(1977) 03 SC CK 0023

Supreme Court of India

Case No: Criminal Appeals Nos. 178 And 179 And 228 Of 1975

Satbir Singh and Another		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: March 14, 1977

Acts Referred:

- Evidence Act, 1872 - Section 24
- Penal Code, 1860 (IPC) - Section 109, 120B, 302, 364

Citation: AIR 1977 SC 1294 : (1977) CriLJ 985 : (1977) 2 SCC 263 : (1977) 3 SCR 195

Hon'ble Judges: Y. V. Chandrachud, J; P. N. Shingal, J; P. K. Goswami, J

Bench: Full Bench

Final Decision: Allowed

Judgement

P.K. Goswami, J.
These appeals under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, are directed against the judgment and order of the High Court of Punjab and Haryana convicting five of the appellants (Satbir Singh, Paramjit Singh, Harbhajan Singh, Shiv Narain and M.P. Singh) u/s 302/120B, Indian Penal Code, and sentencing them to imprisonment for life. Satbir Singh was also convicted on the sole testimony of Puran Singh u/s 364, I.P.C. and sentenced to rigorous imprisonment for seven years and fine. The remaining eight appellants (Ajit Singh, Darshan Singh, Arjan Singh, Baghal Singh, Tara Singh, Dial Singh, Bachan Singh, and Malook Singh) were convicted u/s 364, I.P.C. and sentenced to seven years" rigorous imprisonment and fine. They had all earlier been acquitted by the Additional Sessions Judge, Amritsar.

2. This case throws a lurid light on smuggling activities at the international India-Pakistan border near Amritsar.

3. Amongst the appellants (hereinafter to be described as the accused) M.P. Singh was an Inspector of the Border Security Force (BSF), Shiv Narain was a Sub Inspector (BSF) and Harbhajan Singh was a Constable (BSF). Accused Ajit Singh is the father of the two accused, Satbir Singh and Paramjit Singh. Ajit Singh is alleged to be a big smuggler indulging in his smuggling activities at the India-Pakistan border with his two sons and the other accused persons, namely, Darshan Singh, Arjan Singh, Baghal Singh, Tara Singh, Dial Singh, Bachan Singh and Malook Singh. It is alleged that Inspector M.P. Singh, S.I. Shiv Narain and Constable Harbhajan Singh, along with other BSF personnel were conniving at the smuggling activities of Ajit Singh and party and were reaping their illegal harvest.

Shingara Singh and his son Hardip Singh and Kartar Singh are the three deceased whose murders form the subject-matter of this case. While the dead bodies of Hardip Singh and Kartar Singh were found that of Shingara Singh was not available.

4. Puran Singh (PW 3) son of Shingara Singh (deceased) was a member of the gang of smugglers headed by accused Ajit Singh and in the course of smuggling activities there was a quarrel with regard to the sharing of money to the extent of Rs. 15000/- which was said to be his due and which Ajit Singh and party were not paying. A few months prior to July 6, 1970, the date of occurrence, when accused Satbir Singh, Jasbir Singh and ten or twelve labourers along with Puran Singh smuggled 15 jackets of gold each weighing 1000 tolas from Pakistan into Indian territory with the connivance of Inspector M.P. Singh and S.I. Shiv Narain (BSF), Puran Singh succeeded in slipping away under the cover of darkness with two jackets of gold. The gold with which Puran Singh fled away was then worth about Rs. 5 to 6 lakhs.

5. May 20, 1970. A report was lodged by Shingara Singh, deceased, at Police Station, Gharinda, alleging that his son Puran Singh (PW 3) who had been carrying on smuggling activities with the sons of accused Ajit Singh was taken away by accused Satbir Singh and some others (not before us) on May 6, 1970, in a car. He did not then suspect anything. But now he had a firm suspicion that Satbir Singh, Jasbir Singh and Paramjit Singh, sons of Ajit Singh of village Burj, Rajinder Singh and Makhan Singh, had abducted his son Puran Singh over a dispute about the smuggled gold and they had kept him concealed at some unknown place with the intention to kill him. On receipt of this report a case u/s 364, I.P.C was registered by S.I. Baldev Singh (PW 63) at Police Station, Gharinda (Ex. P.P.Y).

