Tejinder Singh and Others Vs State of Punjab

Criminal Appeal No. 589-DB of 1997

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 12, 2007

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 313#Penal Code, 1860 (IPC) â€" Section 302, 307, 324, 34, 449

Citation: (2007) 3 RCR(Criminal) 408

Hon'ble Judges: Uma Nath Singh, J; A.N. Jindal, J

Bench: Division Bench

Advocate: D.S. Bali, Mr. D.V. Gupta, Nos. 1 and 2 and Mr. S.S. Srawaan, No. 3, for the Appellant; Reeta Kohli, DAG, Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Uma Nath Singh, J.
This judgment shall also dispose of connected Criminal Revision No. 1099 of 1997 (Subhash Chander v. Tejinder

Singh and others), filed by the complainant for enhancement of sentence. Both the matters arise out of a judgment dated 23.7.1997 passed by

learned Sessions Judge, Ferozepur, in Sessions Case No. 208 of 1995 (ST No. 41 of 1997), holding accused Appellants Tejinder Singh,

Baljinder Singh and Ravinder Kumar (hereinafter referred to as `the accused persons") guilty of charges under Sections 302/34 IPC and 449 IPC

and sentencing them each to undergo imprisonment for life with a fine of Rs. 3,000/-, with direction to further undergo RI for one year each in case

of default of payment of fine, on the first count, and RI for ten years with a fine of Rs. 2,000/-, with direction to further undergo RI for six months

each in default of payment of fine, on the second count. However, accused persons Baljinder Singh and Tejinder Singh have been held guilty also

under Sections 324 and 324/34 IPC, respectively, and have been sentenced to undergo RI for one year each, with direction that all the substantive

sentences shall run concurrently.

2. As per prosecution case, FIR (Ex. PK/2) was recorded at 11.30 p.m. on 7.2.1995 under Sections 307/452/34 IPC on the statement of eye-

witness Subhash Chander (PW-3), elder brother of the deceased. He has stated that he was the eldest of three brothers. Ashok Kumar was

younger to him and Prem Kumar (hereinafter referred to as `the deceased") was the youngest. The deceased was employed at a VCR shop and

on the date of incident, he came to him at a three wheelers stand at about 6.30 p.m. This was also his version that the deceased informed him that

accused persons Dimpa alias Ravinder Kumar, Rinku alias Balwinder Singh and Pappi alias Tejinder Singh had scuffled with him. He advised the

deceased to go home with assurance that he would persuade them not to do so. The deceased left for the house and the complainant also followed

him. They reached near the house at about 8.00 p.m. An electric light was on in the street. All the three accused persons, namely, Tejinder Singh,

armed with kirch, Baljinder Singh, also with kirch, and Ravinder Kumar, empty handed, were standing near the house. On seeing the deceased,

Ravinder Kumar gave a lalkara saying ""Prem has come. He should not be allowed to escape today."" Thereafter, he had taken him into his grip and

co-accused Baljinder Singh gave a kirch blow on front side of his chest and another co-accused Tejinder Singh also caused a similar blow, which

hit below the neck on the left side on his chest. The deceased had rushed inside the house to save himself but accused Tejinder Singh again gave a

kirch blow on his right thigh. The deceased fell down in the house. While he was lying fallen, accused Baljinder Singh gave him further three blows

with kirch on his back side. Accused Tejinder Singh again gave one blow to the deceased on his left arm. The complainant raised an alarm and

also proceeded to save the deceased. In this process, Baljinder Singh alias Rinku caused two kirch blows to him also on his left thigh and left

buttock. On seeing oozing out of the blood from the body of the deceased, and when the complainant had raised an alarm, all the three accused

persons fled away with their weapons. According to the complainant, about two months back also, all the aforesaid three accused persons had

exchanged abuses with the deceased but the matter had been compromised in a Panchayat. The police after completion of the investigation put up

a challan against all the three accused persons.

