

Punjab-Haryana High Court

Sadhu Singh And Others vs State Of Punjab on 12 February, 2009

Criminal Appeal No.324-SB of 1998 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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Criminal Appeal No.324-SB of 1998 (O&M)

Date of Decision:12.02.2009

Sadhu Singh and others

.....Appellants

Vs.

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE HARBANS LAL

Present:- Mr. P.S. Brar, Advocate for the appellants.

Mr. T.S. Salana, Deputy Advocate General, Punjab.

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JUDGMENT

HARBANS LAL, J.

This appeal is directed against the judgment/ order of sentence dated 6.4.1998 passed by the Court of learned Additional Sessions Judge, Muktsar whereby he convicted and sentenced the accused Sadhu Singh and Amrik Singh to undergo rigorous imprisonment for four years and to pay a fine of Rs.2,000/- each and in default of payment of fine, the defaulter to undergo further rigorous imprisonment for one year under Section 325 read with Section 34 of IPC and acquitted all the accused of the charge under Section 304 read with Section 34 of IPC.

The facts in brief are that Mukhtiar Singh deceased was hooked on to drugs, which he used to purchase from Sadhu Singh accused, a peddler. The deceased used to collect the fodder and wooden fuel and in turn, he used to get the drugs from Sadhu Singh accused. On the fateful day, Sadhu Singh accused refused to supply drugs to the deceased, who threatened to lodge a report against the former, who asked him to come at 7:30 P.M to get drugs from him. Mukhtiar Singh went to the house of Sadhu Singh after narrating the above facts to his brother Resham Singh complainant, who lodged report with the authorities of the police hierarchy stating that the accused had murdered his brother Mukhtiar Singh. That he had gone to the house of the accused, where they all told him that Mukhtiar Singh had come to their house to commit theft and he has died due to the beatings given to him by the mob. The police did not initiate any action on the oral complaint of Resham Singh. Later on, the accused in connivance with the police got conducted the post mortem examination on the dead body of his brother Mukhtiar Singh. Resham Singh had also reported the matter to the police on 30.9.1990 that Sadhu Singh accused in league with Jagdev, Panch had not allowed the

police to register the case. He also moved an application to the higher police officers and after inquiry, the case was registered on the basis of Ex.PD, the statement of Resham Singh, wherein he stated that Baldev Singh PW had told him that Mukhtiar Singh had been caught in the house of the accused, while committing theft and he has been tied by the accused and he went to the house of the accused along with Sucha Singh, where he saw that Mukhtiar Singh has been tied down by Chain and the accused were giving beatings to him. Amrik Singh accused was holding a thapa (wooden beater). Resham Singh had requested the accused not to give beatings to his brother, but the latter threatened him and other PWs, whereafter Resham Singh came back to his house. Subsequently, the accused took Mukhtiar Singh to the police post and on the next day, Resham Singh came to know that his brother has expired. On the basis of this statement, the case was registered. Meanwhile, the police registered FIR against Mukhtiar Singh under Sections 458/380 of IPC. After completion of investigation, the charge-sheet was laid in the Court of learned Judicial Magistrate First Class, Muktsar, who committed the case to the Court of Sessions for trial.

On commitment, the accused were charged under Sections 304 read with Section 34 of IPC to which they did not plead guilty and claimed trial. To bring home guilt against the accused, the prosecution examined PW1 Dr. S.K. Jagga, PW2 Gurbachan Singh Draftsman, PW3 ASI Fauja Singh, PW4 Suraj Pal Head Constable, PW5 Sucha Singh, PW6 Baldev Singh, PW7 Resham Singh, PW8 Harbhagwan Singh retired DSP, PW9 Surinder Singh MHC and closed its evidence by giving up Sadhu Singh PW being unnecessary.

When examined under Section 313 of Cr.P.C, all the accused denied the incriminating circumstances appearing in the prosecution evidence against them and pleaded false implication. Sadhu Singh accused came up with the following plea:-

"Mukhtiar Singh had entered our house to commit theft at night. I had apprehended him while committing theft. Amrik Singh was with me, when we apprehended Mukhtiar Singh. Jagdev Singh was not present at that time. We had not given any injury to said Mukhtiar Singh. I had informed Mohinder Singh on telephone, who is Ex-Member Panchayat. He came alongwith Jagdev Singh member panchayat, who is my co- accused and they asked me to go to the police post to lodge report. I and Amrik Singh and Gurmit Singh had gone to lodge report. Meantime, mob collected in our house and he was in custody of those persons. When we came back with the police, we saw that mob had already given injuries to said Mukhtiar Singh. After the arrival of the police, Jagdev Singh had gone to his house and the police had taken Mukhtiar Singh to the police post and he had walked himself on a tractor. I had already lodged the report against Mukhtiar Singh regarding theft in my house. We have not caused any injury to said Mukhtiar Singh. This is a false case. Mukhtiar Singh was also interrogated by the police."