6. July 7, 1970: A report was sent to Police Station, Gharinda, by accused Shiv Narain, S.I. (BSF) about an encounter of BSF with smugglers on the midnight of July 6, 1970, on the border of India-Pakistan at Border Pillar No. 100 near Amritsar that "two sikh young men" fell dead to the fire opened by the Border Security Force of the Indian side.

7. July 17, 1970: The first information report (Ex. PPZ/1) of the present case was registered by Police Station, Gharinda, on the report dated July 12, 1970 (Ex. P.P.Z) of

D.S.P. Surjit Singh (P.W. 64) which, inter alia, disclosed:

I heard a rumour on 8th July, 1970, on my return from casual leave that three persons namely Shingara Singh son of Inder Singh, Kartar Singh son of Mangal Singh and Hardip Singh son of Shingara Singh, jats, residents of Ranike. Police Station Gharinda had been abducted forcibly by Ajit Singh of Burj and his sons residents of village Burj, Police Station Gharinda and party from near Crystal Chowk, Amritsar and that they had been shown killed in an encounter in connivance with Border Security Force and Pak Rangers.

This report of D.S.P. Surjit Singh has discounted the encounter story as a fib but yet it continued to be the defence of the accused. According to the trial Court "the encounter version appears to be true.

8.Were the three persons, Shingara Singh, Hardip Singh and Kartar Singh, killed in an encounter with the BSF or murdered in pursuance of a conspiracy to abduct and murder? While the first part of the question need not even be proved, the second part must needs be proved to the hilt.

9. The prosecution case further is that Puran Singh after having been taken away from his village was taken to the Haveli of Ajit Singh where he was asked about the gold which he had stolen away. Puran Singh informed the accused persons that he had delivered the gold to his brother, Hardip Singh. It is alleged that Puran Singh was afterwards taken to the border and left with accused M.P. Singh and accused Shiv Narain who later on handed over him to Shaffi and Yakub, two Pakistani smugglers and the latter took him to village Dial (Pakistan). Puran Singh was brought to the Indian side of the border on the night intervening 6th and 7th July, 1970, but was again taken back to Pakistan wherefrom he could manage to escape and cross over to the Indian side of border only on November 6, 1970, to figure as an eye witness to the murder of his father.

10. It is alleged that on July 6, 1970, Shingara Singh, Hardip Singh and Kartar Singh (all deceased) along with Harnam Singh (P.W. 5) went to Amritsar. Shingara Singh and Hardip Singh had gone to attend court, Kartar Singh to sell his vegetables and Harnam Singh to attend to his wife, Smt. Piaro, who was a patient in the V.J. Hospital. After being free from their work at about 1.00 P. M. the three deceased along with Harnam Singh (P.W. 5) went towards the V.J. Hospital. When they had reached Crystal Chowk on way to the V.J. Hospital, a big vehicle and a car came from the side of the Railway Station, in which accused Ajit Singh, Jasbir Singh (absconder), accused Satbir Singh, Satara (absconder), accused Paramjit Singh, accused Baghal Singh, accused Tara Singh, accused Arjan Singh, accused Bachan Singh, accused Darshan Singh, Pritu (Pritam Singh) (acquitted), accused Malook Singh and accused Dial Singh with two other persons in police uniforms (Pamma and Malkiat) were travelling. These persons were armed with guns and revolvers. The accused came out of the vehicles and physically lifted Shingara Singh, Hardip Singh and Kartar Singh and whisked them away in the said vehicles. It is alleged that the deceased persons were first taken to the Haveli of Ajit Singh in village

