

(2000) 10 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Appeal No. 271-DBA of 1994

State of Punjab

APPELLANT

Vs

Hansa Singh

RESPONDENT

Date of Decision: Oct. 30, 2000**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

Citation: (2001) 1 RCR(Criminal) 775**Hon'ble Judges:** H.S. Bedi, J; A.S. Garg, J**Bench:** Division Bench**Advocate:** Mr. S.S. Rendhawa, Deputy A.G, for the Appellant; Mr. B.S. Bhasaur, for the Respondent

Judgement

H.S. Bedi, J.

The prosecution case is as under :

Sukhdev Singh, father of Nirpal Singh (PW-50, had a share in the liquor vend situated in village Ubhiyan. Nirpal Singh alongwith Bhagat Singh (since deceased) had been working as salesmen at the vend. At about 4,00 A.M. on July 17, 1990, the two were sleeping on the roof of the liquor vend. Bhagat Singh, however, came down of the roof and in the meanwhile, Hansa Singh and Bogha Singh, resident of village Ubhiyan, came to the vend and demanded liquor from Bhagat Singh. Bhagat Singh refused to comply with their demand and told them that the vend would be opened after some time and they could take the liquor thereafter. The two accused then started quarrelling with Bhagat Singh and on the exhortion given by Bogha Singh, accused Hansa Singh gave a Kulhari blow on the right jaw of Bhagat Singh, as a result of which he fell down. Nirpal Singh raised an alarm, which attracted Piara Singh on which the two accused ran away from the spot. Nirpal Singh thereafter came down from the roof and observed that Bhagat Singh had succumbed to his

injuries. Leaving Piara Singh to guard the dead body, Nirpal Singh first went to the liquor vend at village Dirba to meet Sohan Lal, liquor contractor, but as he was not present there, he went on to Patran and from Patran the along with Sohan Lal aforesaid who was present there) came to police station Dirba and lodged the first information report at 10.30 A.M. on July 17, 1990 for an offence punishable under Sections 302/34 of the Indian Penal Code. Sub Inspector Gurdev Singh alongwith other police officials then went to the place of occurrence and made the necessary investigations. On July 22, 1990, the two accused made an extra-judicial confession before Joginder Singh and Gurmit Singh and the accused were produced by them before the police. After completion of the investigation, the accused were charged for the aforesaid offence and as they pleaded not guilty, were brought to trial.

2. In order to support its case, the prosecution examined PW-1 Dr. B.L. Bhardwaj, who had conducted the post-mortem examination on the dead body and had found one incised injury on the right side of the neck, which according to him was sufficient to cause death in the ordinary course of nature; PW-5 Nirpal Singh and PW-6 Piara Singh, the two eye-witnesses, who stated to the manner in which the incident had taken place and the disclosure statement, Ex.PE, of Hansa Singh and on the basis of said disclosure statement, Ex.PE, the Kulhari, the alleged murder weapon, had been recovered: and PW-4 ASI Mohinder Singh, who had been a part of the investigation conducted by Sub Inspector Gurdev Singh.

3. The prosecution case was then put to the accused and their statements recorded u/s 313 of the Code of Criminal Procedure. They denied the allegations and pleaded false implication.

4. The trial Court held that the incident had happened on July 17, 1990 at 4.00 A.M. and though the F.I.R. had been recorded at 10.30 A.M., the same morning, the special report had been delivered to the Illaqa Magistrate at Sunam at 4.30 P.M. on July 18, 1990 i.e. after a delay of 16 hours after the lodging of the F.I.R. and that this delay was fatal to the prosecution case, more particularly as Constable Sukcharan Singh and the bearer of the special report to the Illaqa Magistrate had not been examined by the prosecution to explain the delay. The court also held that Nirpal Singh had stated that the injury had been caused by a Kulhari whereas Piara Singh had deposed that it had been caused by a Gandasi, was a discrepancy which could not be explained. The trial Court accordingly inferred that from this contradiction, it was clear that Piara Singh had not been present at the spot and that in any case he has was admittedly suffering from cataract, it was not possible for him to identify the accused in darkness. The court also observed that the medical evidence did not support the ocular version as the injury found on the person of the deceased could not have been caused in the manner suggested by the prosecution. The Court finally observed that the extra-judicial confession made by the two accused had not been proved on record as both Joginder Singh and Gurmit Singh had not been examined and had been given up as having been won over by the accused. The Court

accordingly acquitted the two accused.

5. Hence this appeal.

6. We have heard the learned State counsel and Mr. B.S. Bhasaur, the learned Counsel appearing for the two respondents.

7. We are of the opinion that the matter would have to be examined in the light of the observations of the Hon"ble Supreme Court in [Ashok Kumar Vs. State of Rajasthan](#), which are that interference in an appeal against acquittal would be called for only if the judgment under appeal were perverse or based on a mis-reading of the evidence and merely because the appellate Court was inclined to take a different view, could not be a reason calling for interference.

8. The trial Court has found from the record that the F.I.R. had been lodged after a delay of 6 hours and the special report delivered after 16 hours of the lodging of the F.I.R. We find that no explanation has been forthcoming as to why this delay had occurred, more particularly, with regard to the delivery of special report. It has come in the evidence of PW-1 Dr. B.L. Bhardwaj that the dead body had been received in-the hospital at 6.30 P.M. on July 17, 1990. We are of the opinion, in these circumstances, that the lodging of the F.I.R. at 10.30 A.M. on that day also becomes doubtful.

9. The prosecution case has to be examined in this light. The trial Court had found that PW-6 Piara Singh had not been present at the spot and even if he had been present, he could not been identified the accused due to his poor eye sight and as there was substantial darkness at 4.00 A.M. on July 17, 1993. We endorse this finding of the trial Court. We also agree with the trial Court then it says that there were some discrepancies in the evidence of the two year witnesses, namely, Nirpal Singh and Piara Singh, which clearly prove that neither of them had witnessed the occurrence. It is true that some of the discrepancies pointed out by the trial Court could in ordinary circumstances, be ignored but in the light of the fact that the F.I.R. and the special report had been delivered belatedly, even the minor discrepancies assume major proportions.

10. We are, therefore, disinclined to interfere in an appeal against acquittal in these circumstances.

11. Appeal dismissed