His co-accused Amrik Singh and Jagdev Singh also adopted identical plea. In their defence, they examined DW1 Guraditta Singh, DW2 Ajaib Singh, DW3 Constable Baljinder Singh, DW4 Ashwani Kumar, Senior Telegram Assistant, Telephone Exchange, Muktsar and closed their defence evidence.

After hearing the learned public prosecutor for the State, the learned defence Counsel and examining the evidence on record, the learned trial Court convicted and sentenced Sadhu Singh as well as Amrik Singh as noticed at the outset. Feeling aggrieved with their conviction/ sentence, they have preferred this appeal.

I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

Mr. P.S. Brar, Advocate on behalf of the appellant urged with great eloquence that indeed the occurrence had taken place on 27.9.1990 and on the same day, FIR Ex.DW3/A was lodged by Sadhu Singh appellant against Mukhtiar Singh deceased under Sections 458/380 of IPC, whereas the present FIR came into being only on 28.10.1990 which is obviously after about one month, albeit PWs Resham Singh and Sucha Singh have admitted that they were present in the village when the police came there on 27.9.1990. In Ex.DW3/A Sadhu Singh accused has stated that the deceased Mukhtiar Singh had come to his house during the night and he was caught red handed, while he was running away after stealing the household articles and he had informed Mohinder Singh and Jagdev Singh Panches, who had also come to his house and in the meantime, a mob of about 100 persons had amassed there and they had given beatings to Mukhtiar Singh with kicks and fists and the police was informed and the person of Mukhtiar Singh was handed over to the police and subsequently, Mukhtiar Singh succumbed to the injuries. The learned trial Court has lost sight of the fact that Sucha Singh as well as Resham Singh PWs have made improvements in their respective statements. To add further to it, Baldev Singh Panch was inimically disposed of towards the accused Jagdev Singh and Sadhu Singh as Sadhu Singh had disconnected his telephone connection being in the telephone department. The evidence of Resham Singh PW has also not been properly appreciated by the learned trial Court, as he went on to say that he was informed by Baldev Singh that his brother Mukhtiar Singh was caught while stealing the household articles from the house of Sadhu Singh accused, he was tied in Sadhu Singh's house and was given beatings by five persons and he had gone to the house of the accused, who also abused him and on that day, he had gone to his relations and had come on the next day. It is a far-fetched and unnatural conduct of Resham Singh that he will go away to see his relations instead of informing the police when his brother was being beaten up and not being released by the accused alongwith other persons. Lastly, he maintained that it is deducible from the circumstances enumerated above that indeed the deceased was beaten up by the mob. Consequently, by no stretch of speculation, the appellants could be held guilty under Section 325 read with Section 34 of IPC.

To controvert these submissions, Mr. T.S. Salana, Deputy Advocate General, on behalf of the State argued that the reasoning apportioned by the learned trial Court in recording conviction warrants no interference. This contention merits rejection for the discussion to follow hereunder:

As follows from the medical evidence tendered by Dr. S.K. Jagga PW1, contusions/ abrasions and defused swelling were found on the body of the deceased. It is in his evidence that "In my opinion, the cause of death is due to hemorrhage and shock as a result of multiple injuries and injuries on the vital parts (spine and skull). All the injuries were ante- mortem in nature and were sufficient to cause of death in the ordinary course of events. Injuries No.1 and 11 alone were sufficient to have

