Supreme Court of India
Harjinder Singh vs State Of Punjab And Ors. on 21 December, 1984
Equivalent citations: AIR 1985 SC 404, 1986 CriLJ 831, (1985) 87 PLR 103, 1984 (2) SCALE 996, (1985) 1 SCC 422
Author: A Sen
Bench: A Sen, V B Eradi
JUDGMENT A.P. Sen, J.

1. This appeal by special leave is directed against an order passed by the Punjab & Haryana High Court dated May 9, 1984 upholding with certain modifications the order of the Additional Sessions Judge, Barnala dated April 24, 1984 directing that the two sessions trials be consolidated and clubbed together, and the evidence recorded in one case be read as evidence in the other.

2. The short point involved in this appeal is whether under Section 223 of the Criminal Procedure Code, 1973 it is permissible for the Court to club and consolidate the case on a police challan and the case on a complaint where the prosecution versions in the police challan case and the complaint case are materially different, contradictory and mutually exclusive. The question is whether the Court should in the facts and circumstances of the case direct that the two cases should be tried together but not consolidated i.e. the evidence be recorded separately in both cases and they may be disposed of simultaneously except to the extent that the witnesses for the prosecution which are common to both may be examined m one case and their evidence be read as evidence in the other.

3. Shortly stated, the facts are these. On the night intervening April 24/25, 1983, an occurrence took place at village Bhadaur in district Sangrur in which the nine respondents before us respondents Nos. 2 to 10 are alleged to have committed the murder of as many as five persons belonging to the complainant's party, three of whom died of gunshot injuries and to as a result of injuries inflicted by sharp-edged weapons. According to the post-mortem report, the deceased Nachattar Singh had been hacked to death and his head was severed. During the occurrence the complainant Harjinder Singh also received gunshot injuries. The first information report was lodged by one Chanan Singh, Head Constable, Police Station Bhadaur. After investigation the police put up a challan against the three respondents Nos. 2, 3 and 4 Karnail Singh, Mohinder Singh and Gurcharan Singh and they have been committed to stand their trial in the Court of Sessions at Barnala for having committed offences punishable under Sections 302, 307, 342 and 440, all read with Sections 149, 148 and 120B of the Indian Penal Code, 1860 and Sections 25 and 27 of the Arms Act, 1959.

4. During the investigation, the complainant Harjinder Singh and seven others were arrested by the police for having committed alleged offences under Section 307 etc. of the Indian Penal Code but they were released on bail by the High Court on May 31, 1983. The police put up a challan in the Court of the Judicial Magistrate, Barnala against nineteen persons belonging to the complainant's side. On the basis of the challan they have also been committed to stand their trial before the Court of Sessions, but we are not concerned with that trial in this appeal.

5. Upon being released by the police and after collecting the relevant material, a complaint was lodged by the appellant in the Court of the Sub-Divisional Magistrate against the nine respondents

before us i.e. respondents Nos. 2 to 10. In the meantime, the learned Additional Sessions Judge had fixed the case put up by the prosecution The State M Karnail Singh for recording of evidence. Apprehending that the complaint case filed by the appellant would not be committed until the trial before the learned Additional Sessions Judge concluded, the appellant moved the High Court under Section 482 of the Code with a prayer that the trial of respondents Nos. 2, 3 and 4 Karnail Singh, Mohinder Singh and Gurcharan Singh be stayed till the complaint filed by him against them and six others was processed by the learned Magistrate and they were committed. On February 14, 1984 the High Court directed that the commitment proceedings be expedited. Thereafter, the learned Magistrate by his order dated March 30, 1984 committed all the nine accused to the Court of Sessions and sent them for trial to the Court of the Additional Sessions Judge, Barnala. On April 7, 1984 the appellant filed an application that as the prosecution versions in the police challan case and the complaint case were conflicting and the number of accused and the prosecution witnesses were also different, the trial of the two cases may not be held together. While this application was pending, the respondents made an application on April 24, 1984 that the police challan case and the complaint case be consolidated and clubbed together. That application of theirs was allowed by the learned Additional Judge who by his order dated April 24, 1984 directed that the cases may be clubbed and consolidated and the evidence recorded in one case be read as evidence in the other case.

6. Aggrieved by the order passed by the learned Additional Sessions Judge, the appellant preferred a revision before the High Court. A learned Single Judge by his order dated May 9, 1984 upheld the order of the learned Additional Sessions Judge with certain directions. In adopting that course he referred to an earlier decision of a Division Bench of the High Court, of which he was a member, in the State of Punjab v. Wassan Singh and Ors. Criminal Revision No. 3-R of 1982 decided on February 10, 1984. The learned Single Judge observed :

One is to be alive to the provisions of Article 20(2) of the Constitution of India providing that no person shall be prosecuted and punished for the same offence more than once. On the same principles, the provisions of Section 300, Criminal Procedure Code, are equally pertinent. It provides that when a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2) thereof.

