HOSHIAR SINGH AND ORS. A

v.

STATE OF PUNJAB

OCTOBER 29, 1991

[KULDIP SINGH AND MADAN MOHAN PUNCHHI, JJ.] B

Indian Penal Code, 1860:

Ss. 148, 149, 302, 302/149, 307, 307/149:

Murder, attempt to murder—Trial of 9 accused—Acquittal of 4 and conviction of 5—Validity of. C

Evidence Act, 1872:

Murder and attempt to murder—Large number of participants—Acquittal of some accused and conviction of the others—Prosecution evidence - Credibility of: Maxim—Falsus in uno falsus in omnibus—Applicability of Exhortation—Evidentiary value of. D

A litigation regarding possession of a certain plot of land was pending in the civil court between the complainants and the accused persons. On 16.12.1975 at about 8 a.m. the accused, armed with fire-arms and sharp edged weapons, reached the outer-house of the complainants E **and attacked them. Accordi g to the prosecution case, accused No. 4 who was unarmed, raised an exhortation challenging deceased-1, and caught hold of his long hair while accused 1 fired a rifle shot at him and accused No.7 gave two successive gandasa blows on his head. Accused No.9 fired a shot at PW 15. Accused nos.6 and 8 fired one shot each at deceased-2 who also succumbed to his injuries. PW 16 was fired at by accused No. 2 hitting** F **him at the left arm and flank. Accused No. 3 and 5 gave blows from the reverse side of gandasa and spear to PW.17 and another woman respectively. On the side of the accused, a spear blow of accused No. 5 accidently his accused no. 9 and a shot fired by accused No. 6 accidently hit another man on the side of the accused who later on died. Besides the** G **members of the complainant's family, the neighbours, PWs, 18 & 19 also witnessed the occurrence. The accused were alleged to have run away taking a rifle and revolver belonging to the complainants. The police investigation culminated in the trial of the 9 accused.**

H

A The Trial Court acquitted four accused (nos.1 and 3 to 5) but convicted the appellants (accused nos. 2 and 6 to 9) of offences punishable under ss. 148, 149, 302, 302/149, 307 and 307/149 and sentenced them to various terms of imprisonment.

The appeal filed by the appellant having been dismissed by the High B Court, an appeal by special leave to this Court was filed.

It was contended on behalf of the appellants that the four accused having been acquitted despite the eye witnesses deposing to their participation in the alleged incident, no credence should be given to the C prosecution witnesses in order to maintain the conviction; and that the prosecution failed to explain the way the injuries were caused to the persons on the accused side.

Dismissing the appeal, this Court,

D HELD :1. The large number of participants in the occurrence would, at some place or the other leave a place for entertaining some doubt. But in the instant case the prosecution case as a whole remained strong supported as it was by the independent evidence of P.Ws.18 and 19, the neighbours. The occurrence took place in the Courtyard of the outer house of the E complainant party. Blood stained earth was collected from four places therein during investigation. In the totality of circumstances it cannot be said that the maxim *falsus in uno falsus in omnibus* was attracted. [583 H; 584A,C]

2. Exhortation is necessarily not a padding or over doing and has to be viewed in the correct perspective, in the facts and circumstances of each case. F [582 E]

In the instant case, the roles assigned to accused no. 4 who was acquitted, that he gave [an] exhortation, caught hold of the long hair of deceased-1 and carried away his rifle after the incident, were, according to G the Sessions Judge, part of the overdoing. The fact that the rifle was being carried by the accused at the time of his arrest was considered by him to be abnormal as otherwise in the normal course of events it was expected to have been kept concealed. The Sessions Judge held that he was not satisH fied about the criminality of accused No. 4. [582 C-D]

Besides the exhortation, there were other factors available which could lead the Sessions Judge to take the view that he had, and that was a possible view which any cautious Judge could have taken. But that per se does not mean that the witnesses who had deposed to the participation of the accused at the time of occurrence have to be dubbed as liars. [582 E-F] A

Jainul Haque v. State of Bihar, AIR 1974 SC 45 , referred to. B

3.1 With respect to acquitted accused No. 3, the Sessions judge held that though PW 17 had received injuries from the reverse side of the gandasa from the accused still in the FIR the use of weapon was mentioned but not the manner in which it was used; and that it was normally expected of the accused to have given at least one gandasa blow to someone from the sharp side. Besides his taking away the revolver from the victim after the occurrence did not inspire confidence. In the circumstances, the act of removing the revolver was viewed with suspicion, more so, when its recovery was made as a result of the disclosure statement after a span of eight days of the arrest of the accused. The view of the Sessions Judge that the case against acquitted accused No. 3 did not stand beyond reasonable doubt was a possible view taken on a cautious approach, without telling on the veracity of the prosecution witnesses. [582 G-H; 583 A-B] C D

3.2 Acquitted accused No. 5 was said to have used a spear blunt-wise but the concerned victim was not found to have any stab or punctured wound. The recovery of the spear taking place after seven days of arrest of the accused was viewed with suspicion due to the time lag. There was omission in the FIR of the specific manner in which the weapon had been used. The finding of benefit of doubt to accused No.5 could be given by the Sessions Judge without causing least dent to the prosecution case. Shifting the grain from the chaff does not mean loss of grain and gain of chaff. Such a view of the learned Judge cannot cast a reflection on the case as a whole. [583 C-E] E F

3.3 As regards acquitted accused No.1, finding the description of the weapon being in discord with the medical evidence the Sessions Judge held the prosecution case not to have been proved against the accused. Even though the Sessions Judge did not extend the benefit of doubt to the accused in so many words, his approach was an exercise in that direction. The acquittal of accused No.1 too would cause no affectation to the prosecution case as a whole. [589 F-G] G H

4.1 The first information report specifically mentioned that the injuries to the persons on the side of the accused were as a result of the doings of accused persons themselves; and all the eye witnesses cogently and consistently deposed to that effect. [584 B-C]

4.2 The time of the occurrence being 8.00 a.m. and the inmates of the house being busy with their daily chores, the complainant party would not anticipate an assault and be ready with fire-arms to put them to use. The fact that the licensed weapons of the complainant party were not shown to have been used by itself established that the injuries received by the persons on the side of the accused were accidental and suffered in the manner as suggested by the prosecution. [584 D-E]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.404 of 1979.

From the Judgment and order dated 19.4.79 of the Punjab High Court in Criminal Appeal No.843 of 1976.

A.N. Mulla, N.D. Garg and T.L. Garg for the Appellants.

Ms. Amita Kohli and R.S. Suri for the Respondents.

The Judgment of the Court was delivered by

PUNCHHI, J. This appeal by special leave is directed against the judgment and order of the Punjab and Haryana High Court at Chandigarh dated April 19, 1979 passed in Criminal Appeal No. 843 of 1976.

The appellants herein are five in number. They along with four others were sent up for trial before the Court of Session, Faridkot on various charges as detailed in the judgment under appeal. Those four co-accused of the appellants were acquitted by the learned Sessions Judge, and the matter seems to have rested there because apparently the State of Punjab did not rake up the issue against those four accused. On the basis thereof, the principle plea of the appellants through their counsel herein is that when four accused have been acquitted, the prosecution story itself has lost credence, entitling the appellants to acquittal. It is this plea which has engaged our attention.

The parties belong to village Talwandi Bhagerian, Distt. Faridkot, Punjab. Thereat was a vacant plot belonging to Karnek Singh, Jagatjit Singh and Wasakha Singh sons of Partap Singh, who were living abroad. Adjoining thereto was the outer house of Balwant Singh P.W.15. According to the prosecution, Balwant Singh P.W.15 had put up a boundary wall around it as also a structure thereon storing wheat chaff therein, besides putting cotton sticks and dung manure in the unbuilt space. Mohinder Singh son of the said Balwant Singh P.W.15 moved the Civil Court through a suit on December 10, 1975 seeking a decree for permanent injunction restraining his co-villager Jiwan Singh, his sons Naib Singh appellant herein and Mohinder Singh an acquitted co-accused, as also the minor sons of the aforesaid two accused from interfering in his possession over the suit land. The Court on December 10, 1975 granted interim injunction restraining the impleaded defendants from interfering with the possession of the plaintiff over the disputed plot. Later on the request of the defendants, the Civil Court on 29-1-1976 identified the suit property being in Khasra No.345, 346 and 356 and out of the same vide Order Ex.D-16, vacated the temporary injunction in respect of Khasra No. 345 and 346 confirming the same in respect of Khasra No.356. Besides there had been security proceedings between Mohinder Singh aforesaid and his brother Ginder Singh (one of the victims) on the one hand and Nirmal Singh and Darshan Singh acquitted co-accused and some others, on the other. However, both parties were ultimately discharged by the Court.

