

Balaka Singh & Ors vs State Of Punjab on 16 April, 1975

Equivalent citations: 1975 AIR 1962, 1975 SCR 129, AIR 1975 SUPREME COURT 1962, (1975) 4 SCC 511, 1976 (1) SCJ 536, 1975 2 SCWR 191, 1976 MADLJ(CRI) 339, 1975 SCC(CRI) 601, 1975 ALLCRIC 302, 1975 CURLJ 378

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, N.L. Untwalia

PETITIONER:

BALAKA SINGH & ORS.

Vs.

RESPONDENT:

STATE OF PUNJAB

DATE OF JUDGMENT 16/04/1975

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

UNTWALIA, N.L.

CITATION:

1975 AIR 1962 1975 SCR 129

1975 SCC (4) 511

CITATOR INFO :

R 1990 SC1709 (38)

D 1991 SC 63 (3)

ACT:

Evidence-Appreciation of-Addition of names in inquest
report-Delay in submission of first information report-
Effect of

HEADNOTE:

A cousin of the deceased, who acted as his body guard and the first appellant and his party were on inimical terms. Some years before the occurrence the first appellant was charged with an offence of murder, in which the cousin was the chief prosecution witness. The appellant was acquitted by the High Court in that case. Shortly before the occurrence the appellant filed an application under s. 107 , Cr.P.C. against the cousin of the deceased and his party

which gave rise to a fresh grouse between the party of the prosecution and the party of the appellants. On the day of the occurrence, it was alleged, that the cousin of the deceased saw the appellant and his party consisting of nine members going towards the house of the deceased, armed with, deadly weapons. All the nine persons entered the house of the deceased and attacked him. The deceased was alleged to have fallen dead with the spear blow of the first appellant. The accused caused injuries to the wife when she came to protect the deceased. The Sessions Judge convicted the appellant under s. 302 and the other accused under s. 302 read with s. 149.

On appeal the High Court affirmed the conviction and sentences against the five appellants and acquitted the remaining four accused on the ground that in the body of the inquest report the names of the four acquitted accused did not find place and that the names of the nine accused including those of the four accused mentioned on the top of the inquest report was an addition made by the Police Sub-Inspector to help the prosecution.

Allowing the appeal of the five convicted accused to this Court,

HELD : 1(a) The prosecution case against the five appellants has not been proved beyond reasonable doubt. The High Court had given cogent and substantial reasons for acquitting the four accused but in that process it had given a finding which is completely destructive of the entire prosecution case itself. Although the names of all the nine accused were mentioned at the top of the inquest report the High Court found that this was ;in addition made by the Assistant Sub-Inspector to help the prosecution and to bring the inquest report in conformity with the F.I.R. The prosecution has not been able to give any reasonable explanation for the omission of the names of the four acquitted accused in the inquest report. Even the Assistant Sub-Inspector, who was examined as a witness had not chosen to _give any explanation for this deliberate omission. This omission throws serious doubt not only on the complicity of the four accused but also on the veracity and authenticity of the F.I.R. itself. When once it is established that the names of the four accused were deliberately added in the inquest report at the instance of the prosecution, there is no guarantee regarding the truth about the participation of the other five accused in assault of the deceased. If the prosecution could go to the extent of implicating four innocent persons by insetting their names in the inquest report and in the F.I.R., they, could very well have put in the names of the other five appellants also because they were inimical to the prosecution party. [133C-G-H, 134B-C, 135C-D]

(b)A perusal of the evidence of the prosecution witnesses showed that the prosecution case against the appellants and the four accused was so inextricably mixed up that it is not

possible to sever one from the other. In the instant case, having regard to the partisan and interested evidence of the prosecution witnesses who could implicate the appellants and the four accused equally with regard to the assault on the deceased it is not possible to reject the prosecution case with respect to the fourth accused and accept it with respect to the other five appellants. [135F-G, H]

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Zwinglee Ariel v. State of Madhya Pradesh, A.I.R. 1954 S.C. 15. referred to.

(2) Under the High Court circulars and Police rules it was incumbent upon the police to send a copy of the F.I.R. to the Ilaqa Magistrate immediately. In the instant case the F.I.R. which was recorded at 10 P.M. on the day of the occurrence reached the Ilaqa Magistrate at 11 A.M. on the following day. It is, therefore, clear that the F.I.R. was a belated document. If this were so, then, there was sufficient time for the prosecution party, who were undoubtedly inimical to the accused, to deliberate and prepare a false case not only against the fourth accused but also against the five appellants. [134F-G-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 133 of 1970 Appeal by special leave from the judgment & order dated the 21st January, 1970 of the Punjab & Haryana High Court in Criminal Appeal No. 318 of 1967.

R. L. Kohli, for the appellants.

M. S. Dhillon, for the respondent.

The Judgment of the Court was delivered by FAZAL ALI, J.-This is an appeal by special leave preferred by the appellants Balaka Singh, Joginder Singh, Pritam Singh, Darbara Singh and Jarnail Singh. The appellant Balaka Singh has been convicted under s. 302 I. P. C. and sentenced to imprisonment for life. The other appellants have been convicted under s. 302 read with s. 1.49 and sentenced to life imprisonment and a fine of Rs. 1,000/- each or in default further rigorous imprisonment for one year. AR the appellants have also been convicted under S., 143 I.P.C. and sentenced to rigorous imprisonment for four months each and under s. 148 to rigorous imprisonment for one year each. Balaka Singh has also been convicted under s. 325 I.P.C. for having caused grievous hurt to Gurmej Kaur and Harnam Kaur and sentenced to two years rigorous imprisonment and fine of Rs. 100. The other accused have also been convicted under s. 325 read with s. 149 I.P.C. and awarded the same sentence as Balaka Singh. Apart from these five appellants there were four other accused who were prosecuted before the Trial Court of the Additional Sessions Judge, Patiala, namely, Makhan Singh, Sucha Singh S/o Inder Singh, Teja Singh and Inder Singh but these accused persons were acquitted on appeal by the High Court of Punjab and Haryana. The

High Court has, however, confirmed the conviction and sentences passed on the appellants and has dismissed the appeal and hence this appeal before us. Put briefly the prosecution case is as follows. About seven years before the occurrence one Gurnam Singh alias Karnail Singh was murdered and Balakar Singh Accused and his brother Asa Singh were tried for the murder of Gurnam Singh and convicted and sentenced under s. 302 I.P.C. to imprisonment for life by the Sessions Judge. Balaka Singh and Asa Singh, however, went up in appeal to the High Court and were acquitted. Banta Singh P. W. 3 who is informant in the instant case was the chief prosecution witness in the murder case in which Gurnam Singh was killed. It is also the admitted case of the prosecution that Balaka Singh and his people were on inimical terms with Banta Singh and the deceased Gurnam Singh. It was further alleged that Dharam Singh the deceased in the present case was the cousin of Banta Singh and was used by him as a sort of his body-guard to protect him from his enemies. Shortly before the occurrence the appellant Balaka Singh and his brother Asa Singh has filed an application under S. 107 of the Code of Criminal Procedure against Banta Singh, Dharam Singh, Budha Singh and Kashmir Singh and in those proceedings the licensed gun of the deceased Dharam Singh was also deposited and this gave rise to a fresh grouse on the part of the prosecution party against the accused. Banta Singh and Dharam Singh also had made a counter-application for taking security proceedings against the present appellants but no action thereupon appears to have been taken. The actual occurrence took place on September 1, 1966, when Banta Singh P. W. 3 the informant and Dharam Singh the deceased had gone to see their fields. They returned from their fields at about 6 P.M. and Dharam Singh had entered his house while Banta Singh took his leave and went to his own house. While Banta Singh was going to his house he saw the nine accused persons including the five appellants variously armed with spears, pandas and lathes proceeding towards the house of Dharam Singh. The party of the accused is said to have entered the house of Dharam Singh and Makhan Singh, Sucha Singh s/o Inder Singh, Inder Singh and Teja Singh- hereinafter referred to as 'the four accused' (since acquitted by the High Court) are said to have incited and exhorted their companions to finish off Dharam Singh and not to spare any member of his family. Dharam Singh was, busy in tying the rope of his ox which was tethered in his court-yard. The accused after entering the court-yard opened 'attack on the deceased Dharam Singh in which Balaka Singh took a main part and gave a spear blow on the chest of Dharam Singh as a result of which he fell down on the ground. Thereafter Banta Singh raised a hue and cry to the effect that Dharam Singh had been murdered. Not content with giving one spear blow to Dharam Singh even after he fell down, Joinder Singh is said to have given a barchha blow on his right knee and Pritam Singh a gandasi blow in the right shoulder of Dharam Singh. Just at that moment Smt. Gurmej Kaur the wife of Dharam Singh, his mother, Waryam Singh his father and his brothers who were in the house tried to intervene and fell on the body of Dharam Singh. But they were also assaulted by Joginder Singh, Balaka Singh and others. It is said that other inmates of the house were also assaulted. On hearing the cries of Banta Singh the informant, Harnam Singh and Kapur Singh reached the spot and they saw Joginder Singh accused catching Dharam Singh by his long hair, while Balaka Singh had caught him by the legs and were trying to drag the deceased towards the entrance gate of the house. Kapur Singh who was armed with a gun fired a shot in the air which dispersed the accused party who ran away. In the aforesaid occurrence apart from the deceased Dharam Singh Mst. Gurmej Kaur, Harnam Kaur, Waryam Singh, Sucha Singh and Budha Singh also received injuries on their person.

