

[2014] 12 S.C.R. 505

STATE OF PUNJAB

v.

JAGGA SINGH ETC.

(Criminal Appeal Nos. 2329-2331 of 2009 etc.)

DECEMBER 17, 2014.

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

Penal Code, 1860 – ss. 302 and 302/120B – Murder by seven accused – Two of the accused convicted u/s. 302 and s. 25 of Arms Act and their conviction confirmed by High Court – Five of the accused convicted by trial court u/s. 302/120B and acquitted by High Court – Appeal against conviction order of two accused and acquittal order of the five accused – Held: conviction order against two accused is affirmed – The prosecution case against them is supported by evidence of eye-witnesses who are further corroborated by the evidence of finger-print expert – High Court rightly acquitted the five accused giving them benefit of doubt after proper appreciation of evidence – Arms Act, 1959 – s. 25.

Dismissing the appeals, the Court

HELD: 1.1. The presence of PWs 1 and 2 being the family members in the house, is natural and the occurrence had taken place in the early morning hours. Their testimonies are cogent, natural and trustworthy. Moreover, there is no material discrepancy in their testimonies. The Courts below have rightly relied on their testimonies and the conviction and sentence imposed on the convicted appellants does not call for any interference. On a proper appreciation of evidence, the High Court had given the benefit of doubt to 5 of the accused persons by acquitting them and no interference is called for. [Paras 16 and 17] [514-H; 515-A-C, G]

A 1.2. According to the Investigating Officer, he
arrested accused in the presence of PW1. PWs 1 and 2
have also identified both of them as assailants during the
trial in the court. In such circumstances, the omission to
B mention their names in the complaint does not affect the
prosecution case and there is no doubt about the identity
of the said accused. [Para 12] [512-E-F]

C 1.3. The evidence of presence of fingerprints on the
glass tumblers corroborates the testimonies of the eye-
witnesses. The Fingerprint Expert reached the
occurrence place on the occurrence day itself and raised
the finger impressions on the two glass tumblers and
duly packed them with his seal and date and handed over
D the same to the investigating officer for onward
transmission to the finger print bureau. The seal was
found to be intact by PW25 finger print expert who
opened it for examination. The specimen finger print
impression have been taken in the presence of Judicial
Magistrate and there is no room for any suspicion as to
E its *bonafide*. [Paras 13 and 15] [512-F-G; 514-A, B, E]

Mohd. Aman and Anr. vs. State of Rajasthan (1997) 10
SCC 44 – distinguished.

Case Law Reference:

F (1997) 10 SCC 44 distinguished Para 14

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 2329-2331 of 2009.

G From the Judgment & Order dated 17.09.2007 of the High
Court of Punjab and Haryana at Chandigarh in Criminal Appeal
Nos 65-DB, 90-DB and 101-DB of 2006.

WITH

H Crl Appeal No. 2327 and 2328 of 2009.

V. Madhukar, AAG, Anvita Kowshish, Mohit Nain, Dhruv Mohan, Kuldip Singh, Kiran Bala Sahay, M.P. Jha, S.K. Devenkan, Rajneesh Bhaskar, Aditya Pratap Singh Naruka, Shubham Seth, Adarsh Tiwari, S.R. Setia, Yash Pal Dhingra, R.K. Talwar, Harikesh for the appearing parties.

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. All these criminal appeals have arisen out of the common judgment dated 17.09.2007 passed by the High Court of Punjab and Haryana at Chandigarh.

