REPPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 406 OF 2009
(Arising out of SLP (Crl.) No. 2315 of 2007)

Joginder Singh …Appellant

Versus

State of Punjab ...Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC') and sentencing him to imprisonment for life and fine of Rs.2,000/- with default stipulation as recorded by learned District and Sessions Judge, Ferozepur.

3. Background facts in a nutshell are as follows:

A complaint under Section 302 IPC was filed by Harbans Singh son of Gurbachan Singh, resident of Chak Saidoke, Police Station Sadar Jallalabad, Tehsil Fazilka against Joginder Singh stating therein that on 18.1.1993 at about 9.00 AM. complainant, his brother Harjinder Singh alias Inder Singh, Sube Singh son of Partap Singh, Jarnail Singh son of Mukhtiar Singh, Pohla Singh son of Aroor Singh all residents of village Chak Saidoke had gone to the school of the village for the purpose of casting their votes in the Panchayat Election. At about 9.45 or 10.00 a.m. he and his brother Harjinder Singh made a request to the voters to keep peace so that there may not be any dispute in casting their votes for the people, who were already standing in queue to cast their votes. In the meantime, Constable Joginder

Singh No. 1421, PC Branch, office of the Senior Superintendent of Police, Ferozepur, (the accused-appellant) challenged his brother Harjinder Singh and abused him and subsequently, he fired a shot from his rifle. The shot fired at Harjinder Singh hit on his head and he died at the spot. The occurrence was witnessed by the complainant along with Sube Singh son of Partap Singh, Jarnail Singh son of Mukhtiar Singh and Pohla Singh son of Aroor Singh, all residents of village Chak Saidoke. Joginder Singh was requested not to fire the shot, but he did not pay any attention and committed the murder of Harjinder Singh. He lodged a report with Inspector Harbans Lal, who recorded his statement and a case was registered vide FIR No.5 dated 18.1.1993 under section 304 IPC, but he was not arrested by the police and no action was taken against him, notwithstanding the fact that he visited the Police Station on number of times and this necessitated the filing of complaint.

The inquest report on the dead body of Harjinder Singh was prepared by Inspector Harbans Lal and he sent the dead body of Harjinder Singh to Civil Hospital, Fazilka, where post mortem on the dead body of Harjinder Singh was conducted. As per the post mortem report, cause of death was due to shock and haemorrhage as a result of injuries Nos.1 and 2, which

were on the vital part of the brain and were sufficient to cause death in the ordinary course of nature and the injuries were caused with fire-arms.

After investigation was completed, charge sheet was filed. Since the appellant abjured guilt, trial was held.

Stand of the accused appellant before the trial Court apart from the plea of denial was that some people tried to snatch away ballot boxes as a consequence of which the law and order situation became bad. The police party fired in the air to disburse the mob. The trial Court placing reliance on the evidence of the eye witnesses recorded the conviction as noted above.

In appeal the primary stand was that the so called eye witnesses were related to the deceased and, therefore, their evidence should not have been relied upon. The High Court found that merely because the prime witnesses were related to the deceased that did not in any event affect the credibility of their evidence. It was submitted that only one shot was fired and, therefore, Section 302 IPC has no application. It was also noted that there was no evidence that the voters had become uncontrollable or that there was snatching of ballot boxes or ballot papers. The evidence clