

**(1987) 12 P&H CK 0002**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Appeal No. 164-DB of 1986

Bhupinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Dec. 1, 1987

**Citation:** (1988) 1 RCR(Criminal) 362

**Hon'ble Judges:** S.P.Goyal, J and I.S.Tiwana, J

**Advocate:** Nand Lal, P.S. Mann, T.P.S. Mann, D.N. Rampal, R.S. Bains, C.D. Dewan,  
Advocates for appearing Parties

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### **Judgement**

I.S. Tiwana, J.

1. The two appellants, Bhupinder Singh and Sukhdev Singh, in Criminal Appeals Nos. 164DB and 202DB of 1986 were tried along with two others for offences under sections 302/34 and 392, IPC, i.e., for the murder of Tarsem Lal and having robbed him of Rs. 7000/, on May 21, 1984. Only they stand convicted. Sukhdev Singh appellant was additionally found guilty under Section 25 of the Arms Act. This conviction is challenged in Criminal Appeal No. 247DB of 1986. For convenience sake all these three appeals are being disposed of together. What was alleged and found established against them was as follows.

2. In May, 1984, Tarsem Lal deceased along with his son Subhash Chander, PW 4, was carrying on his business as a Commission Agent in a purchase centre (temporary grain market) set up in the grounds of Khalsa High School, Hariana, District Hoshiarpur. The shop was set up in a tent at the back of which land was lying vacant. On May 21, 1984, at about 8.15 P.M., while Bharat Bhushan, PW 5, another son of the deceased and his brother-in-law Girdhari Lal were present with him besides PW 4, four Sikh youngmen with muffled faces entered the tent from the back side and two out of them fired two shots each at Tarsem Lal and Subhash Chander, PW. Out of these, three shots hit Tarsem Lal and Subhash Chander remained unhurt as he immediately lay down on the ground. At that very moment, Subhash Chander picked up courage and grappled with one of the culprits and

succeeded in removing the cover from his face. This man was identified as Bhupinder Singh appellant. It was he who had fired at Tarsem Lal and Subhash Chander also. He, however, was able to escape from there along with his companions after throwing Subhash Chander on the ground. Though these PWs chased the culprits upto a certain distance, yet since they fired three more shots towards them, the effort was abandoned. On account of the commotion in the tent, Baldev Sahai, Subhash Chander and Bharat Bhushan took Tarsem Lal to Civil Hospital, Haryana. There on examination the latter was declared as dead by Mohan Singh, Pharmacist, PW 1. Then Ruqa, Exhibit PA was sent by this witness to the police station after making due entries about it in his own register. At that very time, Sub Inspector Manohar Singh (PW 6) SHO, who was passing by the side of the hospital and had come to know of the occurrence contacted Subhash Chander, PW, in the hospital. The latter made his statement Exhibit PL which was sent by the Sub Inspector to the police station for the registration of a case vide his endorsement Exhibit PL/1. On the basis of this statement, formal FIR, Exhibit PL/2 was recorded. The Sub Inspector then prepared the inquest report, Exhibit PG. He also despatched the dead body for purposes of postmortem. Thereafter he reached the place of occurrence and after preparing the rough site plan. Exhibit PM, lifted the bloodstained search and took into possession a bloodstained cushion vide memo Exhibit PN. He also recorded the statements of Bharat Bhushan, Baldev Sahai and Girdhari Lal.

3. On the next morning, the Sub Inspector again visited the spot and from a place at a distance of about 100 yards from the place of occurrence, lifted two empty cartridges (Exhibits P 1 and P 2) of 455 bore pistol which were taken into possession vide memo Exhibit PN. At that time Constable Malkiat Singh also produced before him a packet containing the clothes of the deceased which had been removed from the dead body at the time of postmortem examination and these were taken into possession vide memo Exhibit PO.

4. Bhupinder Singh appellant and Ranjit Singh were arrested by the Sub Inspector on May 28, 1984. Sukhdev Singh appellant was produced before him by Mohinder Singh Sarpanch of village Koopar on June 1, 1984 and was immediately put under arrest. Tarsem Singh accused was apprehended on June 17, 1984. At the time of his arrest, Sukhdev Singh was interrogated by the Sub Inspector in the presence of ASI Basant Singh and Mohinder Singh, Sarpanch, when the former disclosed vide his statement Exhibit PQ that he had kept concealed a revolver near to his residential house. He then in pursuance of this statement took the party to that place and got recovered revolver Exhibit P 3 which laid buried. Its sketch, Exhibit PR 1, was prepared and the same was made into a sealed parcel and taken into possession vide memo Exhibit PR.

