

Balwant Singh vs State Of Haryana on 18 March, 1994

Equivalent citations: 1995 AIR 84, 1994 SCC SUPL. (2) 471, AIR 1995 SUPREME COURT 84, 1994 AIR SCW 4098, 1994 (3) SCR 136, 1994 (3) JT 295, 1994 (2) UJ (SC) 513, 1994 SCC (CRI) 1543, 1994 (3) SCC(SUPP) 210, (1994) SC CR R 305

PETITIONER:

BALWANT SINGH

Vs.

RESPONDENT:

STATE OF HARYANA

DATE OF JUDGMENT 18/03/1994

BENCH:

ANAND, A.S. (J)

BENCH:

ANAND, A.S. (J)

FAIZAN UDDIN (J)

CITATION:

1995 AIR 84

1994 SCC Supl. (2) 471

JT 1994 (3) 295

1994 SCALE (2) 318

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by DR ANAND, J.- Balwant Singh along with his brothers Mahabir Singh and Lal Singh and his son Abhey Singh were challanged by the police for an occurrence which took place on 20-10- 1980 at 3.45 p.m. at Heily Mandi in which Suraj Bhan was murdered. All the four accused were sent up for trial. The learned Sessions Judge, Gurgaon convicted Mahabir Singh for an offence under Section 302 IPC and Lal Singh, Balwant Singh and Abhey Singh for the offences under Sections 302/34 IPC. Each of the accused was sentenced to suffer imprisonment for life. An appeal was filed by all the four convicts in the High Court of Punjab and Haryana. The High Court dismissed the appeal insofar as the conviction and sentence of Balwant Singh and Abhey Singh are concerned but giving benefit of the doubt acquitted Mahabir Singh and Lal Singh. Balwant Singh and Abhey Singh have filed an appeal on special leave being

granted against their conviction and sentence. The State has filed an appeal against the acquittal of Mahabir Singh and Lal Singh. The complainant has also filed SLP (Criminal) No. 342 of 1982 against the acquittal of Mahabir Singh and Lal Singh.

2. Since both the appeals and the special leave petition arise out of the common judgment of the High Court of Punjab and Haryana, they are being dealt with and disposed of together.

3. According to the prosecution case, there was grievous enmity and some litigation was also pending between Suraj Bhan, deceased and his sons on the one hand and Balwant Singh and his brothers on the other. On the date of occurrence i.e. 26-10-1980, it is alleged that at about 3.30/3.45 p.m., when Raj Singh PW 8, who was the Sambandhi to be of Suraj Bhan deceased, after taking their meals at the house of Jagdish PW 7 at about 1.45 p.m. were proceeding on foot towards Pataudi, at a distance of about 4-5 kms from Heily Mandi, all of a sudden near the Jain Temple, Mahabir Singh accused armed with a gandasi, Lal Singh accused armed with a jailley, Abhey Singh and Balwant Singh accused armed with a lathi each, came running from behind and assaulted Suraj Bhan, deceased. Mahabir Singh and Lal Singh inflicted injuries on the head of Suraj Bhan deceased with their respective weapons, on receipt of which he fell down and thereafter Balwant Singh and his son Abhey Singh accused gave numerous lathi blows on the person of Suraj Bhan. On an alarm being raised by Raj Singh PW 8, Jagmal Singh PW 10, who has his house at a distance of about 1 km from the place of occurrence and was going to Pataudi, was attracted to the scene. He rushed to the place of occurrence and also raised an alarm whereupon all the four accused sped away. Raj Singh PW 8 and Jagmal Singh PW 10 then removed Suraj Bhan in an injured condition to the Primary Health Centre, Pataudi in a tonga. The doctor at the Primary Health Centre was on leave and, therefore, Ganesh Dutt Sharma, Pharmacist, PW 3 sent a rukka Ext. PD to the police and advised Raj Singh PW 8 to remove the injured Suraj Bhan, who was in a serious condition to the General Hospital at Gurgaon. SI Sultan Singh PW 11, on receipt of rukka Ext. PD proceeded to the Primary Health Centre, Pataudi and on reaching there he recorded the statement of Raj Singh PW 8, Ext. PK-1, which forms the basis of the first information report. Jagmal Singh PW 10 in the meanwhile arranged for a taxi and both he and Raj Singh PW 8 removed the deceased to General Hospital Gurgaon where Dr S.R. Dhingra, PW 1 examined Suraj Bhan but declared him dead. The Doctor, gave the intimation through rukka Ext. PA to police station City Gurgaon.

