Jit Singh vs State Of Punjab on 24 March, 1976

Equivalent citations: AIR1976SC1421, 1976CRILJ1162, (1976)2SCC836, AIR 1976 SUPREME COURT 1421, (1976) 2 SCC 836, 1976 SCC(CRI) 341, 1976 SC CRI R 330, 1976 CRI APP R (SC) 241, ILR 1976 KANT 1335

Bench: P.N. Shinghal, R.S. Sarkaria

JUDGMENT

R.S. Sharkaria, J.

1. This appeal is directed against an appellate judgment of the High Court of Punjab and Haryana whereby the acquittal of Jit Singh, appellant herein was reversed and converted into conviction for an offence under Section 302, Penal Code, with a sentence of imprisonment for life. The facts of the case, as they emerge from the record, are these:

> The deceased is one Hari Singh of village Ramunwala. On February 6, 1968, his house was searched by the Police for seizure of excisable articles but nothing incriminating was found. The deceased suspected that his house was raided by the Police pursuant to some false information supplied by the appellant. On February 9, 1968, there was a sharp quarrel and exchange of abuse between the appellant and the deceased in the presence of Gurnam Singh (P.W. 6). The deceased was protesting and demanding an explanation from the appellant for causing the police raid on his house. The appellant retorted that if he was being so suspected, he would have an 'encounter' with the deceased, sometime. Gurnam Singh separated and pacified them.

2. On February 10, 1968, about half an hour before sunset, Baldev Singh (P.W. 3) son of the deceased went to his uncle, Nahar Singh (P.W. 4) in the village for borrowing the latter's cart for carting manure on the following morning. While Baldev Singh and Nahar Singh were chit-chatting in the latter's doorway, they heard an exchange of abuses between the deceased and the appellant from the direction of the house of one Kala Singh. Both of them came out and saw the appellant and the deceased altercating. Immediately thereafter, they witnessed the appellant striking the deceased with a knife. Shouting to the assailant to desist from the assault, they proceeded to the spot. Mukhtiar Singh (P.W. 5) was also attracted to the spot. He also witnessed the occurrence. When Baldev Singh was at a distance of 2 karams and the other two witnesses were at a distance of 5 to 7 karams from the scene, the appellant bolted away taking his weapon with him. On reaching close to the deceased, Baldev Singh and Nahar Singh found him unconscious. Soon thereafter Har-nek Singh, another son of the deceased, also arrived there. Harnek Singh brought Gurnam Panch (P.W. 6) to the spot. Baldev Singh then informed him that the appellant had stabbed the deceased. The

sons of the deceased laid Hari Singh on a cot and with the aid of Gurnam Singh and Mukhtiar Singh, carried him to the Civil Hospital, Moga, six or seven miles away.They reached the Hospital at 10 P.M. The medical officer Dr. Manohar Singh, examined Hari Singh and prepared a statement of his injuries. The Doctor sent the note, Ex. P-2, to the City Police Station, Moga informing them about the precarious condition of Hari Singh. On receiving the note, Assistant Sub-Inspector, Kundan Singh (P.W. 9) reached the Hospital at 10.15 P.M. He found the deceased unconscious and unfit to make a statement. Thereupon he recorded the statement (Ex. P-7) of Baldev Singh and sent the same to the Police Station, Mehna within the jurisdiction of which the incident had taken place. On the basis of that statement, a case under Sections 307/ 326, Penal Code was registered in the Police Station, Mehna at 12-30 a.m. of the 11th of February.

3. Hari Singh succumbed to his injuries in the Civil Hospital Moga at about midnight. Dr. Manohar Singh then sent an intimation (Ex. P-4) of Hari Singh's death to the Moga Police. Thereupon, Assistant Sub-Inspector, Kundan Singh came to the Hospital and prepared the inquest report.

4. A. S. I. Darshan Singh (P.W. 10) of P. S. Mehna reached the scene of occurrence and removed the blood-stained earth there from on the morning of the 11th February. Subsequently, S. I. Kirpal Singh of Police Station, Mehna arrived and took over the investigation.

5. Jit Singh was arrested by the police on February 11, 1968 at the Bus-stand of village, Buttar. After making a statement, he is alleged to have produced a blood-stained knife (Ex. P.O. 1).