5. As a result of the postmortem examination of the dead body of Tarsem Lal on May 22, 1984. Dr. Jagmohan Singh, PW 3, opined that the deceased in all had

suffered four injuries out of which three could be caused by fire arms and Nos. 1 and 2 were sufficient to cause death in the ordinary course of nature. According to him, the probable time between the injuries and death was `immediate`".

6. In the light of the aforesaid investigation and collection of material against the accused they were sent up for trial with the result as already indicated in the opening part of the judgment. Ranjit Singh and Tarsem Singh were acquitted as their participation in the crime could not be established.

7. The stand of Bhupinder Singh appellant under Section 313, Cr.P.C., was that in the year 1982, he had secured an order from the Court for the release of his motorcycle on sapurdari and when he produced the said order before Moharrir Head Constable Onkar Singh, of P.C. Haryana, the latter demanded bribe from him and on this he contacted the Vigilance Inspector at Chandigarh. As a result of that a raid was conducted under the supervision of Inspector Ram Rattan, DW 6 at Police Station Haryana and the staff of that police station sided with Onkar Singh MHC and took up cudgels is against the raiding party. This not only led to the registration of a case under Section 5 of the Prevention of Corruption Act against Onkar Singh, but the misbehaviour of the staff of the police station was also, reported to the higher authorities. At the time of the present occurrence an investigation into all this was still pending. On this account, according to him, the staff of police station, Haryana was grossly annoyed with him. He also maintained that on May 15, 1984, Subhash Chander, PW 4, had a quarrel with one Parkash Chand over the sale of some foodgrains in the market and he along with Sarpanch Girdhara Singh had not only intervened to save Parkash Chand, but also accompanied the latter to the police station to lodge a complaint against Subhash Chander. As a result of this complaint, PW 4 was arrested by the police and was sent up for security proceedings. He also claimed that since his father Naranjan Singh was the President of the Bhartiya Kisan Union of that area, he often went to the grain market to check up the deals between the commission agents and the farmers to avoid the exploitation of the latter at the hands of the former and on that account too Subhash Chander, PW was not happily disposed towards him. He also asserted that he as a matter of fact was arrested on May 22, 1984 from his house.

8. In support of his above noted pleas, the appellant examined Constable Malkiat Singh, DW 1 to produce the file of the case FIR No. 59 dated April 30, 1984 under Section 5 of the Prevention of Corruption Act against Onkar Singh; Lajpat Rai, DW 2, Record Keeper of the Court of Sessions, to produce the judicial record of the case State v. Onkar Singh Head Constable, under Section 5 of the Prevention of Corruption Act; Ajit Singh (DW 3), Record Keeper, Judicial Record Room, Hoshiarpur, to produce file State v. Subhash Chander, under Sections 107/151 Cr.P.C. decided on October 8, 1984; Head Constable Karnail Singh, DW 4, to depose that on May 15, 1984 complaint Exhibit DC made by Parkash Chand against Subhash Chander, PW 4, was entrusted to him by the SHO for purposes of enquiry and in this complaint,

Bhupinder Singh is mentioned as one of the witnesses, DW 5, Shri Karnail Singh, Superintendent of Police, CID was examined to State that he conducted an enquiry pertaining to FIR No. 136 dated May 21, 1984, P.S. Hariana, in July 1984. The enquiry was conducted as a result of an application filed by Naranjan Singh, father of the appellant, about his false implication.

9. Similarly Sukhdev Singh appellant maintained that the case against him was a concoction. According to him, he too was arrested on May 22, 1984 and was tortured by the police. His father not only protested to the police about it, but even made an application on May 28, 1984 in the Court of the Judicial Magistrate Ist Class, for his bail and medical examination. The police, in order to save its skin, arrayed him as an accused in this case.

10. At the hearing it was strenuously urged by the learned counsel for the appellants that in this case the investigation was not honest and straightforward. Material evidence had been suppressed and manipulated. Whatever evidence has been produced against them, does not fix their identity as perpetrators of the crime. In any case no offence is established against them beyond any reasonable doubt. In view of these submissions of the learned counsel we propose to deal with their cases separately in the light of the evidence available against each one of them.