4. SI Sultan Singh PW 11, after registration of the case, started the investigation and went to the spot of occurrence and prepared the site plan of the place of occurrence. He also made a search for the accused persons but they could not be found. All the four accused later on surrendered in the court on 3-11-1980 and were arrested by SI Sultan Singh on 5-11-1980. On the disclosure statement, Ext. PO, made by Mahabir Singh in the presence of Bhanwar and Balwant Singh, a gandasi Ext. P-5 was recovered and seized. On the disclosure statement of Lal Singh Ext. PQ, a jailley Ext. P-6 was recovered, while lathis were recovered on the disclosure statements made by Balwant Singh and Abbey Singh Ext. PR and Ext. PS respectively. After completion of the investigation, all the accused were sent up for trial.

5. M/s R.K. Garg, senior advocate and R.L. Kohli, advocate, appearing for the appellants in Criminal Appeal No. 163 of 1982 as well as for the respondents in Criminal Appeal No. 162-A of 1982,

categorised the testimony of Raj Singh PW 8 and Jagmal Singh PW 10 as unreliable and not trustworthy. Learned counsel argued that Raj Singh PW 8 was a relation of deceased Suraj Bhan and appears to have been called from his home, at a far off place, to be a witness because nobody in the locality, where the occurrence allegedly took place and from where the bloodstained earth was collected, was prepared to support the prosecution case regarding the alleged assault by the accused party. It was submitted that the absence of bloodstains on the clothes of Raj Singh PW 8 and Jagmal Singh PW 10, who deposed to having personally lifted and removed Suraj Bhan in an injured condition with bleeding injuries in a tonga to the Primary Health Centre goes to show that they were in fact not present at the place of occurrence and had not taken Suraj Bhan to the Primary Health Centre and had been introduced in the case much later. Learned counsel then argued that the medical evidence belied the ocular testimony inasmuch as none of the injuries, on the deceased could correspond to the weapons alleged to have been used by the accused party and this serious infirmity, according to the learned counsel, was sufficient to discard the testimony of PW 8 and PW 10. Reference in this behalf was made to the absence of any injury with a jailley on the deceased. It was then urged that the first information report had been ante-dated and ante-timed and the argument was sought to be supported by the absence of an entry about the arrival of injured Suraj Bhan in the Primary Health Centre, Pataudi, in the records of the Primary Health Centre. Learned counsel argued that Ext. PD which was signed by PW 3 Ganesh Dutt Sharma appears to have been manufactured subsequently and since Sultan Singh SI PW 11, the investigating officer, was admittedly hostile to the accused party, he had created all these false clues with a view to secure the conviction of the accused persons. According to the learned counsel since Bhanwar and Balwant Singh, in whose presence recovery of gandasi is alleged to have been made on the disclosure statement of Mahabir accused, have not been examined, the evidence relating to the alleged recovery of gandasi becomes doubtful. It was submitted that keeping in view the medical evidence and other circumstances of the case the High Court was fully justified in recording an order of acquittal of Mahabir Singh and Lal Singh, and since the reasoning given by the High Court could not be said to be perverse or unreasonable, no interference was called for insofar as their acquittal is concerned.

6.Mr U.R. Lalit appearing for the complainant in SLP (Crl.) No. 342 of 1982 as well as the learned State counsel, Shri Bajaj, in reply submitted that the promptness with which the first information report had been lodged on 26-10- 1980 at 5.45 p.m. and the sequence of events deposed to by Raj Singh PW 8 and Jagmal Singh PW 10 goes to show that the prosecution has established the case against all the accused beyond a reasonable doubt. Learned counsel argued that from the evidence of PW 3 and the contents of rukka Ext. PD, the presence of Raj Singh PW 8 and Jagmal Singh PW 10 at the time of occurrence stands amply established as they had removed Suraj Bhan deceased to the Primary Health Centre and both of them were present there and had removed the deceased from Primary Health Centre to the General Hospital at Gurgaon in a taxi arranged by Jagmal Singh PW 10. Dealing with the question of absence of bloodstains on the clothes of Raj Singh PW 8 and Jagmal Singh PW 10, it was submitted that there was nothing on the record to show that their clothes had not got stained with blood and the mere fact that the same were not taken into possession by the investigating agency, cannot cast any doubt on the evidence of PW 8 or PW 10. Learned counsel submitted that investigating officer, Sultan Singh PW 11, had conducted the investigation in a fair and impartial manner and the allegation that the investigation was tainted was not based on any

material on the record and was merely a hypothetical argument. Learned counsel submitted that there was no contradiction at all between the medical evidence and the ocular testimony and the alleged contradiction as pointed out by the defence was imaginary and far-fetched. Learned counsel then argued that the grounds on, which the High Court had recorded an order of acquittal of Mahabir Singh and Lal Singh,, after it had itself disbelieved the plea of alibi put up by Mahabir Singh, were wholly unsustainable and were conjectural in nature and did not bear scrutiny and deserve to be upset. Learned counsel urged that the High Court had given no cogent reasons to upset the findings recorded by the learned trial court regarding the guilt of Mahabir Singh and Lal Singh and had set aside their conviction on wholly unsustainable and imaginary grounds.