3. The prosecution examined nine witnesses. Dr. Faqir Masih (PW-1) is the Autopsy Surgeon, who conducted the post-mortem examination on

the dead body of the deceased and gave his opinion on the nature of injuries and the cause of death. Dr. M.M.S. Dhillon (PW-2) had initially

examined the deceased when he had been brought by the complainant to the hospital and submitted an MLR. He also examined the complainant

later on at the request of the police. Subhash Chander (PW-3) is the complainant and the sole eye-witness of the incident. Constable Paramjit Lal

(PW-4) tendered his evidence on affidavit (Ex. PD), which he has also proved. Inspector Surjit Singh (PW-5) was the Additional SHO of Police

Station City, Ferozepur. He had received the MLR and investigated the case. Constable Jagjit Singh (PW-6) has also tendered his evidence on

affidavit (Ex. PT) and proved the document. He carried the special report to the residence of the Judicial Magistrate concerned. Veerpal Singh

(PW-7) was a Lineman of Punjab State Electricity Board. He had brought the register and stated on the basis of record that the electric supply to

the area of offence had continued uninterrupted. ASI Kewal Krishan (PW-8) has also tendered his evidence on affidavit (Ex. PV). However, at

the time of his cross-examination, he was reported to be dead. He was the MHC of Police Station City, Ferozepur. Amrit Pal Singh (PW-9) was

posted as SHO, PS City, Ferozepur, on 11.2.1995. He arrested accused Ravinder Kumar on 11.2.1995 and accused Baljinder Singh on

13.2.1995.

4. Accused Tejinder Singh and Baljinder Singh in their statements before the Court u/s 313 Code of Criminal Procedure pleaded innocence and

further stated that the deceased was a vagabond type person and he was doing nothing. They were falsely implicated in this case only on suspicion

that they had been defaming the deceased. The third accused Ravinder Kumar also pleaded innocence and further stated that he was a class fellow

of Baljinder Singh and was a college student. He was falsely implicated in this case because of his friendship with Baljinder Singh.

5. Heard learned Counsel for the parties and perused the records.

6. Learned Counsel for the Appellants has assailed the impugned judgment on the ground that there was a delay in the lodgement of the FIR. The

incident had taken place at 8.00 p.m., whereas the FIR was lodged at 11.30 p.m.; the presence of the eye-witness on the spot of incident was

doubtful, and the accused persons had no motive to commit the offence.

7. On the other hand, learned State counsel supported the impugned judgment and submitted that the ocular evidence of prosecution witnesses is

supported by the testimonies of Medical Officers (PW-1 and PW-2), as also by the ML Rs and Post-mortem report. Learned Counsel further

submitted that the motive need not be necessarily proved in every criminal case.

8. We have carefully considered the rival submissions and perused the records. The prosecution case is based on an eye-witness account of

Subhash Chander (PW-3), brother of the deceased (hereinafter referred to as `the eye- witness''). He, being an injured witness, has given a vivid

description of the incident. His testimony does not contradict his statement in the FIR. His presence on the spot is established by his MLR (Ex.

PH); evidence of the Investigating Officer, who had recorded his statement; statement of Dr. M.M.S. Dhillon (PW-2), who had medically

examined him at the instance of the police, and the post-mortem report of the deceased, which also bore his signature. The factum of presence of

the eye-witness on the spot, is supported by preponderance of evidence, and thus it certainly inspires confidence. The eye-witness is the elder

brother of the deceased; he had suffered injuries in the incident, and is also the author of the FIR. He has given the background of the case while

stating that on the date of incident at about 6.30 p.m., the deceased had come to him at the Auto Rickshaw Stand, Ferozepur City. The deceased

told him that all the three accused persons had tried to assault him. The eye-witness assured the deceased to go home and he would advise the

accused persons not to do so. However, at about 8.00 p.m., when he had returned home with the deceased from the VCR shop, where the

deceased was employed, he noticed the presence of all the accused. Narrating the actual incident, he has stated that in front of their house in the

street, all the accused persons were standing. It need to be noted that two of the accused persons, namely, Tejinder Singh and Baljinder Singh

were also the residents of the same street. They were armed with kirch, whereas co-accused Ravinder Kumar was empty handed. As regards the

possibility that the eye-witness could not have seen the incident, he has stated that an electric light was on in the street, which is further supported

by the evidence of Veerpal Singh (PW-7), a Lineman employed with the PSEB, who has stated on the basis of the record that the supply of

electricity had continued. Assigning specific roles to the accused persons, the eye-witness has stated that Ravinder Kumar had raised a lalkara

saying that the deceased had come; he be caught hold of, and he be not allowed to go. Accused Ravinder Kumar caught hold of the deceased and

took him into his grip. Accused Baljinder Singh gave a kirch blow hitting the deceased on his chest. He was followed by accused Tejinder Singh,

who also gave a kirch blow hitting the deceased on the left side of the neck. Having received two injuries, to save himself, the deceased rushed into

his house. But he was followed by the accused persons, who also entered into his house. At this stage, accused Tejinder Singh gave another blow,

hitting on the right thigh of the deceased. The deceased had fallen down on the ground, and thereafter, accused Baljinder Singh caused three more

blows, hitting the deceased on his back side. In the last, accused Tejinder Singh again gave another blow, hitting the deceased on his left arm.