The occurrence took place in that interval on 16-12-1975 when the temporary injunction was in force. The complainant party except for P.Ws. 18 and 19 are members of one family. This relationship is disclosed in the judgment of the learned Sessions Judge as also by the High Court. We would not burden this judgment with details thereof. The fact remains that on the night intervening 15th and 16th December, 1975, Jugraj Singh P.W.14 , Balwant Singh P.W.15, Ginder Singh, since deceased and Assa Singh had slept in a room in their outer house, and where they were keeping their cattle also. At about 8.00 a.m. on December 16, 1975, all the inmates of the outer house, and others having joined them having come from their residential house, at that time were busy doing their assigned chores. At that juncture, the five appellants namely, Hoshiar Singh, armed with SBBL gun, Jalaur Singh, armed with a 12 bore DBBL gun, Ex.M.O./5, Sardara Singh, armed with a gandasa, Ex.M.O./2, Ram Singh alias Ram Charan Singh, armed with SBBL gun, Ex.M.O./6 and Naib Singh son of Jiwan Singh, armed with a DBBL gun, Ex.M.O./7 entered the house accompanied by five other men. They were the four acquitted co-accused namely, Thamman Singh, unarmed, Darshan Singh, armed with a gandasa,

A Mohinder Singh, son of Jiwan Singh (brother of Naib Singh, appellant) armed with a spear, Nirmal Singh, armed with a rifle and Major Singh, the fifth man, armed with a DBBL gun, who was lately injured during the occurrence. Thamman Singh acquitted co-accused raised an exhortation challenging Ginder Singh that he would not be spared. Thamman Singh, then caught hold of the long hair of Ginder Singh and thereupon Nirmal B Singh acquitted co-accused fired a shot with his rifle hitting Ginder Singh on his left flank. On Ginder Singh falling down by the side of the manger, Sardara Singh appellant gave two successive gandasa blows on the head of Ginder Singh deceased while he was in the process of falling down. This was the first casualty. It was followed by Naib Singh appellant firing at Balwant Singh P.W.15 hitting him in the abdomen reflective of attempt to C murder. Dhanna Singh alias Shinghara Singh a member of the complainant's family also happened to reach the scene of the occurrence having come from the residential house and while in the door way was fired at by Jalaur Singh appellant with his gun followed by a gun shot by Ram Singh alias Ram Charan Singh appellant hitting Dhanna Singh. This was D the second casualty. Sukhminder Singh, P.W.16 also reached there and was fired at by Hoshiar Singh appellant hitting him on the left arm and blank , where upon he fell down. This was the second case reflecting attempt to murder. The female folk Bhagwan Kaur P.W.17 and Raj Kaur present at the place of occurrence while raising alarm laid themselves over Ginder Singh and Sukhvinder Singh respectively. Darshan Singh acquitted co-ac- E cused gave blows from the reverse side of his gandasa to Bhagwan Kaur P.W.17, and Mohinder Singh co-accused to Raj Kaur with the blunt side of his spear. Apart from the members of the family involved Sukhdev Singh P.W.18, Pritam Singh P.W.19, neighbours, had occasion to see the occurrence while standing in their respective houses. On the side of the accused party, so claimed the prosecution, a Barchha(spear) blow of Mohinder F Singh meant to hit Raj Kaur accidently hit the abdomen of Naib Singh appellant. Likewise, a shot fired by Jalaur Singh appellant accidently caused injury to Major Singh the co-culprit, but that injury later proved fatal. The accused persons took away not only their weapons but a licensed rifle of Ginder Singh and revolver of Mohinder Singh son of Balwant Singh P.W.15 from inside the room (baithak) while going away. This G is the whole prosecution case with regard to the motive and the actual occurrence.