6. The autopsy was conducted by Dr. Jagan Nath Gupta on February 11, 1968 at 3.30 p.m. He found four external injuries on the body. Injury No. 1 was an oblique incised wound 12 cms. x 2 1/2 cms. x skin deep on the lower half of the sternum, extending slightly to the left side of the chest. Injury No. 2 was an oblique incised punctured wound with tapering ends, 51/2 cms. x 21/2 cms. going deep into the abdominal cavity on the left costal margin on the front of chest. It was directed from upwards to downwards, backward and medially. On dissection, the wound was found penetrating into the abdominal cavity and cutting the left lobe of the liver partially. The abdominal cavity contained blood. Injury No. 3 was an oblique incised punctured wound, 6 cms. x V2 cm. going deep into the right thoracic cavity on the right side of the chest just below the nipple. It was directed upwards, backward and medially. The right lung and pleura were found cut. Injury No. 4 was a linear abrasion, 2 cms. long. just below the Xiphi sternum. According to the Doctor, the shirt (Exh. P-2) and the banyan (Ex. P-3) bore cuts corresponding to the injuries. In his opinion, injuries 2 and 3 found on the deceased were individually sufficient to cause death in the ordinary course of nature.

7. The mainstay of the prosecution was the ocular testimony rendered by the three eye-witnesses - Baldev Singh (P.W. 3). Nahar Singh and Mukhtiar Singh. The trial Court held that the occurrence had taken place around 9 p.m. when it was dark and it was impossible for P. Ws. Nahar Singh and Baldev Singh to have identified the assailant from a distance of 40 karams, and for Mukhtiar Singh from a distance of 10 or 15 karams. In its opinion, the injuries found by the medical officer on the deceased, could not have been caused with the knife P.O. 1. alleged to have been recovered from the appellant. The first reason given in support of this con-conclusion was that Hari Singh must have been rushed to the Hospital at Moga in a tractor-trolly with least possible delay BO as to reach there

around 10 p.m. According to the trial Court's estimate the carriage of the injured to the Hospital, six or seven miles away, could not have taken more than an hour. Counting back one hour from the time of arrival at the Hospital, the trial Court placed the time of occurrence around 9 P. M. In support of its conclusion that Hari Singh had been brought in a tractor-trolly to the hospital at 10 p.m. , the trial Court relied on the statement of Dr. Manohar Singh (P.W. 1).

8. The second reason given by the trial Court for rejecting the evidence of the eye-witnesses was that on reaching the spot, Nahar Singh, Harnek Singh and Gurnam Singh asked the deceased as to who had caused him the injuries. For this finding, the trial Court relied upon a sentence in the statement of Nahar Singh recorded in the committal court notwithstanding the fact that at the trial, Nahar Singh had said something to the contrary and had disowned his former statement on that point, when confronted with the same in cross-examination by the defence.

9. The trial Court further found on the basis of the opinion of Dr. Manohar Singh that the injuries of the deceased could not have been caused with the knife, M.O.1.

10. The High Court has reversed these findings of the trial Court, excepting the one that the knife M.O. 1, was not the weapon with which the injuries were inflicted. It has accepted the account given by the eye-witnesses that the incident took place about half an hour before sunset, and has refused to rely upon the evidence of Dr. Manohar Singh inasmuch as he says that Hari Singh, injured was brought to the Hospital in a trolly pulled by a tractor. The reason given for not accepting the Doctor's testimony in regard to this fact, is that the Doctor did not make the deposition on the strength of any record.

11. The second main reason given by the trial Judge for holding that Baldev Singh and Nahar Singh did not see the occurrence, was considered and countered by the High Court in these terms:

> In the first Place the earlier aforesaid statements (of Nahar Singh) cannot be substantive evidence inasmuch as they did not state so at the trial. In the second place, quite often it so happens that a person who sees an event does ask another involved in it "What has happened, who has done it." Such being the working of the human mind at times, it does not necessarily 'follow that the putting of such questions negatived the fact that the person asking them saw the event. In the third place the presence of Nahar Singh as indicated above in his house at the relevant time could not be doubted at all. The fact that Baldev Singh also was there too carries conviction. Added to it the fact that the offence was committed just about 40 karams away, their presence at the relevant time cannot be ruled out. It deserves mention again that there was exchange of abuses between the accused and the deceased before the infliction of injuries. That being so, there was nothing improbable in the arrival of the two witnesses above-named near the spot well in time to see the infliction of injuries by the deceased. Another reason given by the learned trial Judge for disbelieving Baldev Singh is that at the spot Baldev Singh told his brother Harnek Singh before the latter went to fetch Gurnam Singh that Jit Singh had injured the deceased. In the nature of things. Harnek Singh should have conveyed this vital fact

> to Gurnam Singh, but the testimony of Gurnam Singh is that he was told by Harnek Singh that there had been a fight and on reaching the spot he, Gurnam Singh, learnt from Baldev Singh that Jit Singh was the assailant of the deceased. In considering this part of the prosecution case, the learned trial Judge lost sight of the fact that Harnek Singh did not appear in the witness-box. The fact that the condition of Hari Singh deceased was then precarious and that arrangement to remove him to the hospital were being made is patent. It may be that in haste and confusion Harnek Singh did not attach any importance to the name of the assailant of the deceased before Gurnam Singh.

12. Counsel for the appellant contends that the High Court has not been able to displace effectively the main reasons given by the trial Court in support of its order of acquittal. In any case, it is submitted, the view of the evidence taken by the trial Court was also reasonably possible, and, in accordance with the well-established principles of practice, the High Court should have stayed its hands from disturbing the acquittal.

13. As against this, Counsel for the State, has tried to support the judgment of the High Court.

14. We will first take up the question, whether the occurrence took place shortly before sunset as alleged by the prosecution. Civil Hospital. Moga is admittedly six or seven miles from the place of occurrence. It is not disputed by either side that the injured Hari Singh was brought to this Hospital at 10 P.M. on February 10, 1968. The fact in controversy is whether he was brought in a tractor-trailer, as held by the trial court, or on a cot, carried all the way by his sons and relations. In cross-examination, Dr. Manohar Singh stated that Hari Singh injured was removed in his presence from the trolly of a tractor into the Hospital, and was examined by him immediately thereafter. The Doctor lives in the premises of the Hospital. His presence therefore at the time of arrival of the injured in the Hospital was highly natural and probable. In our opinion, the High Court was not justified in rejecting this fact deposed to by the Doctor, on the facile ground that he had no record with him to aid his memory on this point particularly when his version was in accord with the probabilities of the situation. Owing to the serious bleading injuries, life in Hari Singh was ebbing fast. The Hospital was about 7 miles away. There should have therefore been an anxiety on the part of the sons and relations of the deceased, who were at hand, to rush him to the Hospital by the quickest and most convenient means of conveyance available. Carrying the deceased on their shoulders all this 7 miles would be neither convenient, nor quick. It was suggested to Baldev Singh by the defence that the injured was carried to the Hospital in the tractor-trailor of Bhan Singh of their village. Baldev Singh denied the suggestion, but conceded that Bhan Singh of their village had a tractor-trailor which was then in the fields.

15. Mr.O. P. Sharma, Counsel for the State submits that Baldev Singh's statement to the effect, that the injured was carried by them on a cot all the way to Moga, receives corroboration from the mention of that fact in the F. I. R.

16. In our opinion, mention of this fact in the F.I.R. is not supposed to assure its truth. Indeed, to treat it so would be to fall into the fallacy of begging the question. The fact remains that while Baldev

Singh etc. had a reason to conceal the truth on this point, the Doctor had none, Dr. Manohar Singh was a disinterested witness. In our opinion, the trial Court was right in preferring his sworn word to the ipse dixit of Baldev Singh and in holding that Hari Singh was taken to the Hospital in a trolly pulled by a tractor and not on a cot carried on the shoulders of his sons, all the way to Moga. If a trolly-pulled by a tractor was the means of transport used for conveying Hari Singh to the Hospital-as we hold it was- then the maximum time taken in covering the journey to the Hospital would be around one or one and a quarter hours. We may give allowance for another hour or so which would be required to arrange and prepare the tractor for the journey. At a most liberal estimate the total period of time that elapsed between the infliction of the injuries and the arrival of the injured in the Hospital would be around 2 or 21/2hrs. In this way the probable time of the occurrence works out to be around. 8 P.M.

