

**Kirpal Singh
v.
State of Punjab**

(Criminal Appeal No. 1052 of 2009)

18 April 2024

[B.R. Gavai and Sandeep Mehta,* JJ.]

Issue for Consideration

The appellant was convicted u/s. 302, s.307 IPC and sentenced to undergo life imprisonment and rigorous imprisonment for 5 years respectively. Both sentences were to run concurrently. An appeal preferred by the appellant before the High Court was dismissed.

Headnotes

Penal Code, 1860 – s. 302 and s. 307 – Prosecution case was that victim went to sleep in chaubara of the house which was not having any shutter, whereas PW-5 (first informant) along with the other family members slept in a room on the ground floor – PW-5 heard a knock on the door in which she was sleeping – She opened door and she saw the accused appellant standing there armed with a knife – Appellant inflicted an injury with the weapon on the abdomen of PW-5 – Another assailant who was accompanying appellant caught hold of her arm – On raising alarm, both assailants ran away – Then, PW-5 went upstairs and found her husband-victim severely injured – Victim died on the way to hospital – Trial Court framed charges against the appellant – Another accused KS was also summoned to face trial – The Trial Court acquitted KS, however, the appellant was convicted u/ss. 302 and 307 IPC – High Court dismissed the appeal against the conviction – Correctness:

Held: The motive for the incident, as projected in the evidence of PW-5, was accused bearing jealousy on account of flourishing business of victim-deceased – Other than this bald averment, there is no corroborative material to lend credence to this theory – If the prosecution case is to be accepted, the moment victim-deceased had been belaboured, the purpose of the accused was served and then there was no reason why accused would expose himself to the other family members – Furthermore, as per

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the prosecution case, two accused were involved in the incident – And when they have gone down to eliminate the other family members, there was no reason for the person accompanying the accused-appellant to be unarmed – This creates a doubt on the truthfulness of the prosecution story – Also, PW-5 had alleged that the investigation being conducted was partisan and tainted, pursuant to that she had filed petitions (including to chief minister and the High Court) – However, in her cross-examination she virtually resiled from the averments made therein – Neither in the FIR nor in the application (Exhibit-DA) signed by the first informant-PW-5 and addressed to the Chief Minister, the name of the second accused KS is mentioned as one of the assailants – Both accused persons are relatives of deceased and PW-5 – In that event, if the first informant had identified the offenders at the time of the incident, there was no reason as to why she would leave out the name of KS while giving the statement to the police officer, who recorded FIR (Exhibit PG/2) – This creates a doubt on credibility of PW-5 – Further, a serious doubt is created on the credibility of the deposition made by the first informant-PW-5, that she and her husband were being taken to two hospitals – This completely destroys her credibility as there cannot be two views on the aspect that if a case of homicidal death is reported at a Government hospital the doctors would immediately inform the police and there is no chance that the dead body would be allowed to be carried away by the family members – Further, many contradictions have been elicited in the cross examination of PW-6-son of deceased with reference to his previous versions, as recorded by different investigating officers – Both the witnesses PW-5 and PW-6 are wholly unreliable – That apart, two investigating officers who conducted thorough investigation and found the entire case set up by the first informant-PW-5 to be false – Consequently, the appellant deserves to be acquitted by giving him the benefit of doubt – Therefore, the judgment of the trial Court and the High Court are set aside. [Paras 16, 18, 21, 25, 27, 28, 32]

Case Law Cited

Vadivelu Thevar v. State of Madras [\[1957\] 1 SCR 981](#) :
AIR 1957 SC 614 – relied on.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

Kirpal Singh v. State of Punjab**List of Keywords**

Murder; Attempt to murder; Motive; Corroborative material; Witness; Wholly unreliable witness; Deposition; Credibility of deposition; Contradictions in cross-examination; Inherent improbabilities; Benefit of doubt; Falsus in uno, falsus in omnibus.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1052 of 2009

From the Judgment and Order dated 28.02.2008 of the High Court of Punjab & Haryana at Chandigarh in CRLA No. 662 of 2003

Appearances for Parties

Vineet Jhanji, Ranbir Singh Kundu, Imran Moulaey, Ravinder Pal Singh, Ms. Jyoti Mendiratta, Advs. for the Appellant.

Siddhant Sharma, Adv. for the Respondent.

Judgment / Order of the Supreme Court**Judgment**

Mehta, J.