To complete the picture the deceased persons were taken to the Civil Hospital, Moga wherefrom Dr.A.C. Gupta P.W.I sent intimation to Police Station, Moga Sadar. Avtar Singh, ASI. P.W.20 reached the spot and H recorded the statement of Jugraj Singh P.W.14 at 11.00 a.m., within three

hours of the occurrence, formal F.I.R. of which was recorded at the Police Station at 11.15 a.m. In that statement vivid details of the occurrence are given. The injured persons were examined and given medical aid. The bodies of the deceased persons were subjected to post-mortem. The accused were arrested and weapons were recovered, either from them, or at their instance, on statements made under Section 27 of the Evidence Act. The accused at the trial pleaded denial to the occurrence but Naib Singh appellant gave written statement, Ex.D-6 as his counter version. The trial resulted in the acquittal of four persons but so far as the appellants were concerned, all of them were held guilty and convicted under Sections 148, 449 IPC awarding them various terms of sentences. Substantively, Sardara Singh appellant was convicted under Section 302 IPC for having caused the death of Ginder Singh by giving him two fatal gandasa blows. The remaining appellants were convicted constructively under Sections 302/149 IPC. All of them were given life sentence. Jalaur Singh and Ram Singh appellants were substantively convicted under Section 302/149 IPC for causing the death of Dhanna Singh and the remaining appellants under Sections 302/149 IPC, and all were awarded life sentence. Naib Singh appellant was substantively convicted under Section 307 IPC for murderously attacking Balwant Singh P.W.15, as also Hoshiar Singh appellant under Section 307 IPC for murderously attacking Sukhminder Singh P.W.16. The remaining four appellants in each case were convicted constructively under both counts under Sections 307/149 IPC and awarded various terms of imprisonment . All the sentences imposed were ordered to run concurrently. Appropriate orders of disposal with respect to the weapons recovered were passed by the learned Sessions Judge.

As indicated above, the main plea of the appellants is that four accused having been acquitted, despite the eye-witnesses deposing to their participation, no credence should be given to the prosecution witnesses in order to maintain the convictions. The maxim *falsus in uno falsus in omnibus* has been pressed into service. It appears that the argument as such was not raised before the High Court. Rather it appears that the High Court's attention was not invited to the reasoning of the learned Sessions Judge in acquitting the four co-accused. It would be apt therefore to scrutinize that reasoning and see whether the prosecution case has lost credibility on such reasoning.

Thamman Singh acquitted accused was empty handed. The role attributed to him is that he gave an exhortation challenging Ginder Singh deceased to be ready and that he would not be spared. He then caught hold of the long hair of Ginder Singh. Thereafter Ginder Singh was as-

A saulted. At the end of the occurrence, he is blamed of having taken away the licensed rifle of Ginder Singh. The learned Sessions Judge tended to go in generalities in terming that the evidence of exhortation, in the very nature of things, is a weak piece of evidence and there was quite often a tendency to implicate some person besides the actual assailant. For this he took the cue from a reported decision of this Court in *Jainul Haque v. State* B *of Bihar,* AIR 1974 SC 45 as well as a decision of the Punjab and Haryana High Court to that effect in support. Then without coming to the specifics the learned Sessions Judge abruptly came to the conclusion that when Thamman Singh acquitted co-accused had come to the spot empty handed, the exhortation appears to have been introduced in the prosecution case and that the witnesses apparently were out to rope him in. The two roles C attributed to him, namely, of catching the long hair of Ginder Singh and to have carried away the rifle of Ginder Singh went in the same sweep to hold that this was part of the over doing. The fact that the rifle was being carried by Thamman Singh at the time of his arrest was considered by the learned Sessions Judge to be abnormal as otherwise in the normal course of events, it was expected to have been kept concealed somewhere. His finding thus D in his own words is "The fact remains that I have not been satisfied about the criminality of Thamman Singh." The only comment worth making is that exhortation is necessarily not a padding or over doing and has to be viewed in the correct perspective, in the facts and circumstances of each case. In the instant case, besides the exhortation, there were other factors available enumerated herein, which could lead the learned Sessions Judge E to take the view that he has, and that was a possible view which any cautious Judge could have taken. But that *per se* does not mean that the witnesses which had deposed to the participation of the accused at the time of occurrence have to be dubbed as liars.