11. So far as the case of Bhupinder Singh appellant is concerned, the stand of his counsel, Mr. P.S. Mann, is that neither the FIR Exhibit PL/2 had been recorded at the time it purports to have been recorded, nor the version of PW 4, on whose statement it was recorded, inspires any confidence. According to the learned counsel this witness was not present at the spot and has been made to depose a make believe story that he was able to uncover the face of one of the assailants of his father, i.e., Bhupinder Singh, at the time of occurrence. To maintain that the investigation in the case was dishonest, he points out that the earliest version of the occurrence as deposed to by Bharat Bhushan, PW 5, son of the deceased, has been kept back as it, in all probability, did not identify the assailants or any one of them. In the light of the statement of this witness, Exhibit PL or the FIR Exhibit PL/2 cannot be treated as the first information report to the police and, therefore, the very foundation of the case is imaginary. Having screened the evidence we find that these contentions of the learned counsel cannot be brushed aside as devoid of any merit.

12. Bharat Bhushan, PW 5, who as per his statement did not accompany the injured to the hospital and had remained behind at the shop along with his maternal uncle Girdhari Lal, has stated in no uncertain terms that "the police arrived at the spot after 5/7 minutes of the occurrence. The police party was headed by S. Manohar Singh. By that time my father had already been removed to Civil Hospital, Hariana. The Thanedar interrogated me regarding the occurrence. The Thanedar obtained my signatures underneath my statement. The statement was read over to me and thereafter. I signed it in token of its correctness." This statement of the witness has

not seen the light of the day. Though when the investigator of the case, i.e. S.I. Manohar Singh, PW 6 was cross-examined about the suppression of this statement as it did not suit the prosecution, he denied having recorded any such statement, yet he conceded that "the place of occurrence is at the back side of the Police Station, Haryana, and is at a distance of 100 yards from the boundary of Police Station, Haryana." This stand of PW 5 is not only probalised by the above noted admission of the Sub Inspector with regard to the distance between the police station and the place of occurrence, but also by the following admitted facts in the statement of Subhash Chander, PW 4 :

"The playground of Khalsa High School adjoins the building of the Police Station, Haryana .... 300/400 persons collected at the spot after the occurrence .... We raised cries and shrieks when the assailants ran away from the place of occurrence .... We passed through the road which adjoins Police Station Haryana, while going to the hospital. I did not depute any body to inform the police about the occurrence. Since we were passing in front of the police quarters and were crying, on hearing our shricks, the police people came on the road side. At that time I did not narrate the occurrence to the police." In such a situation it was natural for the police to be attracted to the spot immediately. The above noted statement of PW 5 was ignored by the trial Judge with the observation that "in my opinion, he has no sense of time due to confusion of mind. I do not find any fun in withholding the statement of Bharat Bhushan (if) it is/was really recorded and the PW seems to be referring only to his statement under Section 161 Cr.P.C." What confusion this witness was suffering from on October 17, 1985 when he made the statement in Court, is not indicated by the learned Judge. This statement was recorded in Court about 17 months after the date of occurrence. Bharat Bhushan PW could not be treated as an illiterate or rustic person who had no sense of time. He being in trade in which he was, can safely be assumed to be a literate and enlightened person. According to his own admission, he was a Matriculate. Further, how can the statement of this witness to the police, which as per his own stand was singed by him after the same had been read over to him, be treated as a statement under Section 161, Cr.P.C. As per the mandate of section 162 of the Code, any statement made by a person to a police officer during the course of an investigation under Chapter 12 of the Code is not required to be signed by that person. Concededly by that time no case had been registered as yet and thus no investigation had commence. We are thus satisfied that Bharat Bhushan did make a statement to the police immediately after the occurrence, i.e., prior to the recording of Exhibit PL or Exhibit PL/2 and that statement has not been disclosed by the prosecution and in all probability, as is maintained by the learned counsel for the appellants for the reason that it did not suit the prosecution. May be that the identification of this appellant was not fixed or disclosed in that statements. Further we are satisfied that even if Subhash Chander, PW 4, was present at the spot at the time of occurrence, his version that he was able to uncover the face of the appellant is only a makebelieve story. It is apparent that