1. The instant appeal has been preferred on behalf of the appellant for assailing the judgment dated 28th February, 2008 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 662-DB of 2003, whereby the appeal preferred by the appellant was dismissed, thereby affirming the judgment and order dated 26th July, 2003 rendered by the learned Additional Sessions Judge (Adhoc), Hoshiarpur, vide which the appellant was convicted and sentenced as below:-
 - (i) Under Section 302 of the Indian Penal Code (hereinafter being referred to as 'IPC') - Imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.
 - (ii) Under Section 307 IPC – Rigorous imprisonment for a period of five years and a fine of Rs.1,000/-, in default of payment of fine, to undergo further rigorous imprisonment for a period of 15 days.

Both the sentences were ordered to run concurrently.

Digital Supreme Court Reports**Brief facts: -**

2. Sharan Kaur, the first informant(PW-5), wife of Balwinder Singh (deceased) used to reside along with her family members in the house which was situated on the backside of the grocery and halwai shops owned by her husband Balwinder Singh (deceased) at bus stop, Khudda. In the intervening night of 12th/13th November, 1997, Balwinder Singh (deceased) went to sleep in *chaubara* of the house which was not having any shutter, whereas Sharan Kaur (PW-5) along with the other family members slept in a room on the ground floor. It is alleged that Sharan Kaur (PW-5) heard a knock on the door of the room in which she was sleeping at about 2.30 a.m. She thought that it was her husband who had knocked the door and thus she opened the door. In the illumination of light placed in the courtyard, she saw the accused appellant-Kirpal Singh standing there armed with a knife like *chura*. The appellant inflicted an injury with the weapon on the abdomen of Sharan Kaur (PW-5). Another assailant who was accompanying appellant Kirpal Singh caught hold of her arm. She raised an alarm shouting 'killed killed' ('*maar ditta maar ditta*'), on which her sons Goldy and Sonu woke up. None of these three persons could identify the other assailant. Both the assailants fled away by opening the main gate, in between the two shops. Sharan Kaur (PW-5) went upstairs to have a look at her husband and found him lying severely injured on the cot with blood oozing out of his mouth and head. Blood pooled on the ground below. He was unable to speak. She called her two sons and sent them to call her brother-in-law Gurnam Singh with a vehicle. Sharan Kaur (PW-5) and Balwinder Singh were taken to the Civil Hospital, Tanda but on the way to the hospital, Balwinder Singh expired. First aid was provided to Sharan Kaur (PW-5), thereafter, she as well as the dead body of Balwinder Singh (deceased) was brought back to their home in the same vehicle and by that time the police had arrived. The prosecution alleges that the motive behind the occurrence was that the appellant and his associate were bearing jealousy on account of the roaring business being done at the halwai shop of Balwinder Singh (deceased), which was doing much better as compared to the halwai shop run by the accused appellant. Swaran Dass(PW-9), SHO, Police Station Dasuya recorded the statement of Sharan Kaur (PW-5) wherein, the above allegations were incorporated and based thereupon, FIR No.126 of

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1997 dated 13th November, 1997 came to be registered at Police Station, Dasuya, District Hoshiarpur for the offences punishable under Sections 302, 307 IPC read with Section 34 of IPC. The said FIR was marked as Exhibit-PG/2, during the course of trial. The Investigating Officer prepared inquest report on the dead body of Balwinder Singh(deceased) and forwarded the dead body to the Civil Hospital, Dasuya for post mortem examination; rough site plan of the crime scene was prepared; bloodstained earth was collected from the spot and was sealed into a parcel. A spade lying at the crime scene was seized, the blade whereof was bloodstained. A ladder was also seized from the crime scene.

3. The dead body of Balwinder Singh was subjected to autopsy at the hands of Dr. Naresh Kumar (PW-4), Medical Officer, Civil Hospital, Dasuya on 13th November, 1997, who examined the same and took note of the following injuries on the body of the deceased:-

- "i. Lacerated wound 1.5 cm bone deep on left side of forehead. Placed transversely 2 cm above and lateral to outer end of left eyebrow medial to this wound there was red coloured contusion with depressed surface 3 x 4 cm in size 1.5 cm above and parallel to left eye brow.

On dissection there was subaponeurotic hematoma in both front regions. The frontal bone was found fractured into multiple pieces were impacted into the underlying brain tissue, semi clotted blood was present between membrane between and brain tissue and within the brain tissue.

- ii. Lacerated wound 1.5 cm x 1 cm bone deep on left side of head posterior to left pinna. It was transversally placed 2.5 cm below the upper end of left pinna.
- iii. Lacerated wound 2 cm x 1 cm on upper part of left pinna splitting the pinna into two parts. It was transversally placed in lines with injury No.2."

4. The injuries were stated to be caused by blunt weapon and the cause of death was opined to be the head injury, which was sufficient to cause death in the ordinary course of nature.

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5. Dr. Didar Singh (PW-1), Medical Officer, Civil Hospital, Dasuya conducted medical examination of Sharan Kaur (PW-5), the first informant, and took note of an incised wound admeasuring $2\frac{1}{2} \times \frac{1}{2}$ cm elipitcal in shape present on the left side of the abdomen 2 cms above the umblicus and 6 cms lateral to the mid line. However, the wound was not probed for finding of the depth and the case was referred to the Surgical Specialist for opinion and treatment.
6. The case took a different turn, when the first informant Sharan Kaur (PW-5) started raising allegations against the Investigating Officer of conducting partisan and tainted investigation in order to favour the police.
7. Sharan Kaur (PW-5) filed two petitions in the High Court of Punjab and Haryana seeking transfer of investigation to the CBI or some other independent agency. In both these petitions, her allegation was that the second accused named Kulwinder Singh had been left out of the case for oblique reasons.
8. Be that as it may, two different police officials, conducted the investigation and filed closure reports alleging that the first informant-Sharan Kaur(PW-5) had falsely implicated the accused. However, the Magistrate did not agree with the opinion. The accused appellant-Kirpal Singh @ Lucky was arrested on 21st November, 1997 and charge sheet was filed against him for the offences punishable under Section 302 IPC and Section 307 IPC. Since both the offences were exclusively triable by the Court of Sessions, the case was committed to the Court of Additional Sessions Judge(Adhoc), Hoshiarpur (hereinafter being referred to as 'trial Court') for trial.
9. Learned trial Court framed charges against the accused appellant, who abjured his guilt and claimed trial. An application came to be filed by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 (hereinafter being referred to as 'CrPC') which was allowed and the accused Kulwinder Singh was summoned to face trial along with the charge sheeted accused, i.e., the appellant herein. Fresh charge for the offences punishable under Sections 302, 307 read with Section 34 IPC were framed against both the accused to which they pleaded not guilty and claimed trial. The prosecution examined ten witnesses to support its case.
10. The incriminating circumstances appearing in the prosecution evidence were put to the accused while recording their statements

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under Section 313 CrPC. The accused denied those allegations and claimed to be innocent. Total four (04) witnesses were examined in defence. After hearing the arguments advanced by the learned Additional Public Prosecutor and the defence counsel, and upon appreciating the evidence available on record, the learned trial Court vide judgment dated 26th July, 2003 proceeded to convict the accused appellant-Kirpal Singh and sentenced him as noted hereinabove. However, by the very same judgment, the co-accused Kulwinder Singh was acquitted of the charges. The accused appellant-Kirpal Singh preferred Criminal Appeal No.662-DB of 2003 challenging his conviction and sentence, whereas the State preferred Criminal Appeal No.535-DBA of 2004 and the complainant preferred Criminal Revision No.2259-DB of 2003 challenging the acquittal of Kulwinder Singh before the High Court of Punjab and Haryana.

11. The learned Division Bench of the High Court of Punjab and Haryana proceeded to dismiss both the appeals, one filed by the State, and the other by the accused-appellant as well as the revision filed by the complainant by a common judgment and order dated 28.02.2008, which is assailed in this appeal filed at the instance of the accused appellant-Kirpal Singh.

Submissions on behalf of the appellant: -

12. Shri Vineet Jhanji, learned counsel appearing for the accused appellant vehemently contended that the findings recorded in the impugned judgment are perverse and self-contradictory and hence, the same are liable to be set aside. He advanced the following pertinent submissions seeking acquittal of accused appellant:
 - (i) The evidence of Sharan Kaur (PW-5), the first informant, being the wife of the deceased and Daljit Singh @ Goldy(PW-6), son of the deceased, is highly self-contradictory, vacillating and unconvincing.
 - (ii) That the prosecution witnesses have tried to improve upon the story put forth in the FIR at every stage of the proceedings and hence, their evidence deserves to be discarded. The trial Court as well as the High Court have found that the witnesses, Sharan Kaur (PW-5) and Daljit Singh @ Goldy(PW-6) are not wholly reliable witnesses and their allegations qua the co-accused-Kulwinder Singh have been found to be unacceptable, thereby

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recording his acquittal. Thus, the accused-appellant (Kirpal Singh) also deserves the same treatment.