He further observed :

Now if there were to be separate trials, the first trial would in the normal circumstances tend to end up in either the conviction or acquittal of Wassan Singh. In that eventuality, the second trial of Wassan Singh along with others cannot proceed in view of the aforesaid provisions. At this stage, it is to be remembered that the Court takes cognizance of the offence and not the offender. The Court of Sessions under Section 193 of the CrPC takes cognizance of the offence upon the committal of the case relating to that offence to it by a Magistrate.

Accordingly, he upheld the order of the learned Additional Sessions Judge for the trials to be clubbed and consolidated which procedure, according to him, could not in any event be called improper or illegal. He however made the following directions: (1) The complainant should in no event be prejudiced by the adoption of such a course, and (2) the list of witnesses submitted along with the complaint would have to be exhausted by the Public Prosecutor and it should be vouchsafed that the complainant in that regard does not suffer i.e. in the matter of leading evidence in the complaint case. As regard the apprehension of the complainant that the evidence meant to be led in the police challan case and that meant to be led in the complaint case would be mutually exclusive and would necessarily lead to an acquittal of the accused on account of conflicting versions, the learned Single Judge observed that it need not be so as the Court would have to sift the grain from the chaff, that being its bounden duty.

7. It is contended by learned Counsel for the appellant that the High Court was wrong in upholding the order of the learned Additional Sessions Judge that the cases be clubbed and consolidated particularly when the prosecution versions in the police challan case and the complaint care are materially different and the accused persons are also not the same. He places reliance on the decision of this Court in Kewal Krishan v. Suraj Bhan and Anr. for the submission that the two cases should be tried together but not consolidated. Further, he contends that in view of the conflicting prosecution versions in the two cases it is proper that the learned Additional Sessions Judge should inform the Government about the desirability to appoint a Special Public Prosecutor to conduct the case of the complainant.

8. In the facts and circumstances of this particular case we feel that the proper course to adopt is to direct that the two cases should be tried together by the learned Additional Sessions Judge but not consolidated i.e. the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other. The learned Additional Sessions Judge should after recording the evidence of the prosecution witnesses in one case, withhold his judgment and then proceed to record the evidence of the prosecution in the other case. Thereafter he shall proceed to simultaneously dispose of the cases by two separate judgments taking care that the judgment in one case is not based on the evidence recorded in the other case. In Kewal Krishan's case, supra, this Court had occasion to deal with a situation as the present, where two cases exclusively triable by the Court of Sessions, one instituted on a police report under Section 173 of the Code and the other initiated on a criminal complaint, arose out of the same transaction. The Court observed that to obviate the risk of two courts coming to conflicting findings, it was desirable that the two cases should be tried separately but by the same court. The High Court was largely influenced in upholding the order of the Additional Sessions Judge by the fundamental right of the accused guaranteed by Article 20(2) of the Constitution and Section 300 of the Code which provides that no person shall be prosecuted and punished for the same offence more than once. If there is no punishment for the offence as a result of the prosecution, Sub-clause (2) of Article 20 has no application. The constitutional right guaranteed by Article 20(2) against double jeopardy can still be reserved if the two cases are tried together but not consolidated i.e. the evidence be recorded separately in both cases and they be disposed of simultaneously. Further, the second prosecution must be for the 'same offence'. If the offences are distinct, there is no question of the rule as to

double jeopardy being applicable.

9. We fail to comprehend the implications that would arise if the order passed by the learned Additional Sessions Judge as upheld by the High Court was to be implemented. The case presents a feature which is rather disturbing. In the special leave petition, there is a specific allegation made by the complainant that the accused are influential persons and they exerted pressure on the police as a result of which in the police challan case the complainant's party was shown to be the aggressOrs. It is further alleged that the police in order to achieve this object have presented a challan which is not supported by any of the witnesses of the occurrence and although the complainant Harjinder Singh received gunshot wounds, 1 e has not even been cited as a witness for the prosecution. It is said that the case against the accused is sought to be supported by the testimony of Chanan Singh, Head Constable, Pawan Kumar, Constable and the doctors who performed the post-mortem examinations. We have set out these allegations only for the purpose of showing the nature of the case against the accused in the police challan case. The complaint presents a different picture altogether. The prosecution case as set out in the complaint is at complete variance with that in the police challan. In our judgment, it is not permissible for the Court under Section 223 of the Code to club and consolidate the case on a police challan and the case on a complaint where the prosecution versions in the police challan case and: the complaint case are materially different, contradictory. and mutually exclusive.

10. For these reasons, the appeal succeeds and is allowed. The order passed by the Additional Sessions Judge, Barnala dated April 24, 1984 as modified by the High Court by its order dated May 9, 1984, is set aside and the learned Additional Sessions Judge is directed that the two cases be not consolidated but tried together with advertence to the observations made above.