Burj where they were belaboured and later on, blindfolded and tied, removed to the Indo-Pakistan border where on that night some goods were to be exchanged between the accused with Balkar Singh (P.W. 4) and the Pakistani smugglers. Accused M.P. Singh was also present there. At about mid-night all of them including accused Shiv Narain and accused Harbhajan Singh moved near Pillar No. 100. This party handed over 1 1/2 maunds of silver to Yakub and Shaffi, Pakistani smugglers and received gold in return. Hardip Singh and Kartar Singh were brought by accused Satbir Singh and others towards Indian side of the border but Shingara Singh was left behind with the Pakistani smugglers. Balkar Singh (P.W. 4) then enquired as to why Shingara Singh had been handed over to Pakistanis. At that moment accused Shiv Narain fired two shots with very light pistol. Accused Harbhajan Singh, accused M.P. Singh, accused Paramjit Singh and accused Satbir Singh also fired shots at Hardip Singh and Kartar Singh from a distance of 25 yards who then dropped dead. Accused Jasbir Singh (absconder) came there and untied their hands and removed the cloth covering their eyes. A rifle was placed near the dead body of Hardip Singh and a kirpan was placed near the dead body of Kartar Singh. Balkar Singh (P.W. 4) also heard the sound of a fire shot in Pakistan territory when Ajit Singh (accused) said that Shingara Singh had also been killed.

11. According to the prosecution to justify the killing of Hardip Singh and Kartar Singh, accused M.P. Singh, accused Shiv Narain and accused Harbhajan Singh with other officials of BSF, manipulated an encounter story and got a false case registered at Police Station, Gharinda, on July 7, 1970 (Ex. P. P. O/1) on a "ruqa" having been sent by S.I Shiv Narain (accused) falsely alleging inter alia, that on a secret information having been received by Inspector M.P. Singh (accused) that some smugglers would bring some goods from Pakistan to India they conducted an ambush behind Burji (Border Pillar) No. 100 on the night intervening 6th and 7th July, 1970, and during the process in defence the Naka party fired which resulted in killing of two persons who were subsequently identified as Hardip Singh and Kartar Singh.

12. The accused persons were charged u/s 364/120B, I.P.C for abducting Puran Singh. They were also charged u/s 364/120B, I.P.C for abducting Shingara Singh, Hardip Singh and Kartar Singh. They were further charged u/s 302/120B, I.P.C for causing the death of Kartar Singh and Hardip Singh. They were also charged u/s 109 I.P.C for abetting the murder of Shingara Singh which offence was committed in consequence of the abetment.

13. The prosecution examined 68 witnesses. The accused denied the charges and the BSF accused suggested a motive for the prosecution by alleging animus against the D.S. P. Surjit Singh (PW 64). According to them Kartar Singh and Hardip Singh were killed as a result of an encounter with smugglers on the border.

14. The Sessions Judge giving his reasons for not accepting the evidence of the eye-witnesses and other material evidence acquitted all the accused. The High Court on appeal confirmed the acquittal of two accused, namely, Pritam Singh and Mehar Singh, but convicted the appellants as mentioned above.

15. With regard to the charge u/s 302/120B, I.P.C the case will depend upon the evidence of Puran Singh (PW 3) and the extrajudicial confession by the accused, Shiv Narain and Harbhajan Singh, before R. K. Kapur (PW 41). With regard to the charge u/s 364, I.P.C the prosecution rests upon Harnam Singh (PW 5) and also upon the evidence of Gurdial Singh (PW 10), Inspector Gurmukh Singh (PW 11) and Constable Amrik Singh (PW 46) with regard to the Roznameha entry (Ex. P.P.A). We may also note here that Puran Singh (PW 3) and Balkar Singh (PW 4) were the two eyewitnesses to the murder and Balkar Singh (PW 4) was disbelieved both by the Sessions Judge and the High Court. Harnam Singh (PW 5) is an eye-witness to abduction. We should also note that Gurdip Singh (PW 14) Atma Singh (PW 27) and Mohinder Singh (PW 28) who were witnesses with regard to the charge of abduction, were also disbelieved both by the Sessions Judge and the High Court. Harnam Singh (PW 5) who is the eye-witness to abduction was disbelieved by the Sessions Judge but partly believed by the High Court.

