Sucha Singh And Anr vs State Of Punjab on 31 July, 2003

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Bench: Doraiswamy Raju, Arijit Pasayat

CASE NO.:
Appeal (crl.) 1015 of 2002

PETITIONER:
Sucha Singh and Anr.

RESPONDENT:
Vs.

State of Punjab

DATE OF JUDGMENT: 31/07/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T WITH CRIMINAL APPEAL NO. 1014 OF 2002 ARIJIT PASAYAT,J Since these two appeals are inter-linked and a common judgment of Punjab and Haryana High Court at Chandigarh is the subject matter of challenge, they are taken up together for disposal.

Nearly two decades ago, Surjit Singh (hereinafter referred to as the 'deceased') lost his life. Three appellants along with two others were stated to be responsible for his homicidal death.

The litigious history starts from 4.2.1986 and has seen one round of litigation before this Court. By the impugned judgment, the three appellants have been found guilty of offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short the 'IPC'), and Section 201 IPC. They were each sentenced to undergo imprisonment for life and fine of Rs.5,000/- with default stipulation of one year RI for the former and one and a half years RI and fine of Rs.500/- with default stipulation of 3 months RI for the later.

Allegations giving birth to the prosecution are essentially as follows:

> On 4.2.1986 at about 9.30 a.m. Lakhvinder Singh (PW9), his brother Sukhvinder Singh and a relative Pritam Singh (PW10) were returning from their fields. When they reached turning of the street near the house of one Rattan Singh, deceased-Surjit Singh met them on his way towards fields.

Suddenly, they found the accused appellants Satnam Singh, Sucha Singh and Rachpal Singh who were armed with various deadly weapons, and Gurdip Singh and Rattan Singh (who were acquitted by the High Court) surrounded the deceased. Rattan Singh raised a 'lalkara' saying that the deceased should be taught a lesson for not vacating a plot. Gurdip Singh made a similar lalkara. All the accused persons surrounded the deceased and Sucha Singh gave two gandasa blows which hit the deceased on the temple on the right side and on the neck below the right ear and the deceased fell down. Satnam Singh gave kirpan blows on the nose below the chin on the right cheek on his right deltoid and on his left hand. He also thrust the kirpan on his back. Rachpal Singh gave datar blows on his head and neck. The deceased breathed his last at the spot. Thereafter, all the accused persons brought the dead body of the deceased to the house of Rattan Singh and raised a lalkara that they would see if anybody would come to take the dead body. These macabre acts were witnessed by Lakhvinder Singh (PW9) and Pritam Singh (PW10). Report was lodged in the police station by Lakhvinder Singh (PW9). Because of hostility between the parties, earlier security proceedings were initiated under Sections 107/151 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.'). Investigation was undertaken and on completion thereof, charge sheet was filed. The accused appellants along with two acquitted accused persons were tried for alleged commission of offence punishable under Sections 302, 148, 149 and 201 of IPC. It is to be noted that the post mortem was conducted on 4.2.1986 by Dr. R.P. Maingi (PW2). He found 16 injuries on the body of the deceased. He further opined that injuries 1 to 11 were caused by sharp edged weapon while injuries 12 to 16 were caused by blunt weapon. To establish the accusations, thirteen witnesses were examined. The accused persons were arrested on 4.2.1986, 5.2.1986 and 6.2.1986. At the time of arrest, it was noticed that four injuries were present on the person of Rattan Singh and three of the injuries were simple and of minor nature, and one was caused by sharp edged weapon.

During trial, the accused persons took the plea that they were innocent and have been falsely implicated. Accused Rattan Singh took the plea that on the date of occurrence in the morning, he was present in the lane in front of his house and he found the deceased coming with a kirpan in an

aggressive mood. While he was trying to run away, the deceased gave a kirpan blow on his left arm. Both he and the deceased entered his courtyard and when he cried for help, his brother-Harbans Singh armed with a dang, his servants Ram Singh and Ramu armed with different weapons intervened and rescued him by causing injuries on the deceased. Rattan Singh claimed that while he was running away, he fell down and suffered minor injuries. He alleged that his son had gone to the police station and returned to the village with the police. But, instead of taking action against the main culprit he and his family members were falsely implicated. Accused-appellants took the stand that they were arrested on 4.2.1986. The police officials manipulated the records to show as if they were arrested later on. In order to substantiate their plea, the accused persons examined four witnesses. Dalbir Singh (DW1) produced the record to show that Lakhvinder Singh was studying in class 6th when he discontinued studies on 2.5.1981 and his date of birth is 20.4.1968. Harbhajan Singh (DW2) produced the school records to show that Lakhvinder Singh had studied in his school up to class 5th. R.S. Kumar (DW3) stated that one Harbans singh was confined in the Sub-Jail, Dasuya under the orders of SDM in a case under Sections 107/115 of Cr.P.C. and had a injury on the person at the time of admission into jail . Dr. Kamlesh Kumar (DW4) stated about the injuries on Harbans Singh.

