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CrI.A.No. 487 OF 1996

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 487 OF 1996

State of PunjabAppellant

Versus

Daljit Singh & Anr.Respondents

O R D E R

The State of Punjab has preferred this appeal against the judgment of the High Court of Punjab and Haryana dated 24.5.1995 whereby the High Court allowed the appeal of the respondents-accused and acquitted them of the charges for which they were convicted by the learned Sessions Judge, Amritsar.

Briefly, stated the prosecution case is that in a Panchayat election which had taken place in the year 1983 Harbinder Singh one of the deceased had contested for the post of Sarpanch as against one Jiwa Singh and won the said election. Said Jiwa Singh was an accused before the trial court but was declared as absconder, he is also the brother of A1, A2 and A3. Keeping in mind this defeat, the said Jiwa Singh and other accused persons on 7.2.1984 at about 8 p.m. committed the murder of said Harbinder Singh and his uncle Harbans Singh. It is further the case of the prosecution that on that day the said two deceased persons had visited the house of PW.6, Brinderjit Kaur at about 5 p.m. and had dinner with PW.6, PW.7, Satnam Singh, son of deceased Harbans Singh and PW.8 Mohinderjit Kaur, the mother of other deceased Harbans Singh. Having had dinner they left the house at about 8 p.m. and the eye-witnesses PW.6 who is also complainant in this case, PW.7 and PW.8 also went along with the deceased persons till the outskirts of the village to bid farewell to them. It is at that time the four persons which included three accused before the trial court attacked the two deceased persons. The prosecution alleges that Jiwa Singh shot Harbinder Singh while A2, Bhagwant Singh shot Harbans Singh while A1, Daljit Singh stabbed Harbans Singh with a Kirpan and also chopped the head of deceased Harbinder Singh with the said Kirpan while A3, Lakhwinder Singh stabbed Harbans Singh with Kirpan consequent to which both the victims died on the spot. As stated above the incident in question was witnessed by PWs.6, 7 and 8 but being afraid of the prevailing law and order situation in Punjab as also because of the threat of the accused persons they did not bring this incident to the notice of anyone else. It is only the next day on 8th February, 1984 at about

6 a.m. PWs.6 and 7 went to Police Station at Bhikhwind which is 5 kms. away from the place of incident and lodged a report which was reduced into writing by PW.14 the Investigating Officer. It is further the case of the prosecution that during the course of investigation the accused persons except Jiwa Singh surrendered on 20th February, 1984 and certain recoveries were made from them. On completion of the said investigation a charge-sheet was filed against accused Nos.1, 2 and 3 for an offence punishable under Section 302 IPC read with 34 IPC while Jiwa Singh who was not arrested and was declared as proclaimed offender and his trial was separated from others.

The learned Sessions Judge placing reliance on the evidence of PWs.6, 7 and 8 as also on medical evidence of PW.9 came to the conclusion that accused No.1 Daljit Singh and accused No.2 Bhagwant Singh are guilty of the offence charged against them and accordingly convicted them for an offence punishable under Section 302 IPC read with 34 IPC while it accepted the defence put forth by accused No.3, Lakhwinder Singh which was one of alibi and accepting the alibi Lakhwinder Singh was acquitted.

In an appeal filed by the convicted accused persons the High Court of Punjab and Haryana as stated above has allowed the appeal and set aside the conviction imposed on those two accused persons. The State is the appellant before us in this appeal.

The High Court in the course of its judgment inter alia came to the conclusion that the prosecution has totally failed to explain the inordinate delay in filing the complaint as also special report reaching the Illaqa Magistrate; the High Court also came to the conclusion that it is not the normal practice of the people of that area for the ladies to go long distances in the night to see their guests off, therefore, the presence of these ladies eye-witnesses was doubtful; High Court held that even according to the prosecution there were many persons of the village came to the place of the incident including the Lambardar and other members of th

e Panchayat, still nobodies help was sought to lodge a complaint. The High Court next came to the conclusion that the oral evidence adduced by the prosecution ran counter to the medical evidence inasmuch as the food contents found in the stomach of the deceased persons did not indicate that they had taken food just before their death as contended by the prosecution.