- (iii) That the motive attributed to the accused appellant by Sharan Kaur (PW-5) is absolutely cooked up and unbelievable. Her bald allegation that the accused bore jealousy on account of the booming halwai business of Balwinder Singh (deceased), is just a figment of imagination and has not been corroborated by any independent source. Rather the prosecution did not even lead any evidence to show that the accused appellant is involved in halwai business.
- (iv) The accused appellant was admittedly closely related to the deceased, but this fact was concealed in the FIR as well as in the testimony of the material prosecution witnesses.
- (v) That the story put forth by Sharan Kaur (PW-5) in her evidence is totally unworthy of reliance because even as per her own assertion, the accused appellant was bearing a grudge against the deceased. In that event, once the accused had succeeded in belaboring and killing Balwinder Singh (deceased), by entering into the *chaubara* in a clandestine manner using a ladder, there was no reason as to why the accused would come down the stairs, knock the door and alarm the other family members so as to expose himself.
- (vi) That the conduct of the first informant-Sharan Kaur(PW-5) and her family members in bringing back body of Balwinder Singh to their house even after the doctor at Civil Hospital, Tanda had declared him to be dead, brings the credibility of these witnesses under a grave shadow of doubt. He urged that admittedly, while coming back from Tanda, the Police Station at Dasuya falls on the way and thus, if at all, there was any truth in this version, the witnesses would have stopped at the police station to report the matter. Furthermore, the doctor at Civil Hospital would definitely have taken steps to report the matter to the police since it was a clear case of homicide.
- (vii) That the defence witnesses have categorically stated that after thorough investigation, the allegations set out by the first informant-Sharan Kaur(PW-5) were found to be false and hence, closure reports were submitted by the police in the concerned Court.

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(viii) That it is an admitted case as elicited in the testimony of Daljit Singh @ Goldy (PW-6), son of Balwinder Singh(deceased) and first informant-Sharan Kaur(PW-5), that four servants were sleeping with Balwinder Singh(deceased) in the *chaubara* of the house but they were not examined in evidence. Likewise, Gurmit Singh, the other son of deceased and the first informant, was also not examined by the prosecution for the reasons best known to them and hence, it is a fit case warranting/drawing of adverse inference against the prosecution.

On these grounds, learned counsel implored the Court to accept the appeal and acquit the accused appellant.

Submissions on behalf of the State: -

13. *Per contra*, Mr. Siddhant Sharma, learned counsel appearing for the State, vehemently and fervently opposed the submissions advanced by the counsel for the appellant. He conceded that the story of the prosecution qua involvement of accused-Kulwinder Singh has not found favour with the trial Court and the High Court but as per him, that by itself cannot be a valid reason so as to discard the entire prosecution case, qua the accused appellant as well who was named in the FIR and in the testimony of the material prosecution witness. He fervently contended that trivial contradictions in the evidence of the prosecution witnesses lend assurance that they are truthful witnesses and are not created witnesses. He submitted that the principle '*falsus in uno, falsus in omnibus*' does not apply to the Indian criminal jurisprudence system and thus, merely because one of the two accused named by the prosecution witnesses has been acquitted by the trial Court, the accused appellant cannot get the advantage thereof.
14. He further submitted that the trial Court as well as the High Court, after appreciation and re-appreciation of the evidence have separated the chaff from the grain and have held the accused appellant guilty of the charges and thus, this Court should be loath to interfere in such concurrent findings of facts recorded by the trial Court and the High Court. On these submissions, learned counsel appearing for the State, urged that the appeal lacks merit and is fit to be dismissed.
15. We have given our thoughtful consideration to the submissions advanced at the bar and have carefully perused the judgments

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rendered by the High Court and the trial Court and analysed the evidence available on record.

