Supreme Court of India
Kahan Singh And Ors. vs State Of Haryana on 24 February, 1971
Equivalent citations: AIR 1971 SC 983, 1971 CriLJ 806, (1971) 3 SCC 226, 1971 III UJ 422 SC
Author: K Hegde
Bench: G Mitter, K Hegde, P J Reddy
JUDGMENT K.S. Hegde, J.

1. At about 7 a.m. on October 31, 1966, two persons by name Moti Ram and Balak Ram were injured as a result of an attack on them. The attack in question is said to have been made when they were on their way to the field for cultivation. It is said that they fell unconscious at the spot itself. When they were being removed to the hospital, Moti Ram died on the way and later Balak Ram died in the hospital. The information about this offence was laid by P.W. 4, Harnam Das, the brother of the deceased Moti Ram at 9-30 a.m. on the same morning at Mullana Police Station which is about six miles from the scene of occurrence. In that information he accused the appellants as having attacked Moti Ram and Balak Ram. He claims to have seen the occurrence himself.

2. During the pendency of the investigation of the case one Rattan Lal, the brother of the appellant Gopi chand sent a petition to the Superintendent of Police, Ambala on Novembers, 1966. Therein he gave out a different version of the incident. According to the version given by him, the deceased persons and some of their relations attacked the appellants Nos. 1 and 3, when they were proceeding in a cart and that the appellant No. 4. Bhushan Lal was not present at the time of the occurrence. Therein he further stated that appellants Nos. 1 to 3 defended themselves by removing the cart pegs. The Superintendent of Police forwarded this petition to the Dy. Superintendent of Police for enquiry. He in turn appears to have entrusted the same to the Inspector of Police. It is also seen from the evidence that the Superintendent of Police himself went to the locality some days later and supervised the investigation.

3. On January 31, 1967, P.W. 4, Harnam Das filed a petition before the judicial Magistrate, Ist Glass Ambala Gantt. alleging that the police were sabotaging the prosecution case with a view to help the accused. The implied suggestion in that complaint was that with a view to undermine his complaint, the police were distorting the version showing that Bhushan Lal, appellant No. 4 was not present at the occurrence and thereby not only exonerate Bhushan Lal but also condemn the evidence adduced in support of his complaint as being unreliable.

4. After the investigation the police sent up a somewhat curious final report. Despite the fact that the complaint's version that the appellants including Bhushan Lal had attacked the deceased persons was supported by other evidence, it was recommended in that report that Bhushan Lal may be discharged and in his place Rattan Lal, the brother of the appellant Gopi Chand, who as seen earlier had sent a petition on Nov. 5, 1967, be included as an accused. At the trial of the case no evidence whatsoever was led against Rattan Lal. Therefore the complaint of P.W. 4, Harnam Das that the police were trying to sabotage the prosecution case cannot be dismissed as being frivolous.

5. Despite the report of the police, the learned magistrate took cognizance against all the appellants as well as against Rattan Lal, But instead of framing one consolidated charge against all of them, he

adopted a somewhat novel procedure. He framed two sets of alternative charges. In the first set he charged the present appellants Under Section 302 read with Section 34, I.P.C. for the murder of Moti Ram and Balak Ram respectively; under the second set he charged appellants Nos. 1 to 3 and Rattan Lal for the murder of those very persons. After holding a preliminary enquiry, he committed the appellants as well as Rattan Lal to the Court of the Sessions Judge, Ambala for being tried under the charges mentioned above.

6. The learned Sessions Judge did not alter the charge which he could have and should have. But the prosecution adduced evidence only against the appellants. No evidence whatsoever was led against Rattan Lal, nor even the three Court witnesses implicated Rattan Lal. The learned trial judge believed the prosecution evidence, convicted the appellants under sec 302 read with Section 34, I.P.C. He acquitted Rattan Lal. For the murder of Moti Ram all the appellants were sentenced to death but in the charge for the murder of Balak Ram, appellant Bhushan Lal was sentenced to death but the other accused were sentenced to imprisonment for life. The death sentences imposed on them were subject to the confirmation by the High Court.