Learned Additional Sessions Judge, Hoshiarpur held that the prosecution has been able to establish its accusations against all the five accused persons. The matter was carried in appeal before the High Court which held that the prosecution has not been able to bring home the accusations against the accused appellants and by judgment and order dated 2.5.1988 directed acquittal of all the accused persons.

The State of Punjab assailed correctness of the said judgment before this Court in Criminal Appeal Nos.525- 526/1989. By judgment dated 24.7.1997 the appeals were allowed and the matter was remitted to the High Court for a fresh disposal on merits. The High Court was requested to dispose of the appeals as early as possible preferably within a period of three months from the date of communication of the order.

By the impugned judgment the High Court has taken the view that the accusations against the accused appellants have been fully established; but held the evidence to be inadequate so far as accused Rattan Singh and Gurdip Singh are concerned. The accused-appellants assail correctness of the said judgment in these appeals.

In support of the appeals, learned counsel for the appellants submitted that there are several infirmities which rendered the prosecution version vulnerable, but the Trial Court and the High Court lost sight of these vital factors. Had these factors been considered, there was no scope for finding the accused appellants guilty. It was, inter alia, submitted that there was no independent witnesses examined. Only son and close relative of the deceased have been examined. No co-villager came to depose for the prosecution and this is unusual. Conclusion that in a faction ridden village independent witnesses are not easy to find is a surmise. The conclusion that the Panchayat was siding with the accused persons is a factor in favour of accused persons. It indicates that the defence version as projected by Rattan Singh was true and should have been accepted. One of the so-called eye-witnesses and the son of the deceased Sukhvinder Singh was not examined. Body was found

inside of the house of Rattan Singh which probabilises the defence version. It was the prosecution version that the body was lifted from the spot of occurrence to the house of Rattan Singh. But no blood stains were found at the place of occurrence from where the body was claimed to have been lifted. Conduct of PWs 9 and 10 in not coming to rescue of the deceased and not even raising an alarm is rather unusual. PW10 who belongs to another village has not even signed the inquest report though he claimed to be present when inquest was done. This clearly establishes that he could not have been present as claimed. Injuries on the accused persons have not been explained. In view of the fact that two of the accused persons against whom similar evidence was tendered have been acquitted it would not be proper and legal to convict rest of accused persons on the same set of evidence. Benefit of doubt should be given on account of co-accused's acquittal. It was submitted that the evidence is inadequate to fasten guilt, and therefore prosecution cannot be said to have established its case beyond doubt.

Per contra, learned counsel for the State submitted that the trial Court and the High Court have analysed the various points now urged in detail and have rightly come to the conclusion that the accused appellants were guilty. In view of the admitted position that village was faction ridden and there was lot of hostility, it would be too much to expect non-partisan witnesses. As noted above, there has been an elaborate analysis of the evidence of PWs 9 and 10. After carefully weighing the evidence, the trial Court and the High Court have come to the conclusion that their evidence suffers from no infirmity to be viewed with suspicion.

We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible. In Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under:-

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon.

We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – 'Rameshwar v. State of Rajasthan' (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

Again in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) this Court observed: (p, 209-210 para 14):

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

To the same effect is the decision in State of Punjab v. Jagir Singh (AIR 1973 SC 2407) and Lehna v. State of Haryana (2002 (3) SCC 76). Stress was laid by the accused- appellants on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out entire prosecution case. In essence prayer is to apply the principle of "falsus in uno falsus in omnibus" (false in one thing, false in everything). This plea is clearly untenable. Even if major portion of evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of number of other co-accused persons, his conviction can be maintained. It is the duty of Court to separate grain from chaff. Where chaff can be separated from grain, it would be open to the Court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim "falsus in uno falsus in omnibus" has no application in India and the witnesses cannot be branded as liar. The maxim "falsus in uno falsus in omnibus" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called 'a mandatory rule of evidence'. (See Nisar Alli v. The State of Uttar

Pradesh (AIR 1957 SC 366). Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a Court to differentiate accused who had been acquitted from those who were convicted. (See Gurucharan Singh and Anr. v. State of Punjab (AIR 1956 SC 460). The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead- stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See Sohrab s/o Beli Nayata and Anr. v. The State of Madhya Pradesh 1972 3 SCC 751) and Ugar Ahir and Ors. v. The State of Bihar (AIR 1965 SC 277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See Zwinglee Ariel v. State of Madhya Pradesh (AIR 1954 SC 15) and Balaka Singh and Ors. v. The State of Punjab. (AIR 1975 SC 1962). As observed by this Court in State of Rajasthan v. Smt. Kalki and Anr. (AIR 1981 SC 1390), normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in Krishna Mochi and Ors. v. State of Bihar etc. (JT 2002 (4) SC 186). Accusations have been clearly established against accused-appellants in the case at hand. The Courts below have categorically indicated the distinguishing features in evidence so far as acquitted and convicted accused are concerned.