Consideration of evidence and submissions: -

16. The prosecution case as unfolded, in the evidence of the first informant, Sharan Kaur (PW-5) (the star prosecution witness who herself received an injury in the same incident), is that she along with her two sons Daljit Singh @ Goldy (PW-6) and Gurmit Singh was sleeping in the room on the ground floor of the house, whereas, her husband[Balwinder Singh(deceased)] was sleeping in *chaubara*, which has no gate. The prosecution tried to canvass that the accused put up a ladder on the wall of the house, climbed into the *chaubara* with the aid thereof and hit Balwinder Singh(deceased) with a spade, which resulted into grave injuries. The motive for the incident, as is projected in the evidence of Sharan Kaur (PW-5), was that the accused was bearing a jealousy on account of flourishing halwai business of her husband whereas, the business of the accused was not thriving. However, we may state that other than this bald averment made by Sharan Kaur (PW-5) attributing motive for the incident to the accused, no corroborative material was collected by the Investigating Officers to lend credence to this theory of motive. The statement of Sharan Kaur (PW-5) on this aspect is also very vague. There is nothing in her deposition, which can satisfy the Court that merely on account of this so called jealousy, the accused would go to the painstaking length of putting up a ladder against the wall of the house, where Balwinder Singh (deceased) used to reside with his family and then climb up and murder him, that too in the presence of his family members.
17. If the prosecution case is to be accepted, it is apparent that the accused had painstakingly, planned out the murder of Balwinder Singh (deceased), inasmuch as they put up a ladder against the outer wall of the house, climbed into the house by using the said ladder and attacked the deceased by spade. Thus, the moment Balwinder Singh (deceased) had been belaboured, the purpose of the accused was served and hence, there was no rhyme or reason as to why the accused would take the risk of being exposed to the other family members. This precisely is the story portrayed in the evidence of Sharan Kaur (PW-5) who stated that while she was sleeping in the room on the ground floor with her two sons, she heard some noise

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and opened the door of the flight of stairs connecting the *chaubara* and saw the accused appellant-Kirpal Singh and his companion standing therein. The accused appellant-Kirpal Singh who was armed with a knife, stabbed her on the abdomen whereas the other accused appellant caught her by the arm. As per the prosecution, the accused appellant had assaulted Balwinder Singh (deceased) with a spade which was abandoned at the spot and then the accused came down with a knife.

18. The story so set up by the prosecution, does not inspire confidence for more than one reasons. As discussed above, once the accused had achieved the objective of eliminating Balwinder Singh(deceased) without being discovered, they had all the opportunity in the world to escape from the spot by using the very same ladder, which had been used to climb up the *chaubara*. Thus, there was no reason for the accused to risk discovery by coming down and alarming the family members. Furthermore, as per the prosecution case, two accused were involved in the incident. If at all the prosecution case is to be believed, the accused after killing Balwinder Singh(deceased), must have gone down to eliminate the other family members and in that background, there was no reason as to why the person accompanying the accused appellant was unarmed. This again creates a doubt on the truthfulness of the prosecution story. The first informant-Sharan Kaur (PW-5) made a big issue regarding the conduct of the investigating agency alleging that the investigation being conducted was partisan and tainted. She filed petitions before different forums including the Chief Minister and the High Court. She was confronted with these applications extensively in her cross examination and she virtually resiled from the averments made therein. For illustration, we would like to reproduce some excerpts from the cross examination of Sharan Kaur (PW-5):-

“...We approached the Hon’ble High Court as my statement was not being correctly recorded by the Police. On the directions of the Hon’ble High Court my statement was recorded by the Crime Branch.”

xxx xxx

“...I have seen the carbon copy of the application Addressed to CM Punjab Chandigarh. It bears my signature and is Ex.DB. My father used to get my signature on the Blank

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papers so I can not say whether the application of Ex.DA was moved by me on 15.12.97 after the completion of investigation by DSP Ajaib Singh. The witness is not ready to answer the question whether the application EX.DA bear the name of accused Kulwinder Singh @ Neeta. In the application the name of Kulwinder Singh @ Neeta is not written but some unidentified person has been written. The witness has explained that she used to disclose the name of Kulwinder Singh @ Neeta but the police was not recording his name and the application Ex.DA might have been drafted by his counsel at his own. The witness is not ready to answer the question that the copy of the FIR was attached with the writ petition/Crl. Misc application or that the name of Kulwinder Singh @ Neeta was not mentioned in the said petition or that in the petition also the name of unidentified person was mentioned. The witness is also not ready to answer the question whether there was some omission in the petition and that an application was moved for the correction of those omissions. The witness is also not ready to answer the question that by way of amendment the name of Kulwinder Singh @ Neeta was not incorporated in the amended application. The witness is not ready to answer the question whether the petition was withdrawn on 6.8.98.”