17. If about 8 P. M. be the correct time of occurrence, it has to be considered further whether the eye-witnesses could see and identify the assailant at that hour from the nearest distances from which they claim to have seen the occurrence. Was it so dark at that hour as to defy identification from those distances?

18. In this connection, the first thing to be noticed is that at the relevant time there was sufficient moon light. The calendar tells us that on the 10th Feb. 1968, moon arose at 2.5 p.m. and set at 4.11 A.M. on the 11th February. The night of full moon was only two nights ahead. It was not rainy season. It is nobody's case that it was a cloudy night. Thus, even if it is assumed .' that the occurrence took place around 8 P. M., there would be bright moon shedding its light on the scene of occurrence which was an open place. In that bright moonlight it could not be difficult for a person to recognise another known to him from a distance 45 or 50 ft. One infirmity in the reasoning of the trial court was that it assumed, without any basis whatever, that it must have been pitch dark at the time and place of occurrence. It completely overlooked the fact that the scene of occurrence must have been sufficiently lit by moon-light. Contrary to the record, another fallacious assumption made by the trial Court, was that throughout the occurrence all the three eye-witnesses saw the incident while remaining stationary far away at their respective positions, that Baldev and Nahar saw the incident from a distance of 40 or 45 karams and Mukhtiar from 15 or 20 karams. It completely over-looked the sworn testimony of the witnesses inasmuch as they stated that on hearing the altercation they came out and on seeing the commencement of the assault ran towards the scene of occurrence shouting to the assailant to desist from the assault, and that the assailant ran away when Baldev Singh, Nahar Singh and Mukhtiar Singh were at a distance of 2/3 karams, 5 or 7 karams and 7 or 8 karams, respectively from the spot. What the trial Court did was that for the entire duration of the occurrence, it kept the eye-witnesses fixed in immobile positions at distance from which they claimed to have seen the commencement of the assault, and completely ignored the progressively shorter and the shortest distances from which they saw the progress and the closing blows of the assault on the deceased.

19. Learned Counsel for the appellant contends that the story narrated by P. Ws. 3 and 4 about their having moved closer within a distance of 2 to 7 karams of the scene at the time of the assault, was a subsequent improvement, as it does not find mention in the F.I.R. lodged by Baldev Singh. Attention has also been invited to the site-plan, Ex. P-13, prepared by the Draftsman, Kulwant Singh

(P.W. 8). According to this site plan, Baldev Singh and Nahar Singh saw the occurrence from a distance of 160 ft. (32 karams) and Mukhtiar Singh from a distance of 25 ft. Counsel has also referred to the rough site-plan Ex. P-14, that had been prepared by the investigating officer (P.W. 10). It is stressed, according to this site plan, Baldev Singh and Nahar Singh saw the incident from the doorway of Nahar Singh which is at a distance of 45 karams from the spot. It is argued that presumably this site plan also was prepared by the Investigating Officer in accordance with the various situations pointed out to him by the witnesses. The notes on this site plan, according to Counsel, contradict the account given by the witnesses in court in regard to the distances from which they saw the occurrence.

20. We are afraid it is not permissible to use the site-plan Ex. P-14 in the manner suggested by the Counsel. The notes in question on this site-plan were statements recorded by the Police Officer in the course of investigation, and were hit by Section 162 of the CrPC. These notes could be used only for the purpose of contradicting the prosecution witnesses concerned in accordance with the provisions of Section 145, Evidence Act, and for no other purpose. But this was not done. The witnesses were never confronted and contradicted with this record. Nor were the witnesses contradicted with what they are supposed to have told Kulwant Singh (P.W. 8). They were not confronted with the notes on Ex. P-13.

21. Be that as it may, what the witnesses had testified in court was more consistent with the natural conduct of the eye-witnesses and the probabilities of the case Baldev Singh was a son and Nahar Singh a brother of the deceased. Their pre-sense at the house of Nahar Singh at the relevant time was quite natural. That house is hardly 40 karams from the place of occurrence. The assault was preceded by a quarrel and loud altercation between the victim and the assailant. It is inconceivable that when they came out on hearing the exchange of abuse and saw the same developing into the assault on the deceased, they would not go to the rescue of their near relation, raising an alarm. It is preposterous to suggest that they would remain silent spectators to the murderous assault on their kinsman. The conduct of these two witnesses in hastening to the spot was quite probable and natural. Equally probable was the conduct of Mukhtiar Singh in moving closer to the place of occurrence. It is true that Mukhtiar did not, according to his own statement, get closer than 5 karams of the occurrence. He has however given a plausible explanation for the same. He was a victim of a previous assault This conduct of the witness had the impress of the truth of the aphorism-'once bitten twice shy,' We may notice in passing that even in the site-plan prepared by the Draftsman (P.W. 8), the distance from which he saw the incident, is shown as 5 karams. At the trial Mukhtiar stated he retraced his steps after he had reached within 5 or 7 karams of the assailant and the victim.