Banta Singh P.W. 3 went to the police station Julkan and lodged the F.I.R. the police station being 6/7 miles away from the place of occurrence. The report was lodged at about 10 P.M. Accordingly a case under S. 302, 307 and other sections of the Indian Penal Code was registered by the police. Assistant sub-Inspector Teja Singh reached the spot along with Banta Singh and some constables. After reaching There at about 2 or 2.30 A.M. he prepared the inquest report and injury statement of the injured persons. The dead body was sent to the mortuary at Patiala for post-mortem examination. The A.S.I. also took blood-stained earth from the spot and the blood-stained clothes of the deceased were also taken. After completion of the usual investigations the nine accused persons were challaned in the Court of the Judicial Magistrate, Patiala who committed them for trial to the Court of Session which resulted in the ultimate conviction and sentence against the accused as mentioned above. The accused pleaded innocence and averred that they had been falsely implicated due to previous enmity. In support of the prosecution 19 witnesses were examined but the defence did not give any evidence at all. The learned Sessions judge after considering the evidence came to the conclusion that the prosecution case against all the accused persons was fully proved and he accordingly convicted and sentenced the accused persons as mentioned in his judgment. The accused persons then filed an appeal in the High Court, which, while accepting the prosecution case against the five appellants in this Court, acquitted the four accused namely, Makhan Singh Sucha Singh s/o Inder Singh, Teja Singh and Inder Singh. The Court has given cogent and substantial reasons for acquitting the aforesaid accused, but in that process they have given a finding which, in our opinion is completely destructive of the centre prosecution case itself. We may now refer to the reasons given by the High Court for acquitting the four accused mentioned above. The first and foremost reason given by the High Court was that although the inquest report was prepared by the A.S.I. it about 2.30 A.M. in the morning, yet the names of the four accused did not find place in the body of the inquest report which was made on the basis of the report made to the police by the informant Banta Singh. It is true that the names of all the nine accused were mentioned at the top of the inquest report but the High Court found that this appears to have been the addition made by the Assistant Sub-Inspector' to help the prosecution and to bring the inquest report in conformity with the F.I.R. In this connection the High Court observed as follows "The first thing to be noted in this connection is that the names of these four appellants do not figure in the body of the inquest report although they are mentioned in the heading thereof as well as in the first information report. The circumstance leads clearly to the inference that throughout the preparation of the inquest report these appellants were not named as members of the party of the culprits and that their names were added in the said heading as well as in the first information report later."

We have perused Ext. P. H. inquest report ourselves and find that in the brief facts of the case which were made to the Investigating Officer by Banta Singh only the names of Balaka Singh, Joginder Singh, Pritam Singh, Darbara Singh and Jarnail Singh are mentioned. There is no reference at all to Makhan Singh, Sudha Singh s/o Inder Singh, Teja Singh and Inder Singh in the report nor is it mentioned that Teja Singh and Inder Singh incited or exhorted the other accused persons to open the assault on the deceased which appears to be the starting point of the occurrence. The prosecution has not been able to give any reasonable explanation for this important omission in the inquest report. The A.S.I. Teja Singh was questioned on this point and he stated thus "The brief statements of the facts of the case mentioned in the inquest report are based on the report lodged by Banta Singh. In this brief statement, however, the names of Inder Singh, Sucha Singh, Teja Singh

and Makhan Singh accused are not mentioned as culprits, specifically. It is correct that in the brief facts mentioned in the body, there is no reference of the names of these four men."