Pictorial diagram of the injuries (Ex. PD-1) contained the corresponding injury marks. The eye-witness had raised an alarm and proceeded to save

the deceased. In the process, he also received two kirch blows on the left side of thigh near buttock from accused Balwinder Singh. Thereafter, the

accused persons left the place with their weapons. Thus, it appears from the eye-witness accounts of the actual incident that the accused persons

having caused sufficient number of injuries to the deceased and also having caused two injuries to the eye-witness had left the place on their own.

The eye-witness did not report the matter to the police immediately, although the Police Station was situated at a distance of about 2 kms. The

explanation given for not doing so appears to be that the deceased had been bleeding profusely and therefore, the witness rushed him to the

Trauma Ward of Civil Hospital in his auto-rickshaw. Secondly, the eye-witness himself had also sustained injuries in his thigh region. According to

the eye-witness, after one hour, the police had come to the hospital, where he made his statement/ruqa (Ex. PK) at 11.15 p.m. Regarding the

information given to the police about the incident, it has come in the cross-examinations of Dr. M.M.S. Dhillon (PW-2) that the deceased had been

brought to the hospital by the eye-witness (PW-3), who gave his particulars and also signed at two places. Vide the statement of PW-2, the

deceased had been brought to the Civil Hospital at 11.55 p.m., and on medical-examination, he noticed the following injuries on his person:

1. Incised punctured wound 5 cms x 1 cm in the epigastric region, just right to the mid line. Fresh bleeding was present. Probing was not done.

Pressure bandage was applied. Advised for Surgeon''s opinion.

2. Incised punctured wound 4 cms x 1.25 cms on the lower part of the left chest, just distal to costal margin and extending upward on the back of

the lower limbs. Fresh bleeding was present. Probing was not done, obliquely placed. Pressure bandage was applied. Advised for Surgeon''s

opinion.

3. Incised punctured wound 5 cms x 2 cms on the lower part of right chest and extending to mid line. Wound was obliquely placed. Fresh bleeding

was present. Probing was not done. Pressure bandage was applied. Advised for Surgeon''s opinion.

4. Incised punctured wound 2.75 cms x 0.75 cm on the back of the left side of the chest, 8 cms from the mid line, obliquely placed 10 cms above

the injury No. 2. Fresh bleeding was present. Probing was not done. Pressure bandage was applied. Advised for Surgeon''s opinion.

5. Incised punctured wound 4 cms x 2 cms on the left half of manubrium sternil and extending to left side of the chest. Fresh bleeding was present.

Probing was not done. Pressure bandage was applied. Advised for Surgeon''s opinion.

6. Incised wound 2 cms x 0.75 cm on the posterio lateral aspect of the back of the upper part of the left forearm. Wound was muscle deep. Fresh

bleeding was present.

7. Incised wound 2 cms x 0.75 cm on the posterior lateral aspect of the middle of the right thigh. Fresh bleeding was present.

Corresponding cuts were present in the jersi, shirt, banyan and pant and were sent with the MLR. All the clothes were blood stained.

Injuries No. 1 to 5 were kept under observation. Injuries No. 6 and 7 were declared as simple in nature. All the injuries were caused by sharp

edged weapon and probable duration of the injuries was within six hours.

9. We have also perused the MLR of the deceased (Ex. PD) and found the signatures of the eye-witness at two places. Vide the MLR (Ex. PD)

of the deceased, in a printed column, it is noticed that the police was informed immediately. The police had reached the Trauma Ward at 9.30 p.m.

The evidence of PW-2 which corroborates the testimony of the eye-witness, appears to be reliable as the police had reached the hospital within

35 minutes of information. This is also noticed that the doctor PW-2 by sending a copy of the MLR to the police had informed them. He has

reiterated in his cross- examinations to have sent the MLR to the Police Station. It appears that the eye-witness was medically examined after his

statement had been recorded by the police at 11.20 p.m. Dr. Dhillon (PW-2) has stated that he medico-legally examined the eye-witness on police

request of Inspector Surjit Singh (PW-5). He has further stated that the patient was brought to him by Surjit Singh (PW-5) at 11.20 p.m. On

medical examinations, he noticed two injuries on his person:

1. Incised punctured wound 0.75 cm x 0.5 cm on the posterio-lateral aspect of the left thigh. Wound was muscle deep. Fresh bleeding was

present. Corresponding cut was present in the pant and underwear.

2. Incised punctured wound 0.5 cm x 0.25 cm on the posterio aspect of the upper part of left thigh, just below natal cleft and 5 cm behind injury

No. 1. Wound was muscle deep. Fresh bleeding was present. Corresponding cut in the pant and underwear was present.

Both the injuries were declared as simple in nature. The probable duration of the injuries was within six hours and the kind of weapon used was

sharp edged weapon.

10. The police seized incriminating articles in the hospital in presence of the eye-witness. His blood stained clothes and that of the deceased (who

was not yet dead) were removed by the Doctor and handed over the police. The police seized the clothes after making two parcels vide Exs. PL

and PM. The eye-witness (PW-3) and one Kulwant Singh (not examined) attested the seizure. The seal of the I.O. after seizure was handed over

to PW-3. The witness identified the seizure memos in the Court. The police had taken the eye- witness along to the place of occurrence where an

intimation regarding the death of the deceased was received. IO Surjit Singh (PW-5) has also stated that at the place of occurrence, he had

received information about the death of the deceased, therefore, he along with the eye-witness reached the Trauma Ward. From the evidence of

the eye-witness as also from the statements of Dr. M.M.S. Dhillon (PW-2) and the Investigating Officer (PW-5), it appears that from 8.55 p.m. till

the death of the deceased in the intervening night of 7 and 8.2.1995 at 1.45 a.m., the police remained engaged in the investigation of the case. It is

further revealed that the FIR had been lodged at 11.30 p.m. Constable Jagjit Singh (PW-6) had been handed over an envelope containing special

report at 12.40 a.m., which was received by learned Illaqa Magistrate at 9.00 a.m. Thus, there was no intentional delay on the part of the police in

completing this exercise. Moreover, in his cross-examination, PW-6 has also stated that the Duty Magistrate was asleep and, therefore, he did not

think it proper to deliver the report to him at that time. The eye-witness has also denied a defence suggestion that some Advocate, being the

President of a local Radha Swami Satsang, had come to the hospital. He has stated that he had remained standing by the side of the Doctor for

two hours when the deceased was being medical-legally examined. He had also shown his injuries to the Doctor and had made a request for his

medical-examination, but he was told by the Doctor to bring medicines during the course of treatment of his brother. He has reiterated the specific

individual roles attributed to each of the accused persons. Thus, his presence on the spot of incident and his testimony regarding the occurrence are

supported by the cogent material on record. As regards the medical evidence, the testimonies of Dr. M.M.S. Dhillon (PW-2), and Autopsy

Surgeon, Dr. Fquir Masih (PW-1), do not contradict each other. Except at once place, where PW-2 has stated that injury Nos. 1, 2, 3, and 5, as

given in the MLR of the deceased (Ex. PD), are less likely to be caused with kirch (Exs. P-1 and P-2), as the length of the wound is more than the

breadth of the blade of kirch (Exs. P-1 and P-2). Their testimonies appear to be consistent with each other. On the other hand, Dr. Faquir Masih

(PW-1) has noted the following injuries on the dead body of the deceased:

1. Stitched wound 4 cms long on left side of sternum in its upper part. On opening thorax cavity, there was cut fracture of third left rib cartilage.

There was small amount of blood in pleural cavity. Left lung was found healthy.

2. Stitched wound 2.75 cms long on back of left chest, 8.5 cms from mid line in middle part of the chest.

On dissection, injury was found to be muscle deep, congestion of surrounding tissues was present.

3. Stitched wound 5 cms long in lower part of right side of chest. On dissection, wound was going into abdominal cavity obliquely. On opening the

abdomen, small amount of blood was seen in peritoneal cavity. There were two stitched wounds on liver, one anteriorly and the other in posterio-

lateral aspect of liver corresponding to injury No. 3.

4. Stitched wound 4 cms on back and left side just below costal margins. On dissection, injury was going into retro peritoneal space with a big

retro peritoneal haematoma.

5. 2 cms x 0.5 cm incised wound which was muscle deep present on posterio lateral aspect of upper part of left forearm. Clotted blood was

present.