2. The appellants/accused in Criminal Appeal Nos. 2327 and 2328 of 2009 numbering 2, and the respondents/accused in Criminal Appeal Nos. 2329-2331 of 2009 herein numbering 5, were the accused in sessions case Nos. 14, 15 and 16 of 2003 on the file of Additional Sessions Judge, Ludhiana and the first two of them were convicted for the offences under Section 302 IPC and Section 25 of the Arms Act and sentenced to undergo imprisonment for life each and to pay a fine of Rs.2000/- each with default sentence for the offence of murder and further sentenced to undergo rigorous imprisonment for two years each and to pay a fine of Rs.1000/- each with default sentence for the offence punishable under the Arms Act. Rest of them were convicted for the offences under Section 302 IPC read with Section 120-B IPC and sentenced to undergo imprisonment for life each, and to pay a fine of Rs.2000/- with default sentence. All the convicted accused preferred appeals in criminal appeal Nos.65, 90, 101 and 617 of 2006 on the file of High Court of Punjab and Haryana at Chandigarh and the High Court by the impugned common judgment allowed the appeals preferred by five of the accused who were convicted for the offence under Section 302 read with section 120-B IPC and acquitted them of the said charges and at the same time dismissed the appeal preferred by two of the accused who were convicted for the offence under Section 302 IPC, confirming their conviction and sentence. Challenging their conviction and sentence the said two accused preferred

A independent appeals in Criminal Appeal Nos. 2327 and 2328 of 2009 on the file of this Court. The State of Punjab aggrieved by the acquittal of five of the accused preferred appeal in Criminal Appeal Nos. 2329-2331 of 2009. All these appeals are heard together and common judgment is rendered.

B 3. The prosecution case in brief is as follows: PW1
Balwinder Kaur is the mother of the deceased Satnam Singh.
PW2 Gurmeet Kaur is his wife. They were originally living in
Village Gholia Khurd and 10 years prior to occurrence they had
shifted to Ludhiana. Satnam Singh was working with one Jugraj
C Singh for two years and thereafter he started working with Avtar
Singh and Surjeet Singh. On 09.11.2002 at about 7/8 P.M.
Satnam Singh received a call on his mobile phone from certain
persons from village Dhandra asking him to do some earthwork
and it was agreed that they should come next morning at 5.30
D A.M. Satnam Singh sent a message to his partner Avtar Singh
about the visit of the callers for going to the plot. On 10.11.2002
at 5 A.M. on hearing the door bell PW1 Balwinder Kaur opened
the door. Two persons aged about 30 and 40 respectively
wrapping themselves in Chaddars were standing outside and
E they were let in. On the direction of Satnam Singh his wife PW2
Gurmeet Kaur prepared tea and after taking it both went
outside and asked Satnam Singh to come along with them on
his scooter to see the plot. Satnam Singh took out his scooter
and while he was starting it both the visitors took out pistols
F from the respective folds of their garments and fired at Satnam
Singh who fell on the scooter. PW2 Gurmeet Kaur fell upon
Satnam Singh and in the meanwhile Avtar Singh also reached
the spot. Both the assailants ran away. PW1 Balwinder Kaur
heard the noise of starting of some vehicle from the other side
G of the road and she suspected that the assailants had boarded
the said vehicle for fleeing from the spot.

4. PW1 Balwinder Kaur gave Exh.PA statement at
7.30A.M. and same was recorded by sub inspector, Gurpreet
Singh at Hambran Road and he prepared Exh. PA/2 FIR at
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7.45 A.M. and reached the spot. PW6 fingerprint expert Surinder Singh raised the fingerprints from two glasses and both the glasses were made into a sealed parcel and handed over to the sub inspector Gurpreet Singh in memo No. Exh. PW23/B. Scooter of Satnam Singh, footwear of left foot lying on the spot, two empty cartridges of .12 bore were also seized from the occurrence place. Besides two .303 country made pistols with two live cartridges were also recovered from the spot. He prepared Exh.PD/5 inquest report and sent the body for post mortem.

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5. PW5 Dr. Sanjiv Hans conducted autopsy on the body and found the following:

"1. A lacerated wound with inverted margin $1\frac{1}{4}$ " x 1" in size, oval in shape present on left side of lower portion of upper back just below lower border of left scapula and 2" medial to posterior axillary line. There was blackening around the wound with corresponding hole and blackening of hole on left side of back of shirt.

