

(2011) 1 Crimes 369

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 643-DB of 2008

Gurtej Singh and
Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Sept. 2, 2009

Acts Referred:

- Arms Act, 1959 - Section 25, 30
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 209, 226, 311
- Penal Code, 1860 (IPC) - Section 120B, 148, 149, 302, 364

Citation: (2011) 1 Crimes 369

Hon'ble Judges: Mohinder Pal, J; Ashutosh Mohunta, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Mohinder Pal, J.

This appeal has been preferred by appellants Gurtej Singh. Jaspal Singh alias Pala, Manjit Singh alias Neela, Angrej Singh, Ram Singh, Sukhjiti Singh and Gurmail Singh against the judgment of conviction and sentence order dated 4.9.2008 passed by the learned Additional Sessions Judge, Bathinda, whereby they were convicted and sentenced under Sections 120B, 148, 364 read with Sections 149 and 302 read with Section 149 of the Indian Penal Code (for short "the Code"). Appellant Sukhjiti Singh was also convicted and sentenced u/s 25 of the Arms Act, 1959 (for short "the Act") and appellant Gurtej Singh u/s 30 of the Act. Each of the appellant was sentenced to imprisonment for life and to pay fine of Rs.2,000 in default whereof to undergo further rigorous imprisonment for one year u/s 120B of the Code. Each of the appellant was also sentenced to undergo rigorous imprisonment for two years u/s 148 of the Code. Each of the appellant was further sentenced to undergo rigorous imprisonment for eight years and to pay fine of Rs.2,000 in default whereof to undergo further rigorous imprisonment for one month u/s 364 read with Section 149 of the Code. Each of the appellant was further

sentenced to imprisonment for life and to pay fine of Rs.5,000 in default whereof to undergo further rigorous imprisonment for one year u/s 302 read with Section 149 of the Code. u/s 25 of the Act, appellant Sukhjot Singh was sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.1,000, in default whereof to undergo further rigorous imprisonment for three months. u/s 30 of the Act, appellant Gurtej Singh was sentenced to undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently.

2. Co-accused of the appellants, namely, Mohan Singh, Daljit Singh, Gurbant Singh and Ginder Singh were, however, acquitted of the charges framed against them.

The prayer made in this appeal is to set aside the impugned judgment and the sentence order and to acquit the appellants of the charges framed against them by accepting this appeal.

3. Shorn off all unnecessary details, the question involved in this case is whether the trial in this case was conducted by the learned trial Judge as contemplated u/s 226 of the Code of Criminal Procedure and whether conviction of the accused could be recorded on the basis of earlier evidence recorded before the new accused were summoned to face trial on an application moved by the prosecution u/s 319 of the Code of Criminal Procedure.

4. The instant case was registered vide FIR 67 dated 26.7.2005 under Sections 302/ 364/ 148/149/120B of the Code and Sections 25 and 30 of the Act at Police Station Raman on the basis of statement made by complainant Jagsir Singh. The allegations against the accused were that they, after hatching a criminal conspiracy, formed an unlawful assembly, indulged in rioting while armed with deadly weapon and with the common objection of the said unlawful assembly, abducted Gurtej Singh and thereafter committed his murder.

5. After investigating the case, the police submitted report u/s 173 of the Code of Criminal Procedure against accused Gurtej Singh, Jaspal Singh alias Pala, Manjit Singh alias Neela, Angrej Singh, Ram Singh, Sukhjot Singh, Gurmail and Mohan Singh. However, accused Daljit Singh, Gurbant Singh and Ginder Singh were found innocent during trial and as such were not challenged and kept in column No.2. On 12.4.2006, accused Gurtej Singh, Jaspal Singh alias Pala, Manjit Singh alias Neela, Angrej Singh, Ram Singh, Sukhjot Singh, Gurmail Singh and Mohan Singh were charged under Sections 120B, 148, 364 read with Sections 149 and 302 read with Section 149 of the Code. Additionally, accused Sukhjot Singh was charged u/s 25 of the Act and accused Gurtej Singh u/s 30 of the Act.