As observed by this Court in State of Rajasthan v. Teja Ram and Ors. (AIR 1999 SC 1776) the over-insistence on witnesses having no relation with the victims often results in criminal justice going away. When any incident happens in a dwelling house or nearby the most natural witnesses would be the inmates of that house. It would be unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen any thing. If the Court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question then there is justification for making adverse comments against non- examination of such person as prosecution witness. Otherwise, merely on surmises the Court should not castigate a prosecution for not examining other persons of the locality as prosecution witnesses. Prosecution can be expected to examine only those who have witnessed

the events and not those who have not seen it though the neighbourhood may be replete with other residents also.

Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. [See: Gurbachan Singh v. Satpal Singh and Others [AIR 1990 SC 209]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U.P. v. Ashok Kumar Srivastava [AIR 1992 SC 840]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh and Anr. v. State (Delhi Admn.) (AIR 1978 SC 1091)]. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." (Per Viscount Simon in Stirland v. Director of Public Prosecution (1944 AC (PC) 315) quoted in State of U.P. v. Anil Singh (AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth.

In matters such as this, it is appropriate to recall the observations of this Court in Shivaji Sahebrao Bobade v. State of Maharashtra [1974 (1) SCR 489 (492-493)]:

> ".....The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. The judicial instrument has a public accountability. The cherished principles or golden thread of proof beyond reasonable doubt which runs through the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt....."
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> ".....The evil of acquitting a guilty person light-heartedly as a learned author Clanville Williams in 'Proof of Guilt' has sapiently observed, goes much beyond the simple fact that, just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicted 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless....."
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> ".....a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent....."

The position was again illuminatingly highlighted in State of U.P. v. Krishna Gopal (AIR 1988 SC 2154). Similar view was also expressed in Gangadhar Behera and Ors. v. State of Orissa (2002 (7) Supreme 276).

So far as inaction of PWs 9 and 10 in not coming to rescue of deceased is concerned, it has been noted by the trial Court and the High Court that both of them were unarmed and bare handed and the accused persons were armed with deadly weapons. How a person would react in a situation like this cannot be encompassed by any rigid formula. It would depend on many factors, like in the present case where witnesses are unarmed, but the assailants are armed with deadly weapons. In a given case instinct of self-preservation can be the dominant instinct. That being the position, their inaction in not coming to rescue of the deceased cannot be a ground for discarding their evidence.

One of the pleas is that the prosecution has not explained the injuries on the accused. Issue is if there is no such explanation what would be its effect? We are not prepared to agree with the learned counsel for the defence that in each and every case where prosecution fails to explain the injuries found on some of the accused, the prosecution case should automatically be rejected, without any further probe. In Mohar Rai and Bharath Rai v. The State of Bihar (1968 (3) SCR 525), it was observed:

> "...In our judgment, the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabilise the plea taken by the appellants."

In another important case Lakshmi Singh and Ors. v. State of Bihar (1976 (4) SCC 394), after referring to the ratio laid down in Mohar Rai's case (supra), this Court observed:

> "Where the prosecution fails to explain the injuries on the accused, two results follow:
>
> (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabilise the plea taken by the appellants."

It was further observed that:

> "In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:
>
> (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
>
> (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and, therefore, their evidence is

unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

In Mohar Rai's case (supra) it is made clear that failure of the prosecution to offer any explanation regarding the injuries found on the accused may show that the evidence related to the incident is not true or at any rate not wholly true. Likewise in Lakshmi Singh's case (supra) it is observed that any non-explanation of the injuries on the accused by the prosecution may affect the prosecution case. But such a non-explanation may assume greater importance where the defence gives a version which competes in probability with that of the prosecution. But where the evidence is clear, cogent and creditworthy and where the Court can distinguish the truth from falsehood the mere fact that the injuries are not explained by the prosecution cannot by itself be a sole basis to reject such evidence, and consequently the whole case. Much depends on the facts and circumstances of each case. These aspects were highlighted by this Court in Vijayee Singh and Ors. v. State of U.P. (AIR 1990 SC 1459).

Non-explanation of injuries by the prosecution will not affect prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it outweighs the effect of the omission on the part of prosecution to explain the injuries. As observed by this Court in Ramlagan Singh v. State of Bihar (AIR 1972 SC 2593) prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries of the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In Hare krishna Singh and Ors. v. State of Bihar (AIR 1988 SC 863), it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the Court in proof of guilt of the accused beyond reasonable doubt, question of obligation of prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or superficial in nature. In the case at hand, trifle and superficial injuries on accused are of little assistance to them to throw doubt on veracity of prosecution case, particularly, when the accused who claimed to have sustained injuries has been acquitted.

The fact that name of PW10 does not figure in the inquest report or that the DDR entry does not contain the name of Pritam Singh does not in any way corrode the credibility of the prosecution version, particularly when the reason as to why these were absent in the relevant documents has

been plausibly explained by the witnesses, and after consideration accepted by the trial Court and the High Court.

Above being the position, the appeals are without merit and deserve dismissal, which we direct.