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On dissection of thorax, a big haematoma was found present in the pleural cavity along with mediastinum. There was perforating injury of left lung upper part of heart and right lung along with major vessel in the mediastinum corresponding to injury no.1.

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One plastic, 2 rubber objects joining together and a metallic foreign object removed from right pleural cavity, sealed and handed over to police. Corresponding rib and underlying structure corresponding to injury no.1 on left side of chest was lacerated. The heart was empty. Liver spleen, kidneys were pale. As per information provided by the police, the above said person had died due to fire arm injury.

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The cause of death in this case in our opinion was due to shock and haemorrhage as a result of the injuries

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A to the vital organ as mentioned in PMR corresponding to injury no.1 due to fire arm injury, which was ante mortem in nature.”

B 6. Accused Charanjit Singh and Jagga Singh were arrested on 21.11.2002 and were identified by PW1 Balwinder Kaur and PW3 Shamsher Singh. On 23.11.2002 accused Bahal Singh was arrested. The Investigation Officer on 12.12.2002 examined the statement of the some of the witnesses and got the arms and ammunition tested in the
C Armoury in Ludhiana and obtained the sanction orders of the District Magistrate for prosecuting the accused under the Arms Act. He completed the investigation and filed the charge sheet against the accused.

D 7. The Sessions Court framed the charges against all the seven accused and during the trial the prosecution examined 25 witnesses and marked documents. The accused were questioned under Section 313 of Cr.P.C. and their answers were recorded. The Trial Court found all the accused guilty of the charges and convicted and sentenced them as stated
E above On the appeals preferred by the accused the High Court acquitted five of them by allowing their appeals and at the same time confirmed conviction and sentence imposed on accused Charanjit Singh and Surjeet Singh by dismissing their appeals. Challenging the same they have preferred two independent
F appeals and challenging the acquittal, the state has preferred three appeals.

G 8. We heard the submissions made by the learned Addl. Advocate General of Punjab on behalf of the State, the learned Counsel for the convicted appellants and the learned counsel for the respondents/acquitted accused and perused the material on record.

H 9. Satnam Singh died of homicidal violence is established by the testimony of PW5 Dr. Sanjiv Hans who conducted autopsy on his body and the post mortem report issued by him.

The medical evidence reveals that there was lacerated wound with blackening around it, on left side of the chest, piercing the left lung and damaging major blood vessel. The doctor opined that death has occurred on account of shock and haemorrhage as a result of injuries to the vital organ and it is a fire arm injury.

10. PW1 Balwinder Kaur and PW2 Gurmeet Kaur are said to have witnessed the occurrence. PW1 Balwinder Kaur is the mother of deceased Satnam Singh and PW2 Gurmeet Kaur is his wife. The occurrence had taken just outside their house in the early morning at 5.30 A.M. Both the above witnesses have testified that on 9.11.2002 at about 7/8 P.M. Satnam Singh received a call on his mobile phone from certain persons from village Dhandra asking him to do some earthwork and it was agreed that they should come next morning at 5.30 A.M. It is, their further testimony that on 10.11.2002 at 5 A.M. on hearing the door bell, PW1 Balwinder Kaur opened the door and two persons aged about 30 and 40 years respectively wrapped themselves in chaddars, were standing outside and they were let inside the house. On the direction of Satnam Singh, PW2 Gurmeet Kaur prepared and served tea to them. PW1 and PW2 further testified that the visitors told Satnam Singh that they wanted to show him the plot where filling was to be done and asked Satnam Singh to come along with them on his scooter and Satnam Singh took out his scooter and while he was starting it, accused Charanjit Singh took out firearm from the fold of his garments and fired a shot at Satnam Singh and Surjeet Singh also pulled out a firearm from his garment and fired a shot in the air and Satnam Singh fell down and PW2 Gurmeet Kaur fell upon him and both of them raised alarm and they heard the noise of the starting of a jeep from the other side of the road and the assailants fled away.