Thus even the A.S.I. while admitting that the names of the four accused were not mentioned by Banta Singh has not chosen to give any explanation for this deliberate omission to that effect. According to the prosecution the names of the four accused who have been acquitted by the High Court had already been mentioned in the F.I.R. which was lodged 4/5 hours before the inquest report was prepared. Any Investigating Officer possessing some intelligence would have at once questioned Banta Singh as to how it is that while he had named the four accused in the F.I.R. he had not referred to them in his brief statement in the inquest report. In these circumstances, therefore, the High Court was fully justified in holding that the omission of the names of the four accused acquitted by the High Court in the inquest report was a very important circumstance which went in favour of the four accused. This omission has a two-fold reaction. In the first place it throws doubt on the complicity of the four accused acquitted by the High Court and secondly it casts serious doubt on the veracity and authenticity of the F.I.R. itself. It is not understandable as to why the four accused who are alleged to have taken an active part in the assault on the deceased were not at all mentioned in the inquest report and in the brief statement of the very person who had lodged the F.I.R. four hours before. Counsel for the State tried to justify this omission on the ground that in the inquest report Ext. P. H. the names of all the nine accused appear to have been mentioned at the top of that document. There is, however, no column for mentioning the names of the accused and, therefore, there was no occasion for the Investigating Officer to have mentioned the names of the accused in that particular place.

Finally the Investigating Officer P.W. 23 Teja Singh admitted in his evidence that he had prepared the inquest report and that he had read out the same to Banta Singh and Harnam Singh P.Ws. but later tried to say that he did not recollect whether he had read out the inquest report to Banta Singh and Harnam Singh before getting their thumb impressions on the inquest report. This circumstance speaks volumes against the prosecution case. If, therefore, it is once established that the names of the four accused were deliberately added in the inquest report at the instance, of the prosecution there is no guarantee regarding the truth about the participation in the assault on the deceased by the appellants.

Another finding which demolishes the entire edifice and fabric of the prosecution case is that the F.I.R. itself was not written at 1C P.M. as alleged by the informant Banta Singh but it was written out after the inquest report was prepared by the A.S.I. and after the names of the four accused acquitted by the High Court were inserted in the inquest report. If this is true then the entire case of the prosecution becomes extremely doubtful. The High Court has also derived support from another important circumstance to come to the conclusion that the F.I.R. was not written at 10 P.M. as alleged by the prosecution but after the preparation of the inquest report at about 2.30 A.M. The High Court points out that according to the prosecution the special report reached the Ilaqa Magistrate at 11 A.M. on September 2, 1966 i.e. more than 12 hours after the F.I.R. was lodged at the police station, whereas it should have been delivered to the Ilaqa Magistrate during the night or at least in the early morning. Counsel appearing for the appellants submitted that under the High Court Circulars and the Police Rules it was incumbent upon the Inspector who recorded the F.I.R. to send

a copy of the F.I.R. to the Ilaqa Magistrate immediately without any loss of time and the delay in sending the F.I.R. has not been properly explained by the prosecution as rightly held by the High Court. It is, therefore, clear that the F.I.R. itself was a belated document and came into existence during the small hours of September 2, 1966. Indeed if this was so, then there was sufficient time for the prosecution party who are undoubtedly inimical to the accused to deliberate and- prepare a false case not only against the four accused who have been acquitted, but against the other five appellants also. The High Court also found that the best person to explain the delay in sending the special report to the Ilaqa Magistrate was the Police Constable who had carried the F.I.R. to the Ilaqa Magistrate but that Constable has not been examined by the prosecution. On this point the High Court observed as follows "The delay with which the special report was made available to the Ilaqa Magistrate is indicative of the fact that the first information report did not come into existence probably till about sunrise by when the dead body had already been despatched for the purpose of postmortem examination to Patiala along with the inquest report, so that the Investigating Officer was no longer in a position to make alterations in the body of that report and all that he could do was to add later on the names of the said four appellants to its heading."

