.W.4. Therefore, when the presence of P.W.3 at the place of happening of the occurrence was thus fully established with the support of P.W.4, as rightly concluded by the trial Court, as well as, the High Court, the only other question was whether the rest of the statement made by P.W.3 merited any acceptance. In that respect, we find that the High Court made a close scrutiny of the version of P.W.3 and has found that he was a totally independent witness and he had no axe to grind against the appellant. In fact, his statement that he could not identify the other accused, as rightly held by the Division Bench of the High Court, was a very fair statement. When he also belonged to the same village, there was no reason for him to implicate the appellant alone. He could have simply stated that he knew the other accused also and that he had noted their presence at the place of occurrence. Therefore, the conclusion of the High Court that such a fair statement made by the witness, namely, P.W.3 cannot be used to totally erase his version, was perfectly justified. Further, because he did not make any attempt to go to rescue of the deceased cannot be put against the witness, inasmuch as when four persons were assaulting the deceased with dangerous weapons that too in the night hour in the present day set up, one cannot expect an unarmed person to get himself entangled and suffer unnecessary harm to himself. Moreover, the occurrence took place late in the light at around 9 pm and, therefore, prudence might have dawned upon him not to fall a cheap prey at the hands of such criminals who were already assaulting a person with a dagger and other weapons. Equally his conduct in having come back to the place of occurrence in the early morning at around 7.30 am along with P.W.4 only shows his earnestness in disclosing what he witnessed on the previous night to the police.

18. Therefore, we find force in the submission of the

A learned counsel for the State that the presence of P.W.3 along with P.W.4 at the time when the occurrence took place and the identity of the appellant by P.W.3 and describing his involvement in the commission of the offence as narrated by him, was rightly believed by the trial Court, as well as, by the High Court and we are also convinced that such a reliance placed upon the eye-witness account of P.W.3 for convicting the appellant with the aid of other witnesses is perfectly justified. The recoveries made at the instance of the appellants also fully supported the case of the prosecution.

C 19. Having reached the above conclusion, we find that the reliance placed upon the decision reported in *Govindaraju alias Govinda* (supra), as well as, *Lallu Manjhi* (supra) will be of no avail to the appellant. We say so, since we are convinced that the version of P.W.3 was wholly reliable and there was no reason to doubt his version in order to apply the principles set out in the above referred decisions.

20. We, therefore, do not find any merit in this appeal. The appeal fails and the same is dismissed.

E K.K.T. Appeal dismissed.