

Mukhtiar Singh vs State Of Punjab on 4 January, 1995

Equivalent citations: 1995 AIR 686, 1995 SCC (1) 760

Author: M.K Mukherjee

Bench: M.K Mukherjee

PETITIONER:
MUKHTIAR SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 04/01/1995

BENCH:
ANAND, A.S. (J)
BENCH:
ANAND, A.S. (J)
MUKHERJEE M.K. (J)

CITATION:
1995 AIR 686 1995 SCC (1) 760
JT 1995 (1) 531 1995 SCALE (1) 56

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by DR ANAND, J.- These two appeals under Section 14 of the Terrorist Affected Areas (Special Court) Act, 1984 arise out of a common judgment of the Special Court, Ferozepur dated 19-4-1985. While Criminal Appeal No. 434 of 1985 has been filed by Mukhtiar Singh and Jasbir Singh challenging their conviction and sentence, Criminal Appeal No. 489 of 1985 has been filed by the complainant Sohan Lal and is directed against the acquittal of the acquitted co-accused of Mukhtiar Singh.

2.Eleven accused persons were put up for trial before the learned Judge of the Special Court, Ferozepur for offences under Sections 148, 302/149, 120-B, 397, 460 IPC and Section 25 of the

Arms Act. The trial court convicted Mukhtiar Singh, son of Kartar Singh, for offences under Sections 302/34, 397/34, 460 IPC and Section 25, Arms Act and Jasbir Singh for offences under Sections 302/34, 337/34 and 460 IPC. Hazara Singh was convicted for an offence under Section 25 of the Arms Act while Jagrup Singh for offences under Section 411 IPC and Section 25 of the Arms Act. The remaining accused were acquitted of all the charges.

3. According to the prosecution case, on 10-6-1984 when Sohan Lal, PW 5 father of the deceased Jajpal Singh was watching television along with his other family members, on hearing the firing of 8 or 9 shots, he came out into the courtyard and saw two persons standing near his son, Jajpal Singh deceased. One of them was armed with a gandasa while the other had a pistol in his hand. The person who was armed with a gandasa in the presence of PW 5, inflicted some injuries on Jajpal Singh while the other person took away the .12 bore DBBL gun belonging to Sohan Lal, PW 5 which was lying near the cot in the courtyard where Jajpal Singh was sitting. Sohan Lal, PW 5 also noticed some 8 or 10 persons standing at a distance in the darkness. On hearing noise, the assailants as well as the other 8/10 persons ran away. Finding Jajpal Singh in a seriously injured condition, Sohan Lal PW 5 removed him to the Mission Hospital, Ferozepur. Dr A.S. Mann, Emergency Medical Officer sent information to the police regarding the arrival of Jajpal Singh in an injured condition at the hospital. On receipt of telephonic information, Ratan Singh SHO, Police Station Mallanwala proceeded to the hospital. In the meanwhile, it appears Jajpal Singh succumbed to his injuries. Statement of PW 5 Sohan Lal was recorded by Ratan Singh PW 9 on reaching the hospital and that statement Ex. P-9, forms the basis of the FIR Ex. P-9/B. After conducting the inquest proceedings and preparing the inquest report, Ex. P-2, the dead body of Jajpal Singh was sent for postmortem examination by SHO Ratan Singh PW 9. Further investigation was taken in hand and the place of occurrence was inspected and its rough site plan prepared. During inspection of the place of occurrence some empties which were found lying in the courtyard of the house of PW 5 were collected besides the bloodstained earth. Sealed parcels were prepared of the empties and the bloodstained earth and the same were deposited in the police Malkhana and later sent to Forensic Science Laboratory and Chemical Examiner respectively.

4. Dr Jaspal Singh, Emergency Medical Officer, Civil Hospital, Ferozepur performed autopsy on the dead body of Jajpal Singh on 11-6-1984 at 10.00 a.m. He found the following injuries:

(i) Incised wound 20 cms x 3 cms x 3 cms at the middle of the frontal region oblique in direction near the hairline with clotted blood present. On dissection the underlying bone was found cut completely. Extradural and subdural haematoma was present and the brain matter visible.

(ii) Incised wound 14 cms x 2 cms just 2 cms below injury I with clotted blood and underlying bone cut completely. Extradural and subdural haematoma was present. The brain matter was visible.

(iii) Lacerated punctured wound with inverted and contused margins, dimensions being 0.75 cm x 0.5 cm at the right side of the abdomen in middle with clotted blood present.

(iv) Lacerated punctured wound with averted margins 3 cms x 2 1/2 cms on the left side of the chest middle with clotted blood. On dissection under injuries 3 and 4 the track was after performing the intestine going upward and towards left side entering the thorax and impairing the left lung lower part.

Injuries 3 and 4 communicating with each other. The abdominal cavity was full of clotted blood. The ribs under injury 4 were fractured. Injury 3 was the wound of entrance and injury 4 the wound of exit. There was clotted blood along the track.

(v) Terminal 1/4 parts of the index, middle and ring finger of the right hand were found amputated with the margins of the wound incised. Level was in one line. Clotted blood was present.

(vi) Lacerated punctured wound with inverted and contused margins 0.75cm x 0.5 cm on the outer surface of the right ankle. On dissection the underlying bone was found fractured. A bullet was taken out from the wound which was seized. Clotted blood was present.

(vii) Lacerated punctured wound with inverted and contused margins, dimensions being 0.75 cm x 0.5 cm on the outer and the middle of the left upper arm with clotted blood present. On dissection the underlying bone was found fractured. A bullet was extracted from the wound which was seized.

(viii) Grazed lacerated wound in the form of furrow 10 cms x 1 1/2 cms superficial on the outer and middle of the left forearm, oblique in direction.

5. In the opinion of the doctor, death was caused due to shock and haemorrhage as a result of multiple injuries which were sufficient in the ordinary course of nature to cause death. Dr Jaspal Singh also opined that injuries 3 and 4 were the result of one shot while injuries 6 and 7 were the result of two shots. During the postmortem examination two bullets Exs. MO-1 and MO-2, were taken out from the dead body and the same were taken into possession by the police vide Memo Ex. P-32. Various recoveries were effected from the accused persons after their arrest on different dates by the police.

6. The prosecution examined Dr Jaspal Singh PW 1, Dr A.S. Mann PW 2, Shri Bhupinder Singh PW 3, Shri Sunder Singh PW 4, Sohan Lai PW 5, Kashmiri Lai PW 6, Shri Jamail Singh PW 7, Shri Harcharan Singh PW 8 and Shri Ratan Singh PW 9. Some affidavits of police officials whose evidence was of a formal character were admitted into evidence and placed on record. After close of the prosecution evidence, the accused were examined under Section 313 CrPC. They denied the prosecution allegations against them and alleged false implication. They, however, did not lead any evidence in defence.

7. The trial court acquitted Surjit Singh observing in paragraph 28:

"The learned Public Prosecutor in fairness to the Court and the defence frankly conceded at the bar that there was no evidence on the record to connect Surjit Singh with the crime. The charge against Surjit Singh accused was that he had conspired

with his co-accused. The witness in that connection was Dwarka Dass who had refused to support the prosecution. As such the case of the prosecution fails against Surjit Singh accused for want of evidence. Surjit Singh accused is acquitted."

8. The trial court also acquitted Satnam Singh, Sukhdev Singh, Sucha Singh, Kulwant Singh and Jagir Singh accused. Paragraph 29 deals with their acquittal:

"Satnam Singh, Sukhdev Singh, Sucha Singh, Kulwant Singh and Jagir Singh accused were arrested in this case. The statement of Kashmiri Lai (PW 6) brother of Sohan Lai (PW

5) is that he had seen the aforesaid accused proceeding towards the village abadi.

Thereafter there were reports of firing and he saw them running away from the village abadi towards the fields but from this circumstance alone I cannot spell out their criminality. Accordingly I acquit Satnam Singh, Sukhdev Singh, Sucha Singh, Kulwant Singh and Jagir Singh accused."

9. The conviction of Jagrup Singh and Hazara Singh for the various offences as noticed above, was recorded, in paragraph 30 thus:

"Sohan Lai (PW 5) at the trial on oath stated that Jasbir Singh accused had given gandasas blows and Mukhtiar Singh had taken away the gun. The gun was subsequently recovered from Jagrup Singh accused in pursuance of his disclosure statement Ex. P-23. The gun is Ex. MO-3 which is the licensed gun of Sohan Lai (PW 5). Inasmuch as the gun was taken away from the spot by Mukhtiar Singh. Jagrup Singh would be liable criminally under Section 411 of the Penal Code and under Section 25 of the Arms Act. The only evidence against Hazara Singh accused is that he was arrested by Shri Harcharan Singh, Assistant Sub-Inspector and his search brought out a pistol of .315 bore Ex. MO-4 and two cartridges Exs. MO-5 and MO-6 for which he had no licence. Hazara Singh accused has to be convicted under Section 25 of the Arms Act."

The learned Judge of the Special Court then proceeded to consider the case of the prosecution against Mukhtiar Singh and Jasbir Singh, appellants. The discussion in that behalf is found in paras 31 and 32 of the judgment which read thus:

"The two empties recovered from the spot were found to have been fired from the pistol of Jasbir Singh and two from the revolver of Mukhtiar Singh accused. The Supreme Court in the case of Bhura¹ in similar circumstances had held the accused guilty setting aside their acquittal by the High Court. Jasbir Singh and Mukhtiar Singh accused at the time of their arrest were directed to keep their faces muffled and they refused to participate in the identification parade on the ground that they had been shown to the witnesses of the prosecution for which there is not an iota of evidence. Both the accused had committed a trespass and there were firearm injuries

on the body of Jajpal. Their act of taking away the gun would make them criminal liable under Section 397 read with Section 34 of the Penal Code and they would also be liable under the Arms Act."