19. In her examination in chief, the first informant-Sharan Kaur(PW-5) categorically stated that her statement was recorded at the Civil Hospital, Dasuya on 13th November, 1997 at about 7:30 a.m. It was read over and explained to her, and she signed it admitting it to be correct.
20. If that be so, the subsequent conduct of Sharan Kaur (PW-5) in raising a hue and cry that investigation being conducted was tainted and the police had intentionally favoured the co-accused Kulwinder Singh by leaving out his name from the array of offenders creates a great doubt on her credibility.
21. Neither in the FIR (Exhibit-PG/2) nor in the application (Exhibit-DA) signed by the first informant-Sharan Kaur(PW-5) and addressed to the Chief Minister, Punjab, the name of the second accused Kulwinder Singh is mentioned as one of the assailants. There is no

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dispute that the acquitted accused Kulwinder Singh and appellant Kirpal Singh, are closely related to the family of the deceased and the first informant. In that event, if the first informant had identified the offenders at the time of the incident, there was no reason as to why she would leave out the name of Kulwinder Singh while giving the statement to the police officer, who recorded FIR (Exhibit-PG/2). The witness was extensively confronted with the other applications/petitions filed by her questioning the bonafides of investigation being carried out by the Investigating Agencies being Exhibit-DB, Exhibit-DG, etc., and she refused to stand by the versions set out in these applications/petitions filed by herself. Not only this, a statement (Exhibit-DL) of the first informant was recorded by DSP, Rajender Singh, wherein it is stated that some unknown person entered into their house and caused injuries to the witness and her husband, who expired in the incident. Though, the first informant denied having given this statement but this fact definitely creates a doubt on the truthfulness of her story. A serious doubt is created on the credibility of the deposition made by the first informant, when we consider the fact that she claimed in her examination in chief that a van was brought by her son wherein, she and her husband were taken to the Civil Hospital, Tanda, where the medical officers opined that her husband had expired and she was medically examined. However, they did not believe in this opinion and took the victim to Bhogpur where again the doctors reiterated that her husband had expired. Only after this confirmation, the dead body of Balwinder Singh was brought back to the house where police was already present. This version, as set out in the testimony of the first informant, Sharan Kaur(PW-5), completely destroys her credibility. There cannot be two views on the aspect that if a case of homicidal death is reported at a Government hospital the doctors would immediately inform the police and there is no chance that the dead body would be allowed to be carried away by the family members.

22. It may be stated that the medical records of the Civil Hospitals at Tanda and Bhogpur were not collected by the investigating agency nor were the same brought on record by the prosecution in its evidence. Dr. Didar Singh (PW-1) Medical Officer, Civil Hospital, Dasuya examined the first informant-Sharan Kaur (PW-5) on 13th January, 1997 at about 07:05 a.m. In his cross examination, the doctor (PW-1) made the following admissions:-

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“...As per the record brought by me she has not given any history of assault. It is correct that as stated by Sharan Kaur that she has not been examined medico legally by any other doctor. No opinion regarding the weapon used was sought from me till today nor has any surgical opinion been received by me till today. As per my record she was admitted in hospital immediately after the medical examination.”

23. This version of Dr. Didar Singh, (PW-1) completely destroys the story put forth by Sharan Kaur (PW-5) that she and her family members had taken the victim to the Government hospitals referred to above or that the body was brought back to their home after such medical examination was conducted. Apparently, the dead body was just lying in the house till the police arrived who took both the victims to the hospital.
24. This fact is firmly cemented when we consider the deposition of Dr. Didar Singh (PW-1), who has stated that Sharan Kaur (PW-5) told him that she had not been examined medico legally by any other doctor and that she had been admitted in the hospital immediately after the medical examination. These inherent infirmities in the testimony of Sharan Kaur (PW-5) completely destroys her evidentiary worth and we have no hesitation in holding that she is a totally unreliable partisan witness.
25. Daljit Singh (PW-6), being the son of the deceased Balwinder Singh and the first informant-Sharan Kaur (PW-5), stated that he woke up on hearing the cries of his mother and saw that Kulwinder Singh had caught hold of his mother from her arm and both the assailants ran away on seeing him. He and his elder brother Gurmit Singh tried to pursue the offenders. Thereafter they climbed up the stairs and saw that their father was lying in a pool of blood. This witness (PW-6) also stated that he along with his mother took his father in a van to the Civil Hospital, Tanda where he was declared dead, however they did not believe the opinion so given and hence, they proceeded to Bhogpur and consulted Dr. Arora, who also confirmed the fact regarding the death of Balwinder Singh. Then they proceeded back to their house, where the police had reached before their arrival. This witness (PW-6) was also confronted with his previous statement (Exhibit-DB) wherein, the name of Kulwinder Singh was