16. In the above state of the evidence Mr. Sharma appearing on behalf of the State rests his case, on the evidence of Puran Singh (PW 3) and the extra-judicial confession made by the accused Shiv Narain and Harbhajan Singh before R. K. Kapur (PW 41) with regard to the murder charge u/s 302/120B, I.P.C. He also relies upon the Roznamcha and the recoveries.

17. We will therefore first examine the reasons given by the Sessions Judge for acquitting the accused. After narrating the facts, deposed to by Puran Singh (PW 3) the Sessions Judge held that "the story on the face of it appears to be false." According to Puran Singh (PW 3) the accused took him away to Ajit Singh"s Haveli and then to the Indo-Pakistan border only with a view to recover the gold which he had earlier managed to steal away. The Sessions Judge took note of the fact that Puran Singh had told the accused that the gold was lying with his brother, Hardip Singh. It was, therefore, inconceivable that this clue with regard to the gold would not be pursued by the accused and Hardip Singh would be left out and Puran Singh alone would be taken away. This witness even after he had seen the murder of his father, Shingara Singh, on July 6, 1970, stayed in Pakistan for about four months without disclosing this fact to anybody nor did he communicate about it to any of his relations. Although this witness said that he crossed from Pakistan to India only on November 6, 1970 after the murder, and was arrested and interrogated by S.I Jai Ram (PW 58) and was also prosecuted for crossing the border, there is no evidence from any police officer, nor even from S.I. Jai Ram (P.W .58). No documentary evidence, which would have been available if his statement was true, was produced in the case. Apart from that, this witness stated that he was arrested by S.I Jai Ram and he narrated the entire occurrence to him. S.I Jai Ram does not support him. On the other hand he had earlier stated before the committing Magistrate that he did not tell anything about the said murders to S.I Jai Ram.

18. The Sessions Judge also noted several discrepancies in his evidence and finally came to the conclusion that he was not actually present at the time of the murders nor was he abducted by the accused as alleged.

19. The High Court does not appear to have closely considered the reasons given by the Sessions Judge for disbelieving the testimony of Puran Singh. It is difficult to appreciate how the High Court can say that the statement of this witness "seems to be quite natural" in view of the infirmities pointed out by the Sessions Judge. After examining the entire discussion of the evidence of this witness by the High Court, we are mot satisfied that the High Court was right in relying upon the testimony of this witness. It is pointed out that the High Court was not correct in observing that "it is not disputed that he (Puran Singh) is being tried for having come to Indian territory on November 6, 1970 and the moment he entered the Indian territory, he was taken into custody and his statement was recorded by the police." On the other hand the Sessions Judge found just to the contrary and there is no reference in the judgment of the High Court to the discussion by the Sessions Judge with regard to this aspect.

20. We have next to see the reasons given by the Sessions Judge for disbelieving the testimony of Harnam Singh (PW 5). This witness gave evidence about the abduction of the three deceased from the Crystal Chowk, near V. J. Hospital, Amritsar. The witness is a near relation of the deceased and he admitted that when the three deceased were abducted he suspected that the accused might inflict injuries on their per son. Even so he did not go for police assistance nor did he inform even Mangal Singh (PW 17), father of the deceased Kartar Singh, about the occurrence although the latter was residing with him in the same house. He also did not ask the relations of the deceased to lodge any report with the police. Crystal Chowk is a busy commercial area where there are shops and some residential houses and the shops were open at the time of the incident. Even so this witness stated that there were no shops or bazar near the place of occurrence. This witness named five accused persons including two absconders and stated that he knew them by names about one year prior to the occurrence. Since he had named accused Paramjit Singh and accused Satbir Singh in the committing court he was asked there to identify these two accused. He, however, wrongly pointed towards accused M.P. Singh as Paramjit Singh and accused Pritam Singh as Satbir Singh. Accused M.P. Singh was not even alleged to be present at Amritsar at the time of abduction. Although this witness stated that he informed Kabal Singh (PW 6) brother of Shingara Singh, Kabal Singh did no corroborate him on this point.