11. It is the further testimony of PW1 Balwinder Kaur that Satnam Singh died on the spot after receiving the injury and she proceeded to lodge a complaint with police and on the way, in Hambran Road, she happened to meet PW23 Sub inspector

A Gurpreet Singh and she orally gave a statement about the occurrence which was reduced into writing by him. Exh. PA is the statement given by her and Exh. PA/2 is the FIR prepared by him.

B 12. The learned counsel appearing for the convicted appellants contended that PW1 Balwinder Kaur had not named the accused persons in her complaint and has only stated that two assailants after killing her son ran away from the place of occurrence and as per the prosecution case accused Charanjit Singh was working as driver with accused Jugraj Singh and he
C was known to PW1 Balwinder Kaur and still she has not disclosed his name in her complaint and there was no identification parade conducted and they have been falsely implicated in the case. Few years before the occurrence
D Satnam Singh was doing business with his cousin brother accused Jugraj Singh and due to misunderstanding separated from him. It is when they were working in partnership, accused Charanjit Singh was working under them. In this context it is pertinent to note the testimony of the investigating officer PW
E 23 S.I. Gurpreet Singh. According to him he arrested accused Charanjeet Singh and Surjit Singh in the presence of PW1 Balwinder Kaur. PWs 1 and 2 have also identified both of them as assailants during the trial in the court. In such circumstances the omission to mention their names in the complaint does not affect the prosecution case and there is no doubt about the
F identity of the said accused.

G 13. There is yet another clinching evidence against the said accused which corroborates the testimonies of the eye-witnesses. The assailants had taken tea in the house of Satnam Singh few minutes before the occurrence. The Investigating Officer after registering the case proceeded to the house of Satnam Singh and solicited the services of Surinder Singh, finger print expert through the control room. PW6
H Surinder Singh reached the place at 9.00 A.M. and found two glass tumblers lying on the table smeared with tea and

according to him he applied the grey powder on the said
tumblers and raised the finger prints in it and encircled those
places of finger prints and put his initials thereon readable as
S. Singh and the date as 10.11.2002 in it and prepared sealed
parcel by putting them in wooden box duly nailed and handed
it over to the investigating officer for onward transmission to
finger print bureau. The sealed parcel was sent through PW15
Constable Anish Kumar to the finger print bureau. PW 25
Subhash Chander, finger print expert has testified that he
received the sealed parcel with the seal 'SS' through Anish
Kumar PW15 and on opening he found two glass tumblers
which contained already developed finger impressions and he
prepared the photographs of those finger impressions. It is his
further testimony that he received specimen 10 digits finger
impression of the two hands in respect of Charanjit Singh as
well as another specimen 10 digits finger impression in respect
of accused Surjit Singh and made a comparison and prepared
Exh.PW25/A report. As per report, the questioned finger
impressions, Mark – A/1 and B/1 and specimen finger
impressions A/A/1 and B/B/1 of Charanjit Singh were found to
be similar. Similarly, questioned finger impressions C/1, D/1
and E/1 and specimen finger impressions of Surjit Singh C/C/
1, D/D/1 and E/E/1 were also found to be similar.

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14. The learned counsel appearing for the convicted
appellants contended that both the said accused were made
to hold glass-tumblers while they were in police custody and
thereafter the finger prints were taken and it is only to falsely
implicate them in the case. It is her further contention that the
specimen finger impressions were not taken before the
Magistrate in accordance with Section 5 of the Identification of
Prisoners Act, and it is unsafe to accept the evidence led in
this regard. She placed reliance on the decision of this Court
in *Mohd. Aman and another vs. State of Rajasthan* [(1997)
10 SCC 44].