After recording these findings, both Mukhtiar Singh and Jasbir Singh were convicted for various offences as noticed above and sentenced.

10. We have gone through the judgment of the learned trial Judge and find that the same is far from satisfactory. Both, the order of acquittal as well as the order of conviction, have been made by the trial court in a most perfunctory manner without even noticing much less, considering and discussing the evidence led by the prosecution or the arguments raised at the bar. The trial court noticed the prosecution case, the medical evidence and the material collected during the investigation of the case besides the arrest of different accused persons on different dates in paras 1 to 23 of the judgment. In paragraph 24 it noticed the names of the prosecution witnesses and in paragraphs 25 and 26 it noticed the fact that the accused had been examined under Section 313 CrPC. It was in paragraphs 28 to 32, noticed above, that the orders of acquittal and conviction were made. The trial court was dealing with a serious case of murder. It was expected of it to notice and scrutinise the evidence and after considering the submissions raised at the bar arrive at appropriate findings. In vain have we searched through the cryptic judgment of the trial court, the reasons which prevailed with it to acquit the respondents in Criminal Appeal No. 489 of 1985 or convict the appellants in Criminal Appeal No. 434 of 1985. On the plainest requirement of justice and fair trial the least that was expected of the trial court was to notice, consider and discuss, howsoever briefly, the evidence of various witnesses as well as the arguments addressed at the bar. The trial court has not done so. The trial court apparently failed in the discharge of its essential 1 State of Punjab v. Bhura Singh, (1985) 1 SCC 37 : 1985 SCC (Cri) 33 duties. There is no mention in the judgment as to what various witnesses deposed at the trial, except for the evidence of the medical witness. The judgment does not disclose as to what was argued before it on behalf of the prosecution and the defence. The judgment is so infirm that we are unable to appreciate as to how the findings were arrived at. The judgment of the trial court is truly speaking not a judgment in the eyes of law. The trial court appears to have been blissfully ignorant of the requirements of Section 354(1)(b) CrPC. Since, the first appeal lay to this Court, the trial court should have reproduced and discussed at least the essential parts of the evidence of the witnesses besides recording the submissions made at the bar to enable the appellate court to know the basis on which the 'decision' is based. A 'decision' does not merely mean the 'conclusion' it embraces within its fold the reasons which form the basis for arriving at the 'conclusions'. The judgment of the trial court contains only the 'conclusions' and nothing more. The judgment of the trial court cannot, therefore, be sustained. The case needs to be remanded to the trial court for its fresh disposal by writing a fresh judgment in accordance with law.

11. We are conscious of the fact that the occurrence took place more than a decade ago and the conviction was recorded almost 9 years ago. But, looking to the manner in which the judgment has been rendered by the trial court, it appears appropriate to us to remand the case to the trial court for writing a fresh judgment, after providing opportunities of hearing to both the parties, on the basis of the material which is already on the record. We could have undertaken the exercise ourselves and analysed the evidence to determine the guilt or otherwise of the accused persons but we are of the

opinion that our doing so may prejudice one or the other party as it would deprive the party concerned of its right of first appeal to this Court. We have, therefore, considered it proper, after setting aside the judgment under appeal, to remand the case to the trial court for its fresh disposal in the light of the observations made by us above.

12.The appellants Mukhtiar Singh and Jasbir Singh were directed to be released on bail during the pendency of the appeal in this Court by an order of the learned Judge in chambers dated 19-7-1990. We do not consider it appropriate to cancel their bail during the fresh hearing of the case by the trial court but we direct that they shall remain present before the trial court during the hearing of the case and in the event of their being found guilty, they shall be remanded to custody. In case they or either of them does not appear before the trial court during the hearing, their/his bail shall stand cancelled and they shall be taken into custody till the conclusion of the hearing by the trial court. The respondents in Criminal Appeal No. 489 of 1985 shall also remain present during hearing of the case before the trial court and continue to remain on bail till the hearing of the case. The absence of either of the respondents in the trial court shall result in the cancellation of his/their bail and he/they shall be taken into custody till the conclusion of the hearing by the trial court. In case of conviction of any of the accused persons, the sentence already undergone by them as well as the period of detention before and during the trial shall be set off against the period of sentence.

13.Since, it is an old case, we direct the trial court [Judge, Special Court, (Sessions Judge) Ferozepur] to fix an early date for the hearing of the case and dispose it of on merits expeditiously preferably within a period of three months from the date of the communication of this order.

14.Since, we are remanding the case for writing a fresh judgment by the trial court after hearing the parties in the light of the observations made by us, we clarify that we have not expressed any opinion regarding the merits of the case and nothing said by us hereinabove shall be construed expressly or impliedly as any opinion on the merits of the case.