22. For the above reasons, we hold in agreement with the High Court, that the shortest distances from which Baldev Singh and Nahar Singh saw the occurrence were about 2 karams (10 ft), 7 karams (35 ft) respectively, while Mukhtiar was within 25 ft. of the spot when the final blow was given by the assailant. From such short distances the witnesses could unmistakably identify the assailant who was fully known to them and was their co-villager, even in moonlight.

23. P.W. Mukhtiar Singh is not related to the deceased. He is an independent witness. He appears to have been consistent in all his statements, on this point. Mukhtiar Singh's name also, as an eye-witness, finds mention in the F.I.R. which was lodged without undue delay.

24. Counsel for the appellant points out what according to him are flaws in the evidence of Mukhtiar Singh. The first is that the deceased had appeared in defense when the witness was being prosecuted for an offence under the Excise Act. The second is that he had borrowed Rs. 250/- from the appellant on the foot of a promissory note and had not repaid the loan on account of which their relations must have been estranged.

25. This twofold argument was advanced in the High Court also. and was rightly rejected. Mukhtiar Singh has not tried to hide these facts, in cross-examination. In the excise case, he was, despite the defence evidence given by the deceased, convicted. The witness does not deny that he owed Rs. 250/- to the appellant. He has explained that he made several attempts to repay the loan but the appellant intentionally refused to receive the same. We agree with the High Court that these circumstances do not in any way undermine the credit of the witness. The High Court has, after a careful appraisal of his evidence formed the view, and rightly so, that Mukhtiar Singh was neither interested in the deceased nor inimically disposed towards the accused and his evidence was entirely reliable.

26. Next we will take up the previous statement made by Nahar Singh in the Committal Court. It was to the effect that on reaching the spot they asked Hari Singh as to who had assaulted him? At the trial, in cross-examination, Nahar Singh was confronted with this former contradictory statement. He disowned it altogether. So far as P. Ws. Baldev Singh and Gurnam Singh are concerned, there is no such contradiction between their earlier statements and their depositions at the trial. Furthermore, no specific suggestion was put to Baldev Singh and Gurnam Singh that on reaching the spot they had made any query about the identity of his assailant from Hari Singh. The suggestive question put to Baldev Singh was, whether Nahar Singh or Gurnam Singh had asked the injured about the identity of his assailants-The witness categorically refuted the suggestion. He was not pointedly asked as to whether he had questioned his father about the identity of the assailant or assailants. The previous contradictory statement of Nahar Singh could be used only to contradict and discredit Nahar Singh. It could not be used to impeach or undermine the credit of Baldev Singh or Gurnam Singh particularly when no specific suggestion was put to them about their having questioned Hari Singh in regard to the identity of his assailant. The trial court was therefore in error in using the previous inconsistent statements of Nahar Singh as a circumstance against the credit of Baldev Singh. The previous statement of Nahar Singh made in the committal court had not been transferred to the Sessions record, under Section 288, Criminal Procedure Code and consequently it could not be used as substantive evidence in the case.

27. It is not necessary to examine the other reasons of a subsidiary character, which had been pressed into service by the trial Court to brush aside the evidence of the witnesses. They were too puerile. They were also considered by the High Court and rightly rejected. Suffice it to say that the trial court's appraisal of the evidence on record was clearly erroneous and the primary reasons given by it in support of the order of acquittal were untenable. The High Court has effectively displaced

and dispelled these reasons, and rightly reached its own conclusions.

28. In view of what has been said above, we find no good ground for interfering with the order of the High Court reversing the acquittal of the appellant and converting it into a conviction for murder. The appeal fails and is hereby dismissed. Appeal dismissed.