21. Further, Harnam Singh (PW 5) states about abduction of the three deceased from Crystal Chowk. The High Court accepts his evidence as being corroborated by witnesses regarding his presence at Amritsar with the three deceased persons. It is difficult to see how because his presence at Amritsar is proved the further fact about the abduction of the three deceased from Crystal Chowk is also established. There is no corroboration whatsoever of this part of the story. If the High Court has to look for corroboration of the evidence of Harnam Singh even about his presence at Amritsar. on its own reasoning, the principal part of the prosecution case about abduction depending upon his sole testimony cannot be held to be established. The High Court also seeks to find corroboration of this part of the case from Roznamcha of July 6, 1970 (Ex. P.P.A.)

wherein a certain information from an undisclosed source was received at 2.00 P.M. by Gurdial Singh (PW 10) to the effect "that there was some fight between some smugglers near Crystal Chowk or some legislator bad been abducted." This information is hearsay in absence of the informant The name of the informant is not even disclosed. Apart from this, this Roznamcha does not corroborate Harnam Singh (PW 5) with regard to his statement that the three deceased persons were abducted by the accused from Crystal Chowk. The High Court did not fail to observe that the reasons given by the witness for his belated examination by the police as "padding obviously at the instance of the police." Even so, the High Court explained away the fact of Harnam Singh"s not reporting to the police in a very unusual way. The High Court observed firstly that it was natural for the witness not to be involved in the dispute of smugglers and secondly that there was no use informing the police as no petty police officer would take action against the international smugglers. The High Court went on to record that "it appears in the present day administration that no petty police officer is likely to take responsibility in the matter of prosecuting international smugglers without having the blessings of the highest police officer in the district and even above." Witnesses, like Harnam Singh, were, therefore, according to the High Court "helpless." We cannot commend this line of approach in a criminal case in order to find justification for conviction on shaky testimony by making a virtue of the in-alertness of the police administration. The witness cannot be relied upon by resort to a kind of special pleading in his aid. We find that the High Court has not given any cogent reason for taking a different view with regard to the appreciation of evidence of this witness by the Sessions Judge.

22. About recovery of fire-arms and gold at the instance of some of the accused, the case rested on the evidence of the police officers alone. The other search witnesses were declared hostile on account of their not supporting the prosecution. The Sessions Judge did not feel it safe to act upon the testimony of police witnesses including Inspector Bachan Singh (PW 68) in the matter of disclosure statement as well as of recovery of the fire-arms and of gold in absence of corroboration by independent witnesses. The High Court held that there was no reason to disbelieve the police witnesses. But when both the Sessions Judge and the High Court seem to be in agreement in finding that there was "padding" by the police in respect of evidence produced in the case it could not be said that the Sessions Judge was so grievously in error that a contrary appreciation of the evidence was compelling under the circumstances.

23. There is also the evidence with regard to extra judicial confessions said to have been made by the accused Shiv Narain and Harbhaian Singh before R. K. Kapur (PW 41), the Commandant of the Border Security Force. The Sessions Judge has considered that evidence as inadmissible u/s 24 of the Evidence Act.

24. The High Court, differing from the opinion of the Sessions Judge, held the extra-judicial confession as admissible in evidence since, according to the High Court, "it cannot be held that he (Kapur) gave any threat, inducement or promise to the accused." The High Court observed:

When this (warning) was conveyed to the accused by Shri Handa D.S.P., the accused still stuck to the encounter versions and made their statements in writing supporting the encounter version. The said threat of Shri Kapur P.W. did not work and the accused stuck to their old story....It was on 19th July, 1970 that Shiv Narain and Harbhaian Singh were questioned separately when he told them that they should come out with the truth otherwise they would themselves be responsible for their actions and if they had done anything wrong, they would go to jail. Instead of giving them any promise or help, he in fact told them that if they were in the wrong, they would go to jail.... From the statement of this witness, which I have gone through minutely, it is difficult to hold that he gave any inducement, threat or promise to the accused persons and that the accused persons made the confessions in pursuance thereof.

25. Section 24 of the Indian Evidence Act provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appear to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

26. Indeed, Mr. Kapur was a person in authority being the Commandant of the rank of a Senior Superintendent of Police and the confessing accused were his subordinates. Apart from this, it appears from his evidence that the oral confessional statements were not readily forthcoming from the accused persons but they had to be interrogated on several occasions. He further advised D.S.P. Handa to interrogate them "with a warning that they should state the truth otherwise they would not be supported by me." Mr. Kapur further admitted in his cross-examination that he "did tell Mr. Handa on telephone on 10-7-1970 that he should give a warning to Border Security Force people to come out with truth otherwise they themselves would be responsible for their actions". Mr. Kapur also himself "enquired from M.P. Singh and Shiv Narain accused about the matter on 19th July, 1970 telling them that now that the case has been registered they should state the truth.

27. In deciding whether a particular confession attracts the frown of Section 24 of the Evidence Act, the question has to be considered from the point of view of the confessing accused as to how the inducement, threat or promise proceeding from a person in authority would operate in his mind.

28. It is true that Mr. Kapur, in his evidence, denied having held out to the accused any inducement, threat or promise. We, however, find that on July 17, 1970. the police gave a go-by to the encounter story and the present case was registered against the accused. Two days after, on July 19, 1970. Mr. Kapur having already failed to get any confessional statement from the accused through other agency, took upon himself to question accused Shiv Narain and Harbhajan Singh separately and this time he succeeded in securing confessional statements. When the two accused were questioned separately after several

abortive attempts to secure confessions, can it be said that there was no inducement, threat or promise of some kind proceeding from Mr. Kapur to have made any impact on their minds resulting in the confessions? Mr. Kapur having stated to the accused on July 19, 1970. that "now that the case has been registered they should state the truth", it is difficult to hold that by this statement he would not generate in the minds of the accused some hope and assurance that if they told the "truth" they would receive his "support" which he had earlier conveyed to them through D. S. P. Handa. It is true that in the course of cross-examination Mr. Kapur stated that he had told the accused that if they had done " anything wrong they would go to jail. But having regard to the effect of the totality of the evidence of this witness, we are unable to hold that the confessions made by the accused before Mr. Kapur on July 19, 1970, were free from the taint of infirmity within the mischief of Section 24 of the Evidence Act. We are, therefore, clearly of opinion that the extrajudicial confessions by the two accused. Shiv Narain and Harbhajan Singh, have to be completely excluded from consideration being hit by Section 24 of the Evidence Act.

29. Similarly not much can be made of abscondence of certain accused when other material evidence connecting the accused with the crime has failed in this case.

30. A serious infirmity in the judgment of the High Court is that it has not at all considered the reasons given by the Sessions Judge for acquitting the accused. The High Court has given its own reasons for convicting the appellants but that is not enough in an appeal against acquittal.

31. As a practical proposition, in an appeal against acquittal, it is always necessary that the reasons given by the trial Court for recording an acquittal should be examined by the High Court. If the conclusions of the trial Court are not based upon any evidence or they are such as no reasonable body of men, properly instructed in law, can reach, on the evidence, or they are so palpably wrong as to shock the sense of justice, the High Court will be justified in taking a contrary view by giving its own reasons. It is not enough that it is just possible for the High Court to take a contrary view. While interfering with acquittal the judgment of the High Court should demonstrate clearly the unworthiness of the conclusions of the trial Court having regard to all the relevant evidence in record. We are unable to say in these appeals that the High Court has followed these salutary principles in dealing with an appeal against acquittal.

32. We may also observe that the High Court need not have mentioned the fact that the Sessions Judge was "suspended on account of corruption charges." If we may say so, it was absolutely unnecessary to refer to this in disposing of the appeal.

33. We are clearly of opinion that this was not a fit case where the High Court should have interfered with the acquittal of any of the appellants. The appeals are allowed. The judgment and order of the High Court are set aside and the appellants are acquitted of all the charges. The appellants, Satbir Singh, Paramjit Singh, Harbhajan Singh, Shiv Narain

and M.P. Singh shall be released from detention forthwith. The remaining appellants, Ajit Singh, Darshan Singh, Arjan Singh, Baghal Singh, Tara Singh, Dial Singh. Bachan Singh and Malook Singh, who have been on bail shall be discharged from their bail bonds.