7. As against the decision of the learned Sessions Judge, the appellants went up in appeal to the High Court of Punjab and Haryana. The learned Sessions Judge sent up the records to the High Court with his report for confirmation of the death sentences imposed on the appellants. The appeal filed by the appellants and the reference made by the learned Sessions Judge were heard together by a division bench of the Punjab and Haryana High Court. The division bench accepted the prosecution case and confirmed the convictions of the appellants. But it reduced the sentence imposed on the appellants to imprisonment for life. Thereafter this appeal has been brought by special leave.

8. Before proceeding to consider the contentions advanced before this Court, it is necessary to set out the defence of the appellants. According to the appellant Bhushan Lal he was not present at the time of the occurrence and that he had been falsely implicated in the case. According to the other appellants, when appellant Gopi Chand was proceeding in a cart on the morning in question, he was attacked by the deceased persons as well as by two others. Hearing his cries, appellants Nos. 2 and 3 rushed up to the place to rescue him. When they went there they were attacked by the party of the deceased. At that Stage they defended themselves. In short their plea is one of self-defence.

9. From the two versions put forward by the prosecution and the accused, it is clear that an incident did take place at the place and time mentioned in the charge as a result of which the two deceased persons received serious injuries, one of them namely Moti Ram died very soon after the incident and the other Balak Ram on November 1, 1966. The medical evidence discloses that Moti Ram had received as many as 12 injuries, six of them were incised wounds and two were contusions. One of the contusions was in the right eye-brow. Its dimension was 4" x 1". That injury had fractured his skull; the bones of the skull were broken into many pieces. The Medical Officer who had conducted the post-mortem of Moti Ram was of the opinion that primarily the deceased must have died as a result of that injury. Balak Ram had sustained six injuries; three of them were contusions, one was an incised injury. Further he had a big swelling extending from the angle of right mandible upwards above the ear and right side of the scalp. The post-mortem examination disclosed a big haematoma

under the scalp. The Medical Officer was of the opinion death must have been the result of shock and haemorrhage due to the two blows given on the head of Balak Ram viz. injuries Nos. 1 and 5.

10. There is no doubt that both the deceased persons had received serious injuries. Both of them must have been mercilessly attacked. On November 3, 1966, the appellant Bhushan Lal, Kahan Singh and Gopi Chand were also produced for medical examination. On Bhushan Lal, there were two minor abrasions. Kahan Singh had two injuries, one was a contusion 1/2" x 1/6th" on the middle of the scalp, the other was an abrasion. Gopi Chand had nine injuries, three contusions and six abrasions. One contusion was 3/4" x 1/4" on the scalp, another 1/2" x 1/4" again on the scalp and the third was 5 1/4" x 1/4 on the forearm, very minor character.

11. There was bitter enimty between the party of the accused and the deceased. The accused and the deceased persons are close relations. Appellant Gopi Ghand is the first cousin of deceased Moti Ram. As observed by the learned judges of the High Court when relations fall out, the bitterness is all the greater. A case and a counter-case was pending between the parties Under Section 307, I.P.C. Both the parties were also being proceeded against Under Section 107, I.P.C. About five days before the occurrence, the party of the deceased had purchased the land just in front of the house of the appellant, Gopi Chand. Appellant Gopi Ghand wanted to purchase that land. His door opened to that land and it is admitted by P.W. 4 that because of the purchase of the land by his party, Gopi Chand might have had to close his door.

12. The prosecution case, as mentioned earlier, was that when the deceased persons were proceeding to their field for cultivation, they were attacked by the appellants at that stage, the deceased persons put up a meek defence but they were overpowered and done to death. This version is supported primarily by the evidence of P.W. 4, Harnam Das and P.W. 5, Sadhu Singh. P.W. 4 is undoubtedly an interested witness He is the brother of deceased Moti Ram. But his evidence gets corroboration from the First Information given by him. It must be remembered that information was given very soon after the occurrence and therefore the possibility of putting up raise version is remote. P.W. 5 appears to be an independent witness. The evidence of P.W. 4 and 5 has been accepted as true both by the trial Court as well as by the High Court. Their evidence receives support from the evidence of P.W. 8, Gobind Ram and P.W. 9, Gurcharan Singh. According to P.W. 9, at about the time of the occurrence, he was returning to his house after answering the calls of nature. At that time he saw the four appellants proceeding to the scene of occurrence. At that time the appellants Kahan Singh and Gopi Chand were armed with burchas and Bahadur and Bhushan Lal were armed with Kulharis; sometime later he came to know about the murder of Moti Ram and Balak Ram. This witness also appears to be an independent witness, and his evidence had commended itself to the trial Court as well as to the High Court. The evidence of Gobind Ram is to the effect that on the morning in question he heard cries from the scene of occurrence. On hearing those cries, he proceeded towards the scene. When he had covered about four killas, he saw the appellants coming from the opposite directions. At that time they were all armed. He enquired with them as to what had happened. They told him that they had taught a lesson to Moti Ram and Balak Ram. His evidence has also been believed by both the Courts Ordinarily this Court does not reappraise evidence already considered by two Courts. We have found no reason to depart from that rule in this case. A part from pointing out certain minor discrepancies in the evidence of these witnesses nothing substantial was shown to

us to discredit the evidence in the case. The probabilities of the case lend support to the evidence of these witnesses The party of the appellants must have been smarting at the rebuff they received from the deceased persons in the matter of purchase of land referred to earlier. This incident must have been added to the already existing enmity between them & the party of the deceased persons and must have served as an immediate provocation. The injuries found on the person of the deceased also go to indicate that the appellants must have been the aggressOrs.

13. The three Court witnesses examined in the case tried in a somewhat feeble manner to support the case of the appellants. Their evidence was mutually contradictory. Each one of them had a version of his own and further the evidence given by them in Court materially differs from the statements made by them during investigation. Hence the trial Court as well as the High Court were right in placing no reliance on their testimony. The learned Counsel for the appellants made some what hesitant attempt to commend their evidence for our acceptance. Their evidence is discrepant and the version given by them is basically improbable.

14. Some comment was also made on the fact that the trial Court and the High Court erred in not taking into consideration the evidence of P.Ws. 6 and 7. It is clear from the evidence of these witnesses that they had turned hostile to the prosecution. The Public Prosecutor was allowed to cross-examine them. The trial Court and the High Court did not refer to this evidence. The contention of Mr. Mukherjee was that the trial Court and the High Court should have attempted to salvage something out of their evidence. But there was nothing to salvage from their evidence. The effect of their evidence is that they had not seen the occurrence Therefore there was no question of separating the grain from the chaff.

15. The only substantial argument advanced on behalf of the appellants is that the charges under which they were tried were defective and therefore the trial is vitiated. It is true that the trial Court should not have framed the alternative charges referred to earlier. If it wanted to proceed with the case against Rattan Lal as well it should have included him alongwith the other accused and framed common charges. On the facts of the case there was no question of framing an alternative charge. It is not a case wherein the aid of Section 236, Cr.P.C. could have been taken. All the same there is absolutely no reason to think that the accused had been prejudicated by the alternative charges, mentioned earlier. As seen earlier, the prosecution led evidence only in support of the charge that the four appellants were responsible for the murders of Moti Ram and Balak Ram. No evidence whatsoever has been led in support of the alternative charges. Counsel for the appellants was not able to show us how the accused can be said to have been prejudicated by the alternative charges. This Court has ruled in Willie (William) Slaney v. The State of Madhya Pradesh ; that a mere defect in the charge is no ground for setting aside a conviction. Procedural laws are designed to subserve the ends of justice and not to frustrate them by mere technicalities. The object of the charge is to give an accused notice of the matter he is charged with. That does not touch jurisdiction. If the necessary information is conveyed to him and no prejudice is caused to him because of the charges, the accused cannot succeed by merely showing that the charges framed were defective. Some decisions were read to us showing that if the prosecution speaks in discordant voices as to the person or persons who are responsible for the offence, that would be a ground for acquitting the accused. It is not necessary to refer to those decisions in view of the decision of this Court in William

Sidney's case (supra), the essential question being whether the accused were prejudiced by the charge. As mentioned earlier, we are unable to hold that the appellants in this case were prejudiced by the alternative charges referred to earlier.

16. In the result this appeal fails and the same is dismissed.