caused death. Probable time that elapsed between injury and death was a few hours and between death and post mortem was about 24 hours." It is in his cross- examination that "If the medical aid had been given in time, the possibility of surviving the deceased cannot be ruled out. It is difficult to say that with such injuries, the man can walk. Again said, certain persons can walk and can sit in a tractor trolley with their own or with the help of some body." It is in the statement of PW7 Resham Singh complainant, brother of the deceased that "About 5½ years back at about 7 A.M. Baldev Singh Sarpanch of our village came to me and informed me that Sadhu Singh, Amrik Singh and Jagdev Singh accused, who are now present in Court had tied my brother Mukhtiar Singh with a turban and a rope in the house of Sadhu Singh with a 'Jangla'. He also informed me that Amrik Singh and Sadhu Singh are beating him with a 'ghotna' and Amrik Singh was beating him with a 'Thapa'. I and Sucha Singh son of Kartar Singh immediately rushed to the house of Sadhu Singh and came to know that Sadhu Singh and Amrik Singh accused were beating my brother Mukhtiar Singh. He was tied with a 'jangla' with turban and rope. Jagdev Singh accused was sitting by his side on a chair. I and Sucha Singh requested Sadhu Singh etc., to leave Mukhtiar Singh, but in vain. In my presence, Amrik Singh accused gave a Thapa blow which hit on the head of Mukhtiar Singh and Sadhu Singh accused gave a Ghotna blow which hit on the back of Mukhtiar Singh. As a result of these injuries, my brother Mukhtiar Singh expired." On appraisal of this evidence, it transpires that the occurrence was witnessed by this very witness Resham Singh. He has nowhere stated that he had physically intervened to save his brother from the clutches of the accused. He has obviously gone to the extent to say that as a result of these injuries, his brother Mukhtiar Singh had expired. On evaluating his evidence, there can be manner of doubt that the deceased succumbed to the injuries within his view. Queerly enough that he or Sucha Singh who was accompanying him did not make efforts to intervene so as to save the deceased. In all human probabilities, if the deceased was being belaboured or thrashed within his full view, he in the common course of human conduct would have pounced upon the beaters. It is in his cross-examination that "I had not got recorded in the application Ex.DA that after the murder of Mukhtiar Singh, I came to know about the murder and thereafter gathering was arranged of poor people. Thereafter, we went to the house of Sadhu and found Mukhtiar Singh dead there." On being confronted with portion A to A1 of his statement Ex.DA, it was found so recorded therein. This piece of evidence falsify his presence at the time, when the beatings were allegedly being given to the deceased. If the occurrence had verily been witnessed by him, he in all probabilities, would have got incorporated this very fact in Ex.DA. It is in his further cross-examination that "I had got recorded in my application Ex.DA that my brother Mukhtiar Singh was tied with a 'jangla' with turban and rope." When he was confronted with his application Ex.DA, it was not found so recorded therein. In his next breath, he has admitted that Ex.DA bears his thumb impression at point A. It is in his further corss-examination that "I had got recorded in application Ex.DA that Baldev Singh Sarpanch of our village had come to me and informed me that the accused had tied his brother Mukhtiar Singh with a turban and rope in the house of Sadhu Singh." On being confronted with Ex.DA, it was not found so recorded therein. In his next breath, he has admitted in candid terms that the police had registered a theft case against his brother (referring to the deceased Mukhtiar Singh). It is in his further cross-examination that "I had not recorded in my application Ex.DA that the accused had told us that Mukhtiar Singh had come to commit theft and the people by giving him beating, killed him." When he was confronted with Ex.DA portion B to B1, it was found so recorded therein. It is in his further cross-examination that "I had got recorded in my statement Ex.PD to the police that my brother Mukhtiar Singh used