6. Incised 2 cms x 0.5 cm on posterio-lateral aspect of right thigh in its middle part. Clotted blood was present. Wound was extending 3 cms deep

into the thigh muscles.

7. 1.5 cms surgical venesection wound on medial side of right ankle. Wound was stitched.

Stomach was healthy and contained small amount of semi digested food. Liver was pale looking. Spleen was looking pale, but was healthy.

Bladder was empty. Rest all other organs were healthy and as described above.

In the opinion of the Doctor (PW-1), the cause of death in this case was haemorrhage and shock due to multiple stab wounds.

11. On seeing the kitch (Exs. P-1 and P-2), he had opined that the injuries found on the dead body could be caused with these weapons.

Similarly, the injuries mentioned in the inquest report (Ex. PB) also lend support to the medical evidence. The Investigating Officer (PW-5), has

explained that no one was ready to give a statement. His evidence supports the prosecution case regarding the seizure, arrest of the accused

persons and the statements of the witnesses.

12. Now coming to the involvement of the accused persons, accused Tejinder Singh and Baljinder Singh are the real brothers; they are the

residents of the locality of the deceased, and their presence and participation are fully proved by the evidence on record, as discussed

hereinabove. So far as, accused Ravinder Kumar is concerned, he is not a resident of the same locality but he was staying somewhere else, outside

Kashmiri Gate, Ferozepur. His role is only confined to lalkara and taking the deceased into his grip to facilitate the commission of offence. As per

pictorial diagram of the dead body of the deceased (Ex. PD/1), one of the injuries on the front side of the body is located near the abdomen. Such

injury may not have been possible if accused Ravinder Kumar had held the deceased into his grip. Secondly, the accused had no motive to commit

the offence and hence he was not carrying any weapon at the time of offence. He has taken a stand that he was a friend of accused Baljinder Singh

and therefore, was implicated in this case. Further, in his cross-examination, the eye-witness was confronted with his police statement, wherein he

has not mentioned that accused Ravinder Kumar had entered into his house. Moreover, by way of supplementary evidence, the eye-witness had

also projected his wife as another eye-witness, who was not produced in the witness box. Though the presence of the eye-witness is established

but it may not be safe to convict accused Ravinder Kumar solely on the basis of his evidence in the absence of other incriminating materials. The

accused does not have any background of enmity with the deceased, except the evidence of the eye-witness that two months earlier on cricket

ground in the college, there were exchange of abuses between accused Balwinder Singh and Ravinder Kumar on the one hand, and deceased

Prem Kumar on the other. Moreover, Hon''ble Apex Court in the matter of Dani Singh and Others Vs. State of Bihar, has held that an inference

about common intention has to be drawn from the act and conduct of the accused as well as other relevant circumstances of the case. Totality of

the circumstances must be taken into consideration to arrive at any such conclusion. It only depends upon the facts and circumstances of each

case. Moreover, an act in furtherance of common intention is an incident of fact and not of law. Though, the eye- witness herein is an injured

witness but is also a partisan witness, being the elder brother of the deceased. As such, his evidence has to be carefully scrutinised. Similarly, in the

case of Ram Udgar Singh Vs. State of Bihar, , Hon''ble the Apex Court has held that the duty of the Court is to separate grain from chaff and

apprise in each case as to what extent the evidence is worthy of acceptance. It is only when such separation is not feasible, the evidence is to be

discarded in toto.

13. In view of the aforesaid discussion, we allow the appeal in part and set aside the conviction and sentence of accused Ravinder Kumar, but

dismiss the appeal against the rest of the accused, namely, Tejinder Singh and Baljinder Singh. It is informed that all the three accused persons are

on bail, pursuant to suspension of their sentence. Accordingly, the bail bond of accused Ravinder Kumar shall stand discharged, whereas accused

Tejinder Singh and Baljinder Singh shall surrender to their bail bonds to undergo the sentence as awarded by the trial Court.

14. As regards the criminal revision for enhancement of sentence, this is an appeal of 1997 and on a careful appreciation of evidence, we have held

that the sole eye-witness (PW-3) is worth reliance only in respect of accused Tejinder Singh and Baljinder Singh. Further, this is not a case, which

would fall in the category of rarest of the rare cases, calling for extreme penalty of death sentence at this belated stage. Hence, the criminal revision

filed by the complainant is hereby dismissed. Moreover, learned Counsel for the complainant has not appeared to argue the case despite the fact

that the case has remained listed on Board for a long period.