7. We have given our anxious considerations to the submissions made at the Bar and have also gone through the evidence with the assistance of learned counsel for the parties.

8. After going through the evidence on the record, we are satisfied that the version given by Raj Singh, PW 8 which has been fully corroborated by Jagdish Chand PW 7 and Jagmal Singh PW 10 at the trial is truthful and unassailable. In spite of the lengthy cross-examination nothing has been brought out on the record to doubt his veracity. Raj Singh PW 8 has given a detailed account of the occurrence, including the part played by each one of the accused persons. No infirmity has been pointed out by the learned counsel insofar as his testimony is concerned. The testimony of Ganesh Dutt Sharma PW 3 who had sent rukka Ext. PD to the police after Suraj Bhan deceased had been taken to the Primary Health Centre in a seriously injured condition by Raj Singh PW 8 and Jagmal Singh PW 10, clearly establishes the presence of both these witnesses in the Primary Health Centre at about 4.30 p.m. The name of Raj Singh PW 8 as the person who had brought Suraj Bhan deceased to the Primary Health Centre is clearly written in rukka Ext. PD. Corroboration in this behalf is also available from rukka Ext. PA sent by Dr Dhingra PW 1, which conveyed the necessary information to the police at Gurgaon to the effect that Suraj Bhan deceased had been brought to the casualty ward of the Civil Hospital, Gurgaon as dead and that the patient had been referred from Primary Health Centre, Pataudi, with slip No. 23155, dated 26-10-1980. PW 10, Jagmal Singh has also given a detailed account and has fully supported PW 8, Raj Singh. His testimony has impressed us. There is nothing in the cross-examination of the witness which may affect his credibility at all. He appears to be an independent and reliable witness.

9. Sultan Singh PW 11 had reached Primary Health Centre, Pataudi before Suraj Bhan was removed to General Hospital Gurgaon and had recorded the statement of PW 8 Raj Singh, Ext. PK-1 at the Primary Health Centre itself. The formal case was thereafter registered and the investigation taken in hand. A copy of the special report was sent to and received by the Additional Chief Judicial Magistrate at 1.30 a.m. on 27-10-1980. We are, therefore, satisfied that the first information report was promptly lodged and neither the occurrence was ante-timed nor the first information report was ante-dated as argued by the learned counsel for the accused. There is, as a matter of fact, no factual foundation for the argument to the contrary raised by learned counsel for the accused and the submission that the first information report was delayed does not rest on any factually correct premises. Both the High Court and the trial court were perfectly sound in their approach to hold that the first information report had been lodged promptly and that both Raj Singh PW 8 and Jagmal Singh PW 10 were the eyewitnesses who had witnessed the occurrence and that their

testimony did not suffer from any infirmity whatsoever and that both of them were truthful witnesses. In our opinion the prosecution has established beyond any shadow of doubt the complicity of the appellants Balwant Singh and Abhey Singh. The ocular testimony stands amply corroborated by the medical evidence. So far as the conviction of Balwant Singh and Abbey Singh is concerned, the trial court as well as the High Court have correctly appreciated the evidence and rightly placed reliance upon the testimony of PW 8 Raj Singh and PW 10 Jagmal Singh, which stands amply supported by PW 7 Jagdish and PW 11 Sultan Singh, investigating officer. The medical evidence has also lent sufficient credence to the ocular testimony. Nothing has been brought on the record, as was also found by the learned Sessions Judge and the High Court, which may cast any doubt on the testimony of Raj Singh and Jagmal Singh with regard to the time or place of occurrence and the manner of assault on the deceased by the appellants. There is nothing on the record to show that the clothes of PW 8 and PW 10 had not been stained with blood while lifting the deceased and the mere negligence of the investigating officer to take their clothes into possession cannot affect the trustworthiness of these witnesses. The explanation given by PW 3 about the absence of entry of the arrival of injured Suraj Bhan at the Primary Health Centre is sound and does not detract from the reliability of the prosecution case.