6. The prosecution thereafter examined Dr. Ashwani Mittal PW1 on 6.5.2006 and complainant Jagsir Singh PW2 on 27.5.2006. As the case property had not been produced on 6.5.2006, further examination of Dr. Ashwani Mittal PW1 was deferred.

7. After the examination of Dr. Ashwani Mittal PW1 and complainant Jagsir Singh PW2, the prosecution moved an application u/s 319 of the Code of Criminal Procedure for summoning accused Daljit Singh, Gurbant Singh and the Ginder Singh, who had been found innocent during trial and kept in column No.2 of the challan.

8. Vide order dated 3.7.2006, accused Daljit Singh, Gurbant Singh and Ginder Singh were summoned to face trial along with other accused for the aforementioned offences by the trial Court.

9. After the appearance of accused Daljit Singh, Gurbant Singh and Ginder Singh, fresh charges were framed against all the accused on 25.7.2006 under Sections 120B, 148 and 364 read with Sections 149 and 302 read with Section 149 of the Code. Accused Sukhjot Singh was also charged u/s 25 of the Act and accused Gurtej Singh u/s 30 of the Act.

10. After the charge was reframed against all the accused on 25.7.2006, the prosecution, in order to prove its case, examined Gurtej Singh complainant PW1, Jagjit Singh, Jagsir Singh PW2 and Jagdev Singh, witness of conspiracy PW3 on 26.2.2007. All these three witnesses did not support the case of the prosecution all and resiled from their earlier statements made before the police u/s 161 of the Code of Criminal Procedure. They were declared hostile by the trial Court on the request made by the Additional Public Prosecutor and were allowed to be cross-examined by him (Additional Public Prosecutor).

11. On 26.2.2007, after the examination of complainant Jagsir Singh PW1, Jagjit Singh PW2 and Jagdev Singh PW3. the Additional Public Prosecutor made the following statement:

As the star witnesses resiled from their statements and examination of other witnesses do not improve the fate of the case, so I close the prosecution evidence by giving up the remaining witnesses as unnecessary.

12. After the prosecution evidence had been closed by the Additional Public Prosecutor, again an application was made u/s 311 of the Code of Criminal Procedure by the Additional Public Prosecutor for examining the remaining witnesses, which was allowed by the trial Court. Thereafter, the trial Court proceeded to examine/re-examine the witnesses who had earlier been given up on 26.2.2007 i.e. Dr. Ashwani Mittal PW 4 on 10.8.2007. Kheta Singh who had accompanied complainant Jagsir Singh to the Police Station to lodge the report PW5 on 1.8.2007, Sub-Inspector Malkiat Singh, Investigating Officer PW6 on 1.8.2007. Balwant Singh, Station House Officer PW8 on 2.8.2007, Assistant Sub-Inspector Jasbir Singh PW9 on 2.8.2007, Raj Kumar Photographer PW12 on 2.8.2007, Gurjeet Singh, witness of motive PW16 on 18.2.2008 besides some other format witnesses. In all, the trial Court examined nineteen witnesses, which, as mentioned above, included complainant Jagsir Singh PW1, Jagjit Singh PW2, Jagdev Singh, witness of conspiracy PW3, Kheta Singh, who had accompanied complainant Jagsir Singh to the Police Station to lodge the report PW5 and Gurjeet Singh, witness of

motive PW16. They did not support the case of the prosecution and resiled from their earlier statements made before the police u/s 161 of the Code of Criminal Procedure. They were declared hostile by the trial Court on the request made by the Additional Public Prosecutor and were allowed to be cross-examined. Thereafter, the evidence of the prosecution was again closed on 29.4.2008 by tendering in evidence report of the Forensic Science Laboratory (Exhibit PX.).

13. Statements of the accused were thereafter recorded u/s 313 of the Code of Criminal Procedure, in which they denied the prosecution allegations and pleaded false implication on account of political rivalry.

