

(2006) 07 P&H CK 0244

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 495-DB of 1995

State of Punjab

APPELLANT

Vs

Sukhdev Singh and others

RESPONDENT

Date of Decision: July 29, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 34

Citation: (2006) 4 RCR(Criminal) 703

Hon'ble Judges: Viney Mittal, J; H.S. Bhalla, J

Bench: Division Bench

Advocate: S.S. Brar, A.A.G., Punjab, for the Appellant;

Final Decision: Dismissed

Judgement

H.S. Bhalla, J.

The lights of the house of Master Harnek Singh were switched off on 9th of May, 1990 when he met with an edge of doom. As per the prosecution version, on the said fateful day, Sukhdev Singh son of Pal Singh, resident of village Balipur Kalan, and Gurnam Singh son of Ram Krishan Singh, resident of village Bains, were going to village Daudhar in their car. At about 10.00 a.m., when they reached the turning of the road from where the road turns towards village Daudhar, Harnek Singh deceased, who was known to them, was seen coming on foot. At that time, appellants, Sukhdev Singh son of Jaswant Singh alias Banta and Tarlochan Singh son of Bhajan Singh of village Bassian were going on scooter on the road, which was leading towards Daudhar side. When they reached near the Telephone Pole, they stopped their scooter and got down. Appellant Sukhdev Singh took out a pistol from the dub of his pyjama and fired two shots at the head of Harnek Singh, as a result of which, he fell down and while he was lying on the ground, appellant Sukhdev Singh fired two more shots on his chest. On seeing this, Sukhdev Singh son of Pal Singh and Gurnam Singh son of Ram Kishan Singh stopped their car and they started taking care of Master Harnek Singh and while they were busy in doing so, both the

appellants sped away on their scooter. Harnek Singh died at the spot. Sukhdev Singh and Gurnam Singh followed the accused in order to apprehend them, but they could not be seen and escaped from the spot. Both Sukhdev Singh and Gurnam Singh proceeded towards Police Station Mehna for registration of the case, but ASI Gulzar Singh met them at Ajitwal Crossing, where Gurnam Singh made a statement Ex. PD and on the basis of that statement, a case was registered at Police Station Mehna vide FIR No. 18 dated 9.5.1990 under Sections 302/34 IPC and 25 of the Arms Act against both the appellants. As per the prosecution version, Master Harnek Singh deceased had a dispute with his brother Inderjit Singh over a wall. Appellant Sukhdev Singh is brother of the wife of Inderjit Singh, while appellant Tarlochan Singh is the son of another brother of the wife of Inderjit Singh and on account of this, appellants Sukhdev Singh and Tarlochan Singh had murdered Master Harnek Singh. The Investigating Officer came to the spot and prepared inquest report Ex. PA, which was attested by Amarjit Singh son of Naginder Singh and Atamjit Singh son of Mastan Singh. Post Mortem Examination on the dead body of Master Harnek Singh was conducted by Dr. Arun Kumar. According to this witness, the cause of death of deceased Harnek Singh was due to shock and hemorrhage due to the injuries suffered by him, which were sufficient to cause death in the ordinary course of nature and the said injuries were ante mortem in nature. The Investigating Officer lifted three empties of .32 bore lying at the spot and put them into a parcel, which was sealed with the seal 'GS' and thereafter, he took the said parcel into possession vide memo Ex. PC, which was attested by Boota Singh and Krishan Lal witnesses. ASI Gulzar Singh prepared the rough site plan of the place of occurrence. Statements of the witnesses were recorded and the appellants were arrested. After completion of the investigation, the appellants were challaned under Sections 302/34 IPC and 25 of the Arms Act.

2. The Illaqa Magistrate committed the case of the Court of Sessions vide order dated 30.4.1991 and the Sessions Judge, Faridkot, on finding a prima facie case, charge-sheeted appellant Sukhdev Singh for an offence u/s 302 of the Indian Penal Code, while appellant Tarlochan Singh was charge-sheeted u/s 302 read with Section 34 of the Indian Penal Code, to which both the appellants pleaded not guilty and claimed trial.

3. In order to prove its case, the prosecution examined PW-1 Atamjit Singh, PW-2 Boota Singh, PW-3 Amarjit Singh, PW-4 Sukhdev Singh, PW-5 ASI Gulzar Singh, PW-6 Dr. Arun Kumar, PW-7 Constable Mukha Singh, PW-8 Gursewak Singh and PW-9 Constable Baljinder Singh and after tendering the report of the Chemical Examiner Ex. PM, the prosecution evidence was closed.

4. When examined u/s 313 Cr.P.C., both the appellants denied the prosecution allegations and pleaded false implication. They also examined DW-1 Kapoor Singh, DW-2 Harchand Kaur, DW-3 Himmat Singh, DW-4 DSP Harbans Singh and DW-5 Surinder Kumar in their defence.

5. After hearing the Public Prosecutor for the State and defence counsel and after going through the evidence available on record, the learned Sessions Judge, Chandigarh, vide his judgment dated 15.12.1993 acquitted both the accused by giving them the benefit of doubt.

6. Feeling aggrieved against the said judgment, the State of Punjab has preferred the present appeal.

7. We have heard Shri S.S. Brar, Additional Advocate General for the appellant-State of Punjab and have also gone through the record and the findings recorded by the learned Sessions Judge in the impugned judgment passed by him.

8. At the very outset, we would like to observe that it is well settled law that order of acquittal can be interfered with only if there is an absolute assurance of the guilt of the accused upon the evidence on record and the High Court would not be justified in interfering with the order of acquittal, unless the same is found to be perverse and the order of acquittal can be set aside if the view taken by the trial Court is perverse. We would also like to observe that if on over-all appreciation of evidence available on record, two views are possible and when, on appreciation of evidence, a particular view has been preferred by the learned Sessions Judge and when the findings cannot be said to be perverse merely because another view is possible, the High Court would not be justified in interfering with the acquittal order recorded by the learned trial Judge. The entire case of the prosecution is to be scrutinised in the light of the evidence available on record and keeping in view the observations made above.

9. In this case, as per the prosecution version, the incident had been witnessed by two witnesses namely, Gurnam Singh son of Ram Kishan Singh and Sukhdev Singh son of Pal Singh and during the pendency of the trial, Gurnam Singh son of Ram Krishan Singh died and therefore, the entire prosecution case rested on the solitary statement of PW-4 Sukhdev Singh. It is true that lone eye-witness can be believed, but it must inspire confidence. It is again admitted case of the prosecution that PW-4 Sukhdev Singh is a chance witness and according to him, he happened to be present at the spot at the time of the commission of offence. He has categorically deposed that Gurnam Singh accompanied him and they went to village Daudhar in connection with the matrimonial alliance of the niece of Gurnam Singh and in this connection, they were to consult Gurbax Singh, Sarpanch of village Daudhar. It is admitted case of the prosecution that PW-4 Sukhdev Singh is the resident of village Balipur, Police Station Dhakha, District Ludhiana and Gurnam Singh (since deceased) belonged to village Bains, District Ludhiana and murder of Master Harnek Singh took place in the area of village Dhudike and deceased Harnek Singh belonged to village Kaunke Kalan, whereas Sukhdev Singh and Tarlochan Singh appellant belonged to village Bassian, Police Station Raikot. ASI Gulzar Singh PW-6 disclosed that village Bains is situated at a distance of about 40 kms. from village Dhudike and then again village Balipur is at a distance of 20-25 kms. from village Dhudike. It is a