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not mentioned. Many contradictions have been elicited in the cross examination of this witness(PW-6) with reference to his previous versions, as recorded by different investigating officers. In his cross examination, the witness(PW-6) even admitted that he did not remember the name of her mother's brother, who met them on that day. He further stated that he and his mother took Balwinder Singh (deceased) to Civil Hospital, Dasuya. The Police Station, Dasuya falls in the way to the Civil Hospital, Dasuya but they did not go to the police station for lodging the report. This fact again indicates that the conduct of PW-5 and PW-6 was totally unnatural. Gurmeet Singh, elder brother of Daljit Singh(PW-6), was not examined by the prosecution. We find that Daljit Singh (PW-6) did not even utter a word that appellant was having a weapon with him when he saw him fleeing away from the crime scene. These inherent improbabilities and loopholes in the evidence completely destroy the fabric of the prosecution case which is full of holes and holes which are impossible to be stitched together.

26. This Court in the celebrated case of Vadivelu Thevar v. State of Madras¹, has observed as follows:-

“11....Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court, equally has no difficulty in

1 [1957] 1 SCR 981 : AIR 1957 SC 614

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coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial...”.

27. On going through the evidence of Sharan Kaur (PW-5) and Daljit Singh (PW-6), with reference to other evidence available on record, we are of the firm opinion that both these witnesses fall in the second category, i.e., wholly unreliable. No other tangible evidence was led by the prosecution to connect the accused appellant with the crime.
28. As we have noted above, the prosecution's story of motive is very weak and rather far fetched so as to place implicit reliance thereupon. Two investigating officers conducted thorough investigation and found the entire case set up by the first informant-Sharan Kaur(PW-5) to be false. The conduct of the first informant is unworthy of reliance, when we consider the fact that she tried to implicate Kulwinder Singh by filing various petitions while the investigation was still ongoing and even in her testimony during the trial. However, even in the FIR (Exhibit-PG/2), which was admittedly registered on the basis of her own statement, the first informant-Sharan Kaur(PW-5) did not name the said Kulwinder Singh, as co-assailant with the accused appellant herein. Even in the petition i.e. CrI. Misc. Petition No. 2053-M-1998 filed before the High Court of Punjab and Haryana, the name of the said Kulwinder Singh was not mentioned.
29. The spade allegedly used to assault the deceased was found lying at the crime scene. On going through the entire set of prosecution witnesses, we find that no weapon of crime was recovered at the instance of the accused appellant and thus, there is no corroborative evidence so as to lend credence to the wavering and unreliable testimony of Sharan Kaur (PW-5) and Daljit Singh (PW-6).
30. Lajpal Singh(DW-3), DIG (Operation), Punjab was examined by the defence, who in his cross examination stated that in his investigation, he found the accused to be innocent.
31. Having given our thoughtful consideration to the entirety of the material available on record, we are of the firm view that evidence of Sharan Kaur (PW-5) and Daljit Singh (PW-6) is wholly unreliable, does not inspire confidence in the Court so as to affirm the conviction of the appellant. It may be reiterated that no corroborative evidence was

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led by the prosecution so as to lend credence to the testimony of these two witnesses.

32. Consequently, the appellant deserves to be acquitted by giving him the benefit of doubt. Resultantly, the judgments of the trial Court and the High Court dated 26th July, 2003 and 28th February, 2008 respectively are hereby quashed and set aside. The appellant is acquitted of the charges. The sentence awarded to the appellant was directed to be suspended by this Court on 12th August, 2011, during the pendency of this appeal and he is on bail. He need not surrender and the bail bonds are discharged.
33. The appeal is accordingly, allowed.
34. Pending application(s), if any, shall stand disposed of.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.