It is urged before us by the learned counsel appearing for the appellant-State that there is nothing unnatural in the women folk coming out of the house to see off their guests. Regarding the delay in filing the complaint, it was contended that at that point of time law and order situation in Punjab being critical these witnesses were afraid to go to police station to lodge a complaint and at the first available opportunity they went to the police station and had lodged the complaint mentioning the names of the assailants hence the High Court erred in drawing an adverse inference on this aspect of the case.

The High Court, in our opinion, did not accept the explanation given by the prosecution for the delay in filing complaint because it is seen in the evidence that soon after the incident PW .7 a male person at the time of incident chose to go to village Bhagwanpur which is about 5 kms. in a direction in which assailants had gone earlier to inform his grand mother about the incident in question in such circumstances no explanation has come forward from the prosecution side why he could not have gone to the police station which was situated 5 kms. in the opposite direction. This contradicting conduct in our opinion is sufficient to come to the conclusion that the prosecution explanation as that to the delay in filing FIR is not acceptable. This suspicion as to the delay in filing complaint is further supported by the fact that the special report in regard to the incident in question reached the Illaqa Magistrate only at 12.45 noon, the explanation given by the prosecution that because of the fact that the cycle used by the constable who carried the report developed some mechanical trouble is too difficult to believe. We also note that if at all the incident had occurred as alleged by the prosecution and witnessed by PWs.6, 7 and 8 then they could have easily taken assistance of the village Lam bardar and members of the Panchayat and other persons present at the place of the incident to lodge a complaint but no such efforts were made by the prosecution nor these independent witnesses who were present at least immediately after the incident were examined to establish the fact that these eye-witnesses had disclosed the names of the assailants at the first available opportunity to them. Therefore, we are in agreement with the High Court that the prosecution has failed to explain the delay in filing the complaint consequently the presence of these witnesses becomes highly doubtful. The next doubtful aspect in the prosecution case is about the time of incident. It is the case of the prosecution that two deceased persons had their meals with the eye-witnesses around 7 p.m. on the date of incident and they left the house of PW.6 around 8 p.m. PW.9, doctor who conducted the postmortem, in his report, and evidence, clearly stated that 1 Oz. of semi-digested food found in the stomach of the deceased Harbinder Singh while 3 Ozs. of semi-digested food was found in the stomach of other deceased Harbans Singh. According to the doctor, if a person takes a normal meal, it would have at least 10 Ozs. of semi-digested food in the stomach if such person is killed within 1 hour after taking the food. If that be so, the presence of 1 Oz. And 3 Ozs. of semi-digested food shows the death of the deceased was very much later than what the prosecution projects as the time of death. Then, we will have to also notice the fact that the trial court accepted the defence put forth by A3, Lakhwinder Singh which was a case of alibi. Having accepted the case of Lakhwinder Singh that he was not present at the time of incident the trial court failed to consider the fact of such finding on the evidence of eye-witnesses which, in our opinion, indicates that these eye-witnesses are capable of including the names of innocent persons. Therefore, this is also a circumstance to be taken into consideration while appreciating evidence of these persons. We having come to the conclusion that the reasons given by the High Court for disbelieving the evidence is unexceptional, we find no reason to differ from the judgment of the High Court. Therefore, the appeal fails and the same is dismissed.

.....J.
(N. SANTOSH HEGDE)

.....J.
(B.P. SINGH)

NEW DELHI,
SEPTEMBER 25, 2003.

ITEM No.103

Court No.3

SECTION IIA

Criminal Appeal No.487 of 1996

STATE OF PUNJAB Appellant (s)

VERSUS

DALJIT SINGH & ANR. Respondent (s)

(with office report)

Date : 25/09/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE B.P. SINGH

For Appellant (s) Mrs. Naresh Bakshi, Adv.
Mr. Bimal Roy Jad, Adv.

For Respondent (s) Mr. K.B. Sinha, Sr. Adv.
Ms. Kawaljit Kochar, Adv.
Mr. Amitabh Poddar, Adv.
Ms. Kusum Chaudhary, Adv.

UPON hearing Counsel the Court made the following

O R D E R

Mrs. Naresh Bakshi, learned counsel started her arguments at 2.20 p.m. and concluded at 3.15 p.m. Hearing concluded.
The appeal fails and the same is dismissed in terms of the signed order.

(PAWAN KUMAR) (PREM PRAKASH)
COURT MASTER COURT MASTER
(signed order is placed on the file)