to purchase intoxicated pills for him from Sadhu Singh and was working as labourer in the village." On being confronted with Ex.PD, this fact was not found recorded therein. It is in his further cross-examination that "I had got recorded in my statement Ex.PD that accused Jagdev Singh was sitting by the side of Mukhtiar Singh on a chair." When confronted with Ex.PD, it was not found so recorded therein. It is in his further cross-examination that "I had got recorded in my statement Ex.PD that in my presence Amrik Singh accused gave 'thapa' blow which hit on the head of Mukhtiar Singh and Sadhu Singh accused gave a 'Ghotna' blow which hit on the back of Mukhtiar Singh." When confronted with Ex.PD, it was not found so recorded therein. It is in his further cross-examination that "I had got recorded in Ex.PD that as a result of above said injuries, my brother Mukhtiar Singh expired." On being confronted with Ex.PD, it was found recorded that Mukhtiar Singh has been murdered by giving him injuries by Sadhu Singh and his nephew Amrik Singh and Jagdev Singh and other residents of village, but the said specific lines are not found to be recorded. It is in his further cross-examination that "I have not got recorded in Ex.PD that we did not come to know as to when Sadhu Singh etc. had taken my brother Mukhtiar Singh to chaunki Lakhewali and I out of fear, had gone to my relations." On being confronted with Ex.PD portion A to A1, it was found so recorded therein. In his further cross-examination, he went on to say that "I had not got recorded in my statement Ex.PD that on the next day, when I came back to the village, I came to know that my brother has died." On being confronted with Ex.PD portion B to B1, it was found so recorded therein. It is in his further cross-examination that "my statement Ex.PD was recorded by the police after about one month of the death of my brother. After recording my statement Ex.PD, the police did not inquire anything from me. After the death of my brother I remained in the village and did not go out of the village. I was present at the time of cremation of my brother. I was not present at the time of post mortem examination of my brother." This evidence spells out that as a matter of fact the case was registered after about one month for which no plausible explanation is forthcoming on the record. The reason for referring to all the improvements in material particulars catalogued above, is meant to emphasise that the story projected by this witness Resham Singh is an afterthought or a coined version. Axiomatically, his statement is fraught, replete and bristle with material improvements. His testimony is discredited by the very fact that if he had seen his brother being thrashed, he in no eventuality would have preferred to go to see his relations instead of approaching the police or respectables of the village. Thus, his evidence fails to inspire confidence. His testimony is such that it does not pass the test of even "May be true" much less, "Must be true". In a criminal case, the guilt of the accused must be established beyond reasonable doubt. The evidence in this case when tested on that touchstone falls short of the requisite standard. Improbability is heaped upon improbability in his testimony. In re: Badruddin Rukonddim Karpude and others v. State of Maharashtra, 1981 Supreme Court Cases (Criminal) 610, it has been observed that the interested witnesses also make improvements in material particulars in the prosecution story during the course of their testimony at the investigation stage. Resham Singh (sic.) has left no stone unturned in introducing material improvements as emerges out of his cross-examination.

Sucha Singh PW5 has solemnly affirmed that "Sadhu Singh PW is my brother and Resham Singh son of Banta Singh complainant in this case is my relative. At about 8:30 again said 7:15/7:30 A.M., myself and Resham Singh reached in the house of accused Sadhu Singh along with Amrik Singh and Jagdev Singh. Arms of Mukhtiar Singh were tied with rope and the rope was tied with an iron rod of

window. Amrik Singh and Sadhu Singh were causing injuries with wooden piece (Ghotna). Again said, Amrik Singh was having 'Thapa' and he was causing injuries with 'Thapa'. Two more persons were also present, the name of whom I do not know. Myself and Resham Singh requested the accused present in the Court that they should free Mukhtiar Singh and not to cause injuries. Instead of releasing Mukhtiar Singh, all the accused present in the Court abused us and threatened that in case if they had not left the house they will also be beaten by the same way. From there, we came to our house." Curiously enough that they did not have the courage to physically intervene so as to save the deceased from the grip of the accused party, if they were there. It is in his cross-examination that the dead body of Mukhtiar Singh deceased was brought by the police from the house of Sadhu Singh. This statement is belied by Harbhagwan Singh retired DSP PW8, who has stated in no uncertain terms in his cross-examination that "It is correct that a case under Section 458/380 of IPC against Mukhtiar Singh deceased of this case was registered. That Mukhtiar Singh was captured at the spot by the accused and then he was given to the Home Guard, the employees who took him to the police post, where he died in the police post." This evidence can be interpreted to mean that the deceased was very much alive, when his person was handed over to the Home Guard employees, whereas the aforesaid witness Sucha Singh went on to say that the dead body of Mukhtiar Singh deceased was brought by the police from the house of Sadhu Singh accused. To add further to it, it is in the further cross-examination of Sucha Singh (sic.) that "I had not stated to the police that the police officials had taken away the dead body of Mukhtiar Singh from the house of Sadhu Singh accused. No theft case has been registered against Mukhtiar Singh deceased. I do not know whether a case has been registered against Mukhtiar Singh regarding theft from the house of Sadhu Singh accused." Had the dead body of the deceased been taken away by the police from the house of Sadhu Singh accused, then this witness would have said so with absolute certitude in his police statement, though obviously he has denied having stated this fact before the police. It is in his further cross-examination that "I had not stated in my statement Ex.DA that Baldev Singh Sarpanch had told me and Resham Singh PW that Mukhtiar Singh deceased was tied in the house of Sadhu Singh that he had went to the house of Sadhu Singh to commit the theft." On being confronted with portion A to A1 of his statement Ex.DA, it was found so recorded therein. It is in his further cross-examination that "I had not stated in my statement Ex.DA that I had not known that Sadhu Singh etc. had brought Mukhtiar Singh to police post Lakhewali." When he was confronted with portion B to B1 of his statement Ex.DA, it was found so recorded therein." Thus, this witness has made every possible endeavour to introduce material improvements in his evidence.