14. We have heard Mr. A.P.S. Deol, Senior Advocate, assisted by Ms. Manpreet Kaur, Advocate and Mr. Davinderbir Singh, Advocate, appearing for the appellants and Mrs. Manjari Nehru Kaul, Additional Advocate General, Punjab, appearing for the State and have gone through the records of the case.

15. Section 226 of the Code of Criminal Procedure reads as under:

226. Opening case for prosecution-- When the accused appears or is brought before the Court in pursuance of a commitment of the case u/s 209 the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

16. Section 209 of the Code of Criminal Procedure provides for commitment of the case by the Magistrate to Court of Session when offence is triable exclusively by it. In this case, as mentioned above the police, after investigating the case, submitted its report u/s 173 of the Code of Criminal Procedure against accused Gurtej Singh, Jaspal Singh alias Pala, Manjit Singh alias Neela. Ram Singh. Sukhjot Singh, Gurmail Singh and Mohan Singh. Accused Daljit Singh, Gurbant Singh and Ginder Singh were found innocent during trial and were kept in column No.2. Charges were framed by the trial Court on 12.4.2006 against accused Gurtej Singh, Jaspal Singh alias Pal, Manjit Singh alias Neela, Angrej Singh, Ram Singh, Sukhjot Singh, Gurmail Singh and Mohan Singh under Sections 120B, 148, 364 read with Sections 149 and 302 read with Section 149 of the Code and Sections 25 and 30 of the Act. The prosecution thereafter partly examined Dr. Ashwani Mittal PW1 on 6.5.2006 and complainant Jagsir Singh PW2 on 27.5.2006. As the case property had not been produced on 6.5.2006, further examination of Dr. Ashwani Mittal PW1 was deferred. After examining Dr. Ashwani Mittal PW1 and complainant Jagsir Singh PW2, the prosecution filed an application u/s 319 of the Code of Criminal Procedure for summoning accused Daljit Singh, Gurbant Singh and Ginder Singh, who were summoned to face trial along with other accused for the aforementioned offences by the trial Court vide order dated 3.7.2006. In compliance with the order dated 3.7.2006 passed by the trial Court, accused Daljit Singh, Gurbant Singh and Ginder Singh were made to appear before the said Court. Fresh charges were framed against all the accused thereafter on 25.7.2006 under Sections 120B, 148 and 364 read with Section 149 and 302 read with

Section 149 of the Code and Sections 25 and 30 of the Act.

17. In view of the provisions of Section 226 of the Code of Criminal Procedure, quoted above, trial would be deemed to have commenced against all the accused on 25.7.2006 when charges were framed against them. After reframing of the charge against all the accused on 25.7.2006, the prosecution, in support of its case, examined complainant Jagsir Singh PW1, Jagjit Singh PW2 and Jagdev Singh, witness of conspiracy PW3 on 26.2.2007. However, they did not support the case of the prosecution and resiled from their statements made before the police u/s 161 of the Code of Criminal Procedure. Resultantly, on the request made by the Additional Public Prosecutor, Jagsir Singh PW1, Jagjit Singh PW2 and Jagdev Singh PW3 were declared hostile by the trial Court and were allowed to be cross-examined by the Additional Public Prosecutor. When Jagsir Singh PW1, Jagjit Singh PW2 and Jagdev Singh PW3 did not support the case of the prosecutor, the Additional Public Prosecutor, on 26.2.2007, closed the case of the prosecution on the ground that the star witnesses had resiled from their statements and examination of other witnesses could not improve the fate of the prosecution case and gave up the remaining witnesses of the prosecution. The Additional Public Prosecutor, after the prosecution evidence had been closed by him, moved another application u/s 311 of the Code of Criminal Procedure for examining the remaining witnesses who had earlier been given up by him. This application was allowed by the trial Court. The trial Court then examined the witnesses who had earlier been given up on 26.2.2007. These witnesses are Dr. Ashwani Mittal PW4 examined on 1.8.2007, Khela Singh who had accompanied complainant Jagsir Singh to the police station to lodge the report PW5 examined on 1.8.2007, Sub-Inspector Malkiat Singh, Investigating Officer PW6 examined on 1.8.2007, Balwant Singh, Station House Officer PW8 examined on 2.8.2007, Assistant Sub-Inspector Jasbir Singh PW9 examined on 2.8.2007, Raj Kumar Photographer PW1 examined on 2.8.2007. Gurjeet Singh, witness of motive PW16 examined on 18.2.2008 in addition to some other formal witnesses. Evidence of the prosecution was again closed on 29.4.2008 by tendering in evidence report of the Forensic Science Laboratory (Exhibit PX.).