the assailants were desperate people and lost no time in gunning down Tarsem Lal while depriving him of the money he was handling at the time of occurrence. It looks unbelievable that this witness was able to grapple with the appellant to uncover his face and remained unhurt particularly when it was his own case that "when Bhupinder Singh accused fired the shot upon me, I lay down on the ground and in this process. I was saved." Further it is not that the appellant was obvious of the presence of this witness or the latter was in any way able to surprise him, rather, as pointed out in his statement, he i.e., Subhash Chander was as a matter of fact a target of the appellant and was actually fired upon. In that situation the appellant would not have allowed this witness to get up from the ground and then to grapple with him also. Further, according to the prosecution version, this witness was one of the persons who had taken the injured to the hospital soon after the occurrence. Strange as it may seem, Mohan Singh, Pharmacist, PW 1, who examined the dead body of Tarsem Lal in the hospital, recorded that it was Baldev Sahni Ranger who had brought the dead body to the hospital. In the normal course had this witness been accompanying the dead body, he being the son of the deceased, would have been noted as the person who brought the dead body to the hospital. Therefore, it was very doubtful if this witness was present with the deceased at the time of the occurrence. During his cross-examination it was the positive case of the defence that he was not so present and was rather at his residence at the time of occurrence. All these facts when noticed in the light of the delayed receipt of the special report by the Illaqa Magistrate on the next day, i.e. May 22, 1984 at 6.05 A.M. at Hoshiarpur, i.e., at a distance of about 15 kilometers from the place of occurrence, assume added significance. As per the prosecution stand statement of this witness. Exhibit PL, was recorded in the hospital at 9 P.M. and on the basis of the same, FIR Exhibit PL/2 was recorded in the police station at 9.15 P.M. Soon thereafter the special report was despatched to the Illaqa Magistrate through Gulshan Lal, Constable No. 1026. This Constable in his affidavit has stated that he reached the residence of the Illaqa Magistrate but since the Magistrate was not available there, he returned from there with the special report and delivered it the next morning at this house. For this delayed receipt of the special report by the Illaqa Magistrate, the learned trial Judge has offered an explanation of his own in paragraph 23 of the judgment wherein he recorded that in view of the law and order situation prevalent in the State then, it could not be imagined that the Police Constable, who had been assigned this duty, would have run the risk of travelling at night. As pointed out earlier, this was not the stand of the prosecution. As a matter of fact, as per the affidavit of Gulshan Lal Constable, he travelled the above said distance of 15 kilometers during the night, not once but twice. He says that when he reached the house of the Illaqa Magistrate for the first time, he was not there and then he returned back and then again went to deliver the special report to him and he actually did it at 6.05 A.M. It is thus patent that the special report reached the Illaqa Magistrate after a considerable delay. The learned counsel for the appellants does not appear to be wrong in asserting that this delay is indicative of the fact that FIR Exhibit PL/2 had not come into being by

the time it purports to have been recorded. It was recorded sometime late in the night after due deliberations about the identity of the accused involved. These facts thus firmly established that the investigation of the case has not been carried out in an honest and straightforward manner. The earliest version of the occurrence as deposed to by PW 5 has been suppressed. The FIR appears to have been recorded after delay and due deliberations. In the light of these facts the contention of the learned counsel for the appellant that as a matter of fact the statement of PW 5 which was recorded at the earliest, did not fix the identity or participation of the appellant, against probability. Further the proceedings events between the appellant, PW 4 and the staff of Police Station, Hariana, can also not be lost sight of. It is the conceded case of Subhash Chander (PW 4) that "I was arrested by the police on 16.5.1985 in the security proceedings on the application of some Parkash Chand of village Jallowal. I was produced in handcuffs before the Executive Magistrate and I was released on bail." A reading of the complaint Exhibit DC filed by Parkash Chand against PW 4 and the statement of DW 4, Head Constable Karnail Singh who enquired into the same, together establishes that the appellant had same role to play in the matter and he was cited as a witness of that occurrence. Subhash Chander could not easily forget this disgrace which he had to meet, i.e., for being handcuffed and produced before the Executive Magistrate in those proceedings. Similarly the staff of Police Station, Hariana, had also some cause for annoyance against the appellant on account of the complaint made by Shri R.R. Sharma, Deputy Superintendent of Police, DW 6 to the higher authorities about the misbehaviour of police staff when he conducted the raid against Onkar Singh, Moharrir Head Constable of this Police Station on April 29, 1982. According to the appellant this matter was still pending enquiries when the present occurrence took place.