10. The ground on which the High Court acquitted Mahabir Singh and Lal Singh accused is the alleged absence of any injury by the weapons alleged to have been carried and used by Mahabir Singh and Lal Singh respondents. According to the prosecution case, Mahabir Singh gave a gandasi blow while Lal Singh had given a blow with the jailley to the deceased. The gandasi Ext. P-5 was recovered on the disclosure statement made by Mahabir Singh, Ext. PO. According to the testimony of Dr M.S. Ahalwat, who had been shown gandasi Ext. P-5 and had found that even its sharp edge was blunt, injuries 1, 2 and 9 could have been caused by a 'farsa' (actually gandasi) Ext. P-5. His opinion Ext. PB-3 which has remained unchallenged and unquestioned, unmistakably shows that injuries 1, 2 and 9 on the deceased which are as follows:

- (1) There was a lacerated wound 10 cms x 1/2 cm scalp deep over right parietal region with clot over it.
- (2) There were lacerated wounds of the size of 3 to 5 cms x 1/2 cm scalp deep at the top and front region of scalp with clotted blood all over it.
- (9) Fracture base of the skull was seen with injury of the brain stem.

were caused by gandasi Ext. P-5. The High Court while acquitting Mahabir Singh and Lal Singh respondents, after accepting the substratum of the prosecution case, observed as under:

" Dr M.S. Ahalwat PW 2 had not originally mentioned in the postmortem report that there was any injury caused by a sharp-edged weapon like a pharsa on the dead body. It was only by way of clarification on 17-11-1980, that according to him, pharsa Ext. P-5 alleged to have been recovered from Mahabir appellant was shown to him and he expressed this opinion that injuries 1, 2 and 9 as noted by him could be caused with such a weapon. It may here be mentioned that injury 9 was only the result of the

injuries 1 and 2. We are of the view that pharsa Ext. P-5 being a sharp-edged weapon, it would have caused incised wounds if it had in fact been used by Mahabir on two occasions as alleged by the prosecution. He was said to have caused injuries with that weapon while Suraj Bhan was standing and also after he had fallen on the ground. The evidence of Dr M.S. Ahalwat also does not show the user of jaili Exh. P-6 said to have been recovered from Lal Singh. It being a pronged weapon, some parallel punctured wounds should have been found on the dead body but the doctor said that there was no clear evidence of any parallel injuries on the dead body. As about Lal Singh, it was alleged by the prosecution that he had caused injuries with his jaili to Suraj Bhan on those very two occasions when Mahabir had used a pharsa. A reasonable doubt about the participation of Mahabir and Lal Singh arises for this reason that neither Raj Singh PW 8 nor Jagmal PW 10 has been able to explain the absence of such injuries which could be caused by Mahabir and Lal Singh by the wielding of their weapons. We thus grant the benefit of doubt to these two appellants. For the foregoing reasons, the appeal on behalf of Mahabir and Lal Singh is allowed and they are acquitted of the offence under Sections 302 and 320/34 of the Indian Penal Code. The conviction and sentence of Balwant Singh and Abhey Singh are confirmed and their appeal stands dismissed."

11. We will demonstrate by reference to few important circumstances, as to why the High Court was not justified in interfering with the order of conviction of Mahabir respondent.

12. From the testimony of Raj Singh PW 8 and Jagmal Singh PW 10, we are satisfied that the account of occurrence given by them is intrinsically correct. According to both these witnesses, Mahabir had given a gandasi blow on the head of the deceased Suraj Bhan. Ext. P-5 was the gandasi in question and as already noticed, it was recovered on the disclosure statement made by Mahabir, Ext. PO. According to the medical evidence, injuries 1, 2 and 9 which were present on the head of the deceased could have been caused by gandasi Ext. P-5. The Chemical Examiner and the Serologist found gandasi Ext. P-5 to be stained with human blood of 'A' group which corresponded to the blood group of deceased Suraj Bhan. All these pieces of unimpeachable evidence would go to show not only that there was no contradiction between the ocular testimony and the medical evidence insofar as the assault on Suraj Bhan by Mahabir Singh with gandasi Ext. P-5 is concerned but also that the evidence on the record conclusively establishes that Mahabir Singh respondent had caused the injury with gandasi Ext. P-5 on the head of the deceased. The High Court did not deal with these factors in their correct perspective at all and acquitted Mahabir Singh, without trying to properly appreciate and sift the evidence on the record by taking recourse to surmises and conjectures. The High Court erred in not taking note of the report of the Serologist Ext. PJ- 1, which established that the bloodstains on the weapon of offence, Ext. P-5 tallied with the blood group with which the clothes of the deceased had been stained from his bleeding injuries. This has resulted in grave miscarriage of justice. The High Court itself disbelieved the plea of alibi which had been set up by Mahabir Singh. In the words of the High Court:

"Mahabir is a Physical Training Instructor at the Middle School, Bharat Nagar, Delhi. He took up this defence that on the date of occurrence he was present on duty in that

school. It being Sunday that day, he could not say that he was actually performing some duty at the time of the occurrence. Shri Laxmi Narain DW 16 a teacher of the same school, was produced for proving the plea of alibi. He only deposed about this fact that Mahabir was present at Delhi from 27-10-1980 to 31-10-1980. He was then said to be on half day's casual leave for 28-10-1980. It does not follow from his evidence that Mahabir could not have come to the spot from Delhi for taking part in the occurrence. We agree with this finding of the trial court that the plea of alibi does not stand proved."

13. After having disbelieved the plea of alibi of Mahabir, the High Court fell in error in not properly appreciating the other evidence on the record to determine his guilt. Keeping in view the evidence relating to the recovery of gandasi Ext. P-5 which fully corroborates the testimony of PW 8 and PW 10, coupled with the report of Serologist Ext. PJ-1, the order of acquittal passed by the High Court insofar as Mahabir Singh respondent is concerned, cannot be sustained. The approach of the High Court in acquitting him is totally slipshod and conjectural. The opinion of the High Court is totally perverse and unreliable. The High Court was in error in finding that the medical evidence belied the ocular testimony. "There is no basis for that opinion. The reasoning given by the trial court, on the other hand, was sound and the High Court was not justified in upsetting the same.

14. So far as the acquittal of Lai Singh is concerned, the position is somewhat different. Undoubtedly, jailley Ext. P-6 was also recovered at the instance of Lai Singh but, there is no report of the Serologist showing that the jailley Ext. P-6 was stained with human blood of 'A' group. Again, whereas the medical witness PW 2, categorically opined that injuries 1, 2 and 9 on the body of the deceased could have been caused with gandasi Ext. P-5 used by Mahabir Singh, he tendered no such opinion with regard to the injuries allegedly caused by Lai Singh with a jailley. Maybe, jailley Ext. P-6, was used by Lai Singh in a manner which did not cause any punctured or parallel wounds, but, keeping in view the position that admittedly there was enmity between the parties, the possibility cannot be ruled out that Lai Singh may have been implicated in addition to the real assailants. Since sufficient and reliable corroboration of the testimony of PW 8 Raj Singh and PW 10 Jagmal Singh, with regard to the injuries allegedly caused by Lai Singh, is not available on the record, it cannot be said with any amount of certainty that the prosecution has established the case against Lai Singh beyond a reasonable doubt and therefore, we do not find it appropriate to set aside the acquittal of Lai Singh as recorded by the High Court. The view taken by the High Court regarding Lai Singh cannot be said to be either unreasonable or perverse. Cogent and good reasons have been given by the High Court to order his acquittal.

15. As a result of the above discussion, the State appeal insofar as the acquittal of Lai Singh is concerned, is dismissed while it is accepted insofar as the acquittal of Mahabir Singh is concerned, which is hereby set aside.

16. After carefully considering the testimony of the eyewitnesses, the medical evidence, the recoveries and the other evidence including the report of the Serologist on the record, we are satisfied that both the trial court and the High Court on a proper and correct appreciation of the evidence found the case against Balwant Singh and Abbey Singh to have been established beyond

any doubt and agreeing with their reasoning, we uphold the conviction and sentence of Balwant Singh and Abbey Singh and dismiss their criminal appeal. Thus, Criminal Appeal No. 163 of 1982 filed by Balwant Singh and Abhey Singh is dismissed and their conviction and sentence as recorded by the courts below is upheld. They are on bail. Their bail bonds are cancelled and they are directed to be taken into custody to serve the remaining part of their sentence of life imprisonment.

17.The appeal filed by the State, being Criminal Appeal No. 162-A of 1982 is allowed insofar as the acquittal of Mahabir Singh is concerned. His acquittal is set aside and he is convicted for an offence under Sections 302/34 IPC and sentenced to suffer life imprisonment. The, appeal insofar as Lai Singh is concerned is dismissed and his acquittal as recorded by the High Court is not interfered with. The bail bond of Lai Singh shall stand discharged while that of Mahabir shall stand cancelled and he shall be taken into custody to undergo the remaining part of the sentence.

18.The Special Leave Petition (Criminal) No. 342 of 1982 filed by the complainant shall also stand disposed of in the above terms.