strange coincidence that all the persons belonging to different villages at about 10.00 a.m. on 9.5.1991 appeared in village Dhudike and appellants Sukhdev Singh and Tarlochan Singh appeared at the spot from village Bassian, Police Station Raikot and PW-4 Sukhdev Singh and Gurnam Singh (since dead) came there from their different villages Balipur and Bains at the same time and then again Master Harnek Singh happened to meet appellants Sukhdev Singh and Tarlochan Singh at the spot, though he belonged to village Kaunke Kalan. No explanation has come forward from the side of the prosecution with regard to the presence of these persons at about 10.00 a.m. from different places. Moreover, the fact that PW-4 Sukhdev Singh is a chance witness, would not itself be sufficient to discard his testimony but at the same time, the testimony of a chance witness although not necessarily false is proverbially unsafe. In a number of cases, this Court had rightly distrusted the testimony of a witness, who does not belong to the village of occurrence even if his name is mentioned in the FIR. In this regard, the trial Judge has rightly placed reliance on a decision rendered in the case of [Balkrishna Chhaganlal Soni Vs. State of West Bengal](#), . The prosecution story clearly spells out that appellants Tarlochan Singh and Sukhdev Singh happened to see Master Harnek Singh at that point all of a sudden and PW-4 Sukhdev Singh and Gurnam Singh reached the spot by sheer chance and then appellants Sukhdev Singh and Tarlochan Singh happened to reach again by sheer chance and the entire story is based on a number of coincidences, as pointed above. It is again admitted case that Sukhdev Singh (PW-4) and Gurnam Singh (since dead), who was author of the FIR, were relatives of the deceased. The statement of DW-2 Harchand Kaur, mother of the deceased, clearly spells out that Karnail Singh, resident of village Rajpur, is father-in-law of Master Harnek Singh deceased and Sukhdev Singh PW-4 is the real brother of said Karnail Singh whereas daughter of Gurnam Singh, author of the FIR, is married to the son of Sukhdev Singh PW-4. The pedigree table, Ex. DY, available on the file, clearly spells out that Karnail Singh and Sukhdev Singh PWs are the sons of Gopal Singh alias Pal Singh. In the revenue record Ex. DZ, Sukhdev Singh PW is again shown as son of said Gopal Singh. All this clearly proves on record that they both were related to Master Harnek Singh deceased. So apart from their relations witnesses, they are chance witnesses as mentioned above. The prosecution story is based on probabilities and in fact, the prosecution has attempted to raise a building on sandy foundation, which is bound to collapse. It is again admitted case of the prosecution that in village Dhudike, deceased Harnek Singh, was employed as a teacher and both Sukhdev Singh and Gurnam Singh did not inform any one in village Dhudike regarding this murder. Then again the ocular version is not supported by the medical evidence available on the record. Sukhdev Singh PW-4 has deposed that the deceased was fired at a very close range from a distance of 2 feet and empty fell at a distance of 4-5 feet from the place where Harnek Singh fell down. However, Dr. Arun Kumar did not find any blackening or scorching in the wounds. So seen from every angle, the statement of PW-4 Sukhdev Singh does not inspire confidence and it appears that truth is not coming out of his mouth and he was introduced later on. Learned Sessions Judge

has rightly observed that the possibility of Harnek Singh being murdered by the terrorists cannot be ruled out. Further, the presence of Amarjit Singh and Atamjit Singh, who were, allegedly, present at the time of preparation of inquest report and belong to village Kaunke Kalan, has not been explained.

The delay in sending the special report to the Ilqa Magistrate has added another nail to the coffin of the prosecution case. Special report reached the Ilqa Magistrate at 5.30 p.m., whereas the statement of Gurnam Singh was recorded at 12.50 p.m. The distance between Ajitwal Chowk and Police Station Mehna is about 5-7 kms. If the occurrence had taken place at about 10.00 a.m., then it would have taken hardly half an hour for Sukhdev Singh and Gurnam Singh PWs to reach Ajitwal Chowk, where the police party met them and as the distance between Ajitwal Chowk to Police Station Mehna is about 5-7 kms, therefore, the FIR could have been recorded at Police Station Mehna before 12.00 noon and if the FIR is recorded before 12.00 noon, then it would have reached the Ilqa Magistrate by 1.00 p.m. or so whereas it had reached the Ilqa Magistrate at 5.30 p.m. This delay has not been explained by the prosecution in any manner. It appears that there were consultations to decide what version should be put forward and who should be implicated for the murder. The prosecution, in fact, has not made any attempt to explain this delay and as such, the delay casts a doubt on the prosecution version.

10. The above discussion would show that the false witnesses to the occurrence had been introduced to the case and there was an attempt to implicate innocent persons in the case. When the investigation is found to be tainted, the whole of the prosecution case becomes open to serious doubt and challenges. All that can be said for the prosecution is that it may be that the accused had committed the murder, but there is a long way to travel between, "may be true", and "must be true" and this whole distance has to be travelled by the prosecution. The only safeguard for this Court would be to reject the prosecution case as not proved. The result is unfortunate and it is pity that the death of Harnek Singh is going unheard and unnoticed.

No other point was urged or survives for consideration.

In the final analysis, there is no merit in this appeal and the same is dismissed.