This finding of the High Court is based on cogent materials and convincing reasons, but unfortunately the High Court has not considered the effect of this finding on the truth of the prosecution case with regard to the participation of the appellants. In our opinion, in view of the finding given by the High Court it has been clearly established that the F.I.R. was lodged not at 10 P.M. as alleged by the prosecution but some time in the early morning of September 2, 1966. If this was so, then the F.I.R. lost its authenticity. If the prosecution could go to the extent of implicating four innocent persons by inserting their names in the inquest report and in the F.I.R. which was written subsequent to the inquest report they could very well have put in the names of the other five appellants also because they were equally inimical to the prosecution party, and there could be no difficulty in doing so because it is found by the High Court that all the prosecution witnesses belonged to one party who are on inimical terms with the accused.

The suggestion of the appellants is that they were falsely implicated because the prosecution could not succeed in convicting Balaka Singh for the murder of Gurnam Singh in the previous murder case. It was to wreck fresh vengeance on the accused that they had been falsely implicated in the present case. It is true that there are as many as eight witnesses who are alleged to have seen the occurrence and they have given a parrot-like version of the entire case regarding the assault on the deceased by the various accused persons. All these witnesses have with one voice and with complete unanimity implicated even the four accused persons, acquitted by the High Court, equally with the appellants making absolutely no distribution between one and the other. A perusal of the evidence of the prosecution witnesses would show that the prosecution case against the appellants and the four accused is so inextricably mixed up that it is not possible to sever one from the other. It is true that, as laid down by this Court in *Zwinglee Arivel v. State of Madhya Pradesh*⁽¹⁾ and other cases which have, followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the

prosecution completely from the context and the background against which they are made, then this principle will not apply. We are satisfied that in the facts of the present case, having regard to the partisan and interested evidence of the prosecution witnesses who can implicate the appellants and the four accused equally with regard to the assault on the deceased it is not possible to reject the prosecution case with respect to the four accused and accept it with respect to the other five appellants. If all the witnesses could in one breath implicate the (1) A.I.R. 1954 S.C. 15.

10SC/75-10 four accused who appear to be innocent, then one cannot vouchsafe for the fact that even the acts attributed to Balaka Singh, Joginder Singh, Pritam Singh, Darbara Singh and Jamail Singh may have been conveniently made to suit the needs of the prosecution, case having regard to the animus which the witnesses as also Banta Singh bore against the appellants. In these circumstances, therefore, we are satisfied that in view of the finding of the High Court that the F.I.R. was a belated document having come into existence much later than the time it is said to have been recorded and which adds the names of the four accused against whom the prosecution case is absolutely identical with the appellants, the case of the appellants cannot at all be distinguished from that of the four accused in any respect. If the case against the four accused fails, then the entire prosecution will have to be discarded and it will not be possible for this Court to make out a new case to convict the appellants as has been done by the High Court. In order to test the veracity of the prosecution witnesses we find that one of the eye witnesses, namely, Waryam Singh has deposed that Gurmej Kaur, the wife of the deceased, who was drawing water, from the hand pump when the accused came, ran towards Dharam Singh and fell upon his body in order to protect him from receiving further injuries. At this the appellant Balaka Singh is alleged to have given her a barchha blow on her right hand and the appellant Joginder Singh gave a barchha blow on the left buttock of Gurmej Kaur. According to the evidence of this witness the two appellants Balaka Singh and Joginder Singh appear to have assaulted Gurmej Kaur with a sharp-cutting instrument, namely, barchha and spear. This version is completely falsified by the medical evidence of Dr. Mohinder Singh who examined Gurmej Kaur and who stated in his evidence that all the injuries on Gurmej Kaur were caused by blunt weapon. Moreover out of the six injuries which Gurmej Kaur received on her body not a single one could be caused by a sharp-cutting instrument because there was no penetrating or incised wounds. The injuries were either contusions, abrasions or lacerated wounds. While the witness Waryam G- Singh says that the accused Joginder Singh had given a barchha blow on the left buttock of Gurmej Kaur, according to the medical evidence, it was a lacerated wound deep on the upper and outer part of the left buttock. This, therefore, clearly demonstrates the extent to which the witnesses could have gone in order to implicate all the accused. In view of these circumstances and the evidence discussed above, we are clearly of the opinion that the prosecution case against the five appellants has also not been proved beyond reasonable doubt and the manner in which the F.I.R. and the inquest report have been made throws considerable doubt on the complicity of the five appellants in the crime. The result is that the appeal is allowed and the order of conviction and sentence passed on all the appellants is set aside. The appellants are acquitted of the charges framed against them and are directed to be released forthwith. Appeal allowed.

P.B.R.