18. At the time of his deposition as PW2 on 26.2.2007 after framing of fresh charge against the accused on 25.7.2009, complainant Jagsir Singh was confronted with his earlier statement made as PW2 on 27.5.2006. He stated that he had made his deposition in Court on 27.5.2006 under the pressure of police. As has been noticed above, all the main witnesses of the prosecution i.e. eye-witness complainant Jagsir Singh PW1, Jagjit Singh PW2 another eye-witness, Jagdev Singh, witness of conspiracy PW3, Kheta Singh, who had accompanied complainant Jagsir Singh to the police station to lodge the report PW5 and Gurjeet Singh, witness of motive PW16 had resiled from their statements made earlier before the police u/s 161 of the Code of Criminal Procedure. However, the trial Court by accepting the statement of complainant, Jagjit Singh PW2 recorded by the trial Court on 27.5.2006 i.e. before the charge was reframed against all the accused, which was not permissible in view of the provisions of Section 226 of the Code of Criminal

Procedure, convicted and sentenced the accused, as aforementioned. The trial Judge accepted the statement of Jagsir Singh PW2 recorded on 27.5.2006 qua the accused against whom the charge had been framed earlier and did not believe the same against the accused who had been summoned to face trial on an application moved by the prosecution u/s 319 of the Code of Criminal Procedure, which is not legally acceptable. As the main witnesses of the prosecution had resiled from their earlier statements and did not support the case of the prosecution after the charge was reframed against all the accused, there was no evidence on record to connect any of the appellants with the offences alleged against them. In case of *Amanat Sk, & Ors. v. State of West Bengal* 1988 (2) Crimes 323 a Division Bench of Calcutta High Court held that the evidence that is laid by the prosecution after the person newly summoned appears is to be treated as the substantive evidence during the trial and the evidence earlier given by the witness can be used only as previous statement. For holding such, the Hon"ble Judges in *Ananat Sk's* case (supra) took into consideration the point that there cannot be two sets of evidence in one and the same trial in respect of the accused arraigned therein. It is another matter if one of the witnesses examined earlier was not available or had died. In such an eventuality, the evidence the witness had earlier given could be used as substantive evidence. Such is not the case here.

19. Mrs. Manjari Nehru Kaul, learned Additional Advocate General, Punjab, relied on the case reported as [Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others](#), to content that in order to maintain confidence of the public in the judicial system. it is the duty of the Courts to ensure that accused persons are punished. With due respect to the observations made by the Apex Court in *Zahira Habibulla H. Sheikh's* case (supra), it may be mentioned here that the facts of this case are quite distinct from the facts in that case. In *Zahira Habibulla H. Sheikh's* case (supra), there were macabre killings arising out of communal frenzy and there was failure of the State machinery to protect citizens' lives, liberties and properties. Further, the investigation in that case had allegedly been conducted in a manner helpful to accused persons. Such is not the case here. In this case, no fault could be pointed out by the State counsel in the investigation conducted by the police.

20. For the aforesaid reasons, this appeal is allowed, the impugned judgment of conviction and the sentence order are set aside and the appellants are acquitted of the charges framed against them by giving them the benefit of doubt.

21. Before parting with this judgment, we direct the learned trial Judge to initiate appropriate proceedings against complainant Jagsir Singh PW2 as his statement recorded before and after accused Daljit Singh, Gurbant Singh and Ginder Singh were summoned to face trial are diametrically opposite to each other and as both were made on oath one of them must be false.

Let a copy of his judgment be forwarded to the learned trial Judge accordingly.