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15. Both the above contentions are devoid of merit. As

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A already seen on the direction of the investigating officer, finger
 print expert PW6 Surinder Singh reached the occurrence place
 at 9.00 A.M. on the occurrence day itself and raised the finger
 impressions on the two glass tumblers and duly packed them
 with his seal and date and handed over the same to the
 B investigating officer for onward transmission to the finger print
 bureau. The seal was found to be intact by PW25 finger print
 expert who opened it for examination. Exh. PW25/G is the 10
 digits finger impression of accused Charanjit Singh. It contains
 the signature of Judicial Magistrate, First Class, Ludhiana with
 C his seal and date. Exh. PW25/H is 10 digits finger impression
 of accused Surjit Singh. It also contains the signature of Judicial
 Magistrate, First Class, Ludhiana with his seal and date. In fact
 the word 'attested' is put by the Magistrate while putting his
 signature in the said documents. In the facts of the case in
 D which the decision cited supra arose the specimen finger prints
 of the accused were never taken before or under the order of
 a Magistrate in accordance with Section 5 of the Identification
 of Prisoners Act and in such circumstances this Court held that
 it is unsafe to accept the said evidence. As already seen in the
 present case the specimen finger print impression have been
 E taken in the presence of Judicial Magistrate and there is no
 room for any suspicion as to its bonafide.

16. Yet another contention was raised on behalf of the
 convicted appellants that the presence of PWs 1 and 2 in their
 F house on the occurrence day is doubtful since they would have
 gone far away to village Landey for attending the marriage of
 daughter of Satnam Singh's maternal uncle. There is evidence
 to show that the said marriage was scheduled on that day in
 the village . It does not mean that PWs 1 and 2 had left for the
 G village one or two days prior to the marriage. On the contrary
 PWs 1 and 2 have specifically denied such a suggestion put
 to them in cross-examination. Further, there is also no evidence
 let in by the defence to show that both of them had gone to the
 village the previous day of the marriage. Hence this contention
 H is also liable to be rejected. The presence of PWs 1 and 2

being the family members in the house is natural and the occurrence had taken place in the early morning hours. When Satnam Singh took out his scooter, his mother and wife came to close the door and at that time they happened to witness the occurrence. Their testimonies are cogent, natural and trustworthy. Moreover, we do not find any material discrepancy in their testimonies and they are credible witnesses. The Courts below have rightly relied on their testimonies and the conviction and sentence imposed on the convicted appellants does not call for any interference.

17. Insofar as the implication of other accused is concerned the prosecution relied on the testimony of PW9 Sukhwinder Singh cousin of Satnam Singh before whom accused Ranjit Singh is alleged to have made extra judicial confession. As rightly held by the High Court Sukhwinder Singh is not a person of any authority to help the said accused to get any assistance from him by confessing the crime and in the absence of any corroboration, his testimony with regard to extra judicial confession cannot be relied on. The presence of PW3 Shamsher Singh at the occurrence place as claimed by him is also doubtful on account of testimony of PW4 Surjit Singh. According to PW4 Surjit Singh he reached the occurrence place and thereafter informed PW3 Shamsher Singh who was present at village Samalsar about the occurrence and then PW3 Shamsher Singh reached the place of occurrence. Moreover in the inquest report the presence of Shamsher Singh is not recorded. Therefore his presence at the time of occurrence is not proved. There is also no evidence to prove that the accused had entered into conspiracy in carrying out the act of committing murder of Satnam Singh. On a proper appreciation of evidence the High Court had given the benefit of doubt to 5 of the accused persons by acquitting them and no interference is called for.

18. In the result all the criminal appeals are dismissed. The bail granted to the appellant/accused Surjit Singh in Criminal

A Appeal no. 2328 of 2009 shall be cancelled and he is directed to surrender before the Additional Sessions Judge, Ludhiana to serve out the remaining sentence, failing which the learned Additional Sessions Judge is requested to take him into custody and send him to jail to serve his left over sentence.

B Kalpana K. Tripathy

Appeals dismissed.