13. Similarly we find no conclusive evidence to uphold the participation of Sukhdev Singh appellant in the crime. His conviction is recorded on the basis that he was arrested on June 1, 1984 and in pursuance of his statement Exhibit PQ under Section 27 of the Indian Evidence Act, got recovered revolver Exhibit P 3 from which, as per the report of the ballistic expert Exhibit PY, two cartridges Exhibits P 1 and P 2, which had been taken into possession by the investigator from a place at a distance of 100 yards from the place of occurrence on May 22, 1984, had been fired. According to the trial Court, these facts completely established the participation of Sukhdev Singh in the crime. We, however, find it difficult to accept this conclusion. Firstly, Mohinder Singh Sarpanch, who is alleged to have produced the appellant before the police on June 1, 1984, has not been produced to support his part of the prosecution version. It is only S.I. Manohar Singh, PW 6, who has vouchsafed these facts. It is again he alone who has proved the dramatic disclosure statement (Exhibit PQ) alleged to have been made by the appellant. It is admitted by this witness that just at the time of his arrest "I put hardly two questions to Sukhdev Singh accused when he came out with a disclosure statement." It is then as per the case of the prosecution, that the appellant led the police party to his village and got recovered

the revolver, Exhibit P 3. This recovery is again proved by Manohar Singh, Sub Inspector only and none else. As indicated earlier, the honesty and fairness of this investigator is not beyond doubt. Besides this we have it on record that father of the appellant had complained to the Illaqa Magistrate that Sukhdev Singh, as a matter of fact, had been arrested by the police on May 22, 1984 and till the date of his formal arrest on June 1, 1984, had been tortured while in police custody. He even prayed for the medical examination of his son. Though this application of his did not bear any fruit as the SHO, Police Station, Hariana, reported to the Court that the appellant was not in custody of the police yet the fact remains that such a protest was made by the father of the appellant. Above all this we are not at all satisfied with the report of the ballistic expert that the two cartridges, Exhibits P 1 and P 2 had been fired through revolver Exhibit P 3. This report, as contained in Exhibit PY, records nothing more than "Two 455 K.F., 80 cartridges cases marked C/1 and C/2 contained in parcel 'A' have been fired from the 455 revolver No. 222842." No material or data or any reasons have been recorded by the expert in support of this conclusion of his. It hardly needs any great argument to hold that to attach any weight to the opinion of an expert he has to disclose the number and nature of test carried out by him, his observations and the facts on the basis of which he records his conclusion. Even this is not disclosed in this report as to whether the examiner ever fired a test cartridge through this revolver. It is thus difficult to place any reliance on the opinion expressed in this report which does not disclose the facts which warrant the opinion. We are not sure whether there was any clear and adequate factual data available to the expert to record a conclusive opinion. It is for this reason that section 51 of the Indian Evidence Act provides that whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant. In short, the reports of the experts have to speak for themselves. This is totally lacking in this case. So in the light of this event if the facts as stated by Manohar Singh Sub Inspector, PW 6, about the arrest of this appellant, the disclosure statement made by him and the recovery effected in pursuance thereof are to be accepted, though we have our doubts about the veracity of his evidence, still the prosecution has failed to establish that cartridges Exhibits P 1 and P 2 were fired through the revolver Exhibit P 3. In the light of this conclusion of ours, the above noted finding about the participation by the appellant in the crime as recorded by the trial court, cannot possibly be upheld.

14. So far as the genuineness of the disclosure statement, Exhibit PQ, alleged to have been made by Sukhdev Singh appellant and the recovery of revolver Exhibit P 3 in pursuance thereof is concerned, we find that the statement of Manohar Singh, PW 6 and that of Basant Singh (PW 1) in Criminal Appeal No. 247DB of 1986 are materially discrepant. Whereas Manohar Singh has stated "I hardly put two questions to Sukhdev Singh when he came out with disclosure statement Exhibit PB", ASI Basant Singh stated that "accused Sukhdev Singh was interrogated for about 30/45 minutes" when he made the disclosure statement. Besides this the



investigator failed to associate any independent witness at the time of recovery and that too in spite of the admitted fact that "the place of recovery adjoins to the village Abadi of village Kang Mai." We are conscious of the legal proposition that in normal course, police officials do not deserve to be disbelieved merely because they happen to be a part of the police force, yet in the instant case since the bona fides of the investigator have been doubted right from the beginning, we do not find it safe to put firm reliance on his evidence. This equally applies to the evidence of Basant singh, ASI who is none other than a subordinate of PW 6.

15. The net result of the above discussion is that the prosecution has failed to establish the case against the appellants beyond any reasonable doubt and, therefore, they are entitled to be acquitted of the charges framed against them. We order accordingly and set aside their convictions and sentences. They be set at liberty.

JUDGMENT accordingly.