F With regard to Darshan Singh acquitted accused, the role assigned to him is that he gave gandasa blows to Bhagwan Kaur P.W.17 from the reverse side and that he took away the licensed revolver of Mohinder Singh from the room (baithak) of the outer house. The learned Sessions Judge opined that though the eye witnesses account was that Bhagwan Kaur had received injuries from the reverse side of the gandasa from Darshan Singh, G still in the First Information Report given by Jugraj Singh P.W.14, the use of the weapon was mentioned but not of the manner in which it was used. The learned Sessions Judge took the view that it was normally expected of Darshan Singh to have given at least one gandasa blow to someone from the sharp side as well. Besides his taking away the revolver from Mohinder Singh after the occurrence did not inspire confidence, like the case of H Thamman Singh. Besides if these two weapons namely the rifle and the

revolver were available with the complainant party when the occurrence started it was expected of them to have used those, which had not appeared to have been used. In that light the act of removing the revolver was viewed with suspicion, more so, when its recovery was made as a result of the disclosure statement after a span of eight days from the date of arrest of Darshan Singh. The learned Sessions Judge then concluded with these words, "The case against Darshan Singh, accused does not again stand beyond reasonable doubt". Now such a view of the learned Sessions Judge was a possible view taken on a cautious approach, without telling on the veracity of the prosecution witnesses.

So far as Mohinder Singh acquitted accused is concerned, he is said to have used a spear blunt-wise on Raj Kaur. Raj Kaur was not found to have any stab or punctured wound. Further the spear was recovered after seven days of the arrest of Mohinder Singh and that recovery was viewed with suspicion due to the time lag. The version in F.I.R. was pressed into service about the omission of the specific manner in which the weapon had been used. The learned Sessions Judge then held, "I would accordingly give the benefit of doubt to Mohinder Singh accused and acquit him." This finding could be given by the learned Sessions Judge without causing the least dent to the prosecution case. Shifting the grain from the chaff does not mean loss of grain and gain of chaff. Such a view of the learned Judge cannot caste a reflection on the case as a whole.

Lastly Nirmal Singh acquitted accused was described in the F.I.R. to be armed with a "pakki banduq" which description the learned Sessions Judge translates as "rifle". Since Nirmal Singh is accused to have begun the occurrence by firing at Ginder Singh and Ginder Singh had pellets seen in his dead body, such description of the weapon sowed the seeds of suspicion in the mind of the learned Sessions Judge. It was at best either a case of a mistaken perception or flash impression that Nirmal Singh, undisputably being a licensee of a rifle, had that rifle. Finding the description of the weapon being in discord with medical evidence, the learned Sessions Judge found the prosecution case not proved against Nirmal Singh acquitted accused. Here even though the learned Judge did not extend the benefit of doubt to Nirmal Singh in so many words, his approach is an exercise in that direction. The acquittal of Nirmal Singh too would cause no affectation to the prosecution case as a whole.

For the views afore-expressed and the totality of the circumstances, we do not think that in the instant case the maxim *falsus in uno falsus in omnibus* is attracted. The large number of participants in the occurrence would, at some place or the other, leave a place for entertaining some

A doubt. But here the prosecution case as a whole remains strong supported as it is by the independent evidence of P.Ws 18 and 19, the neighbours, and the occurrence having taken place in the house of the complainant party.

It was next contended that the prosecution has cocealed its own guilty part and has not explained the way the injuries were caused to Major B Singh Deceased and to Naib Singh appellant. The argument is barely to be noticed and rejected. Significantly Jugraj Singh in the First Information Report specifically mentioned that the injuries to Major Singh deceased and Naib Singh appellant were as a result of the doings of accused persons themselves and in the circumstances narrated above all the eye witnesses have cogently and consistently deposed to that effect. The findings of both C the courts below are that the occurrence took place in the courtyard of the outer house of the complainant party. Blood stained earth was collected from four places therein during investigation. Time of the occurrence being 8.00 a.m. and the inmates of the house being busy with their daily chores leaves one to pose the question as to why should the complainant party anticipate an assault and be ready with fire-arms to put them to use. It does D not stand to reason that the complainant party having licensed weapons, if anticipating an assault, to have not kept the same ready for use. The fact that these licensed weapons of the complainant party are not shown to have been used by itself goes a long way to establish that the injuries received by Major Singh deceased and Naib Singh appellant were accidental and suffered in the manner as suggested by the prosecution. On this E score also we remain unconvinced of the argument.

Having examined the prosecution case as finally established at the level of the High Court and having seen the reasoning of the Court of Session in acquitting the four accused, and also for the reasons set out above, we go to hold the appeal to be devoid of merit and accordingly F dismiss the same. The appellants are on bail. They are required to surrender to their bail bonds forthwith.

R.P. Appeal dismissed.