Coming to the deposition of Baldev Singh PW6, he has testified that "I saw Mukhtiar Singh son of Banta Singh with his arms tied present at the house of Sadhu Singh. He was further tied with the 'Jangla' (iron bar of the window). 5/6 more persons were also present there. Sadhu Singh, Amrik Singh, his nephew and one Hakam Singh and Bhola Singh were also present there. Jagdev Singh, Member Panchayat was also there. So many other persons were also there. Mukhtiar Singh was in an injured condition and Sadhu Singh told that he had entered his house to commit theft. Mukhtiar Singh asked me to save him from the accused or inform his relations. I suggested Sadhu Singh that he be handed over to the police or his relations as he was habitual of taking pills. I informed Resham Singh and his brothers about the above said facts." It is in his cross-examination that "I cannot say as to at whose hands the deceased had received injuries." This piece of evidence strikes a death knell to the prosecution version that the injuries were inflicted on the body of the deceased by the

accused. On assessing the above evidence, it emerges out that this witness too had not seen the occurrence. It is in the cross-examination of Baldev Singh (sic.) that "It is correct that Jagdev Singh (referring to the accused) and other members of the Panchayat had moved an application against me to the B.D.P.O. alleging therein that I had sold the 'Tahli' trees to the wood sellers and I embezzled the sale proceeds of the trees." To my mind, this may be the motive for this witness to toe the line with the complainant party to wreak his vengeance. Towards the end of his cross-examination, he has stated that "It is correct that earlier to this occurrence 2/3 cases under theft provisions were registered against the deceased at Police Station Sadar Muktsar." This evidence further sub-serves the fact that the deceased was in the habit of indulging into the commission of offence of theft.

It is in the cross-examination of PW8 Harbhagwan Singh retired DSP that "During my investigation, it was revealed that Mukhtiar Singh was given majority of injuries by a mob after he was captured." This evidence demolishes the entire prosecution edifice like a house of cards. In other words, this evidence deals a coup-de-grace to the fortress of the prosecution or knocks the bottom out of the prosecution case. It cuts down the fibers of the prosecution fabric rendering it in tatters. This witness Harbhagwan Singh has been emphatic in his deposition that the statement of Resham Singh Ex.PD was correctly recorded and was read over to him and he thumb marked the same in the token of its correctness. It is apt to be borne in mind that he has been examined by the prosecution. It is worth pointing out here that Resham Singh has been confronted with Ex.PD and it has been found that he has tried his level best to introduce as many material improvements in his statement as he could do. So, it would be quite unsafe or in other words, it would not be free from risk to believe his statement. It is the specific plea of Sadhu Singh accused that the deceased had come to his house to commit theft at night and he was apprehended, while he was committing theft. This fact is borne out by registration of the case of theft against the deceased. As noted supra, it is own evidence of the prosecution that the deceased used to indulge in the commission of thefts even at earlier occasions. So, the defence version competes in probability with the prosecution version, where it is so, the defence version has to be believed. In the course of their natural conduct, Sadhu Singh and the members of his family were bound to raise hue and cry, which in turn, would have certainly attracted the neighbours and other residents of the village. It is a common place experience that if alarm is raised by the inmates of a house in the village, particularly at the night time, the neighbours and other residents of the village out of anxiety rush thereto. If these ruralites find a person committing theft in the house of their co-villager, they more often than not, resort to give severe beatings to the thief, being obsessed by the thought that if he be not taught a lesson today, tomorrow he may commit burglary in their house. In such a situation, scene of mob is created. The mobsters after having mobbed such a thief could go to any extent. Sometimes, the passions of the rustic mobsters at such odd hours run so high that they could go even to the extent to lynch the perpetrator of the crime. As per Harbhagwan Singh retired DSP (Sic.), the mobsters had given beatings to the deceased. This evidence explicitly exculpates the appellants.

In the ultimate analysis, it follows that the prosecution has dismally failed to bring home guilt against the appellants. Sequelly, this appeal is accepted setting aside the impugned judgment/ order of sentence. The appellants are hereby acquitted of the offence under Section 325 read with Section 34 of IPC. Their bail bonds shall stand discharged.

February 12, 2009  
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( HARBANS LAL )  
JUDGE

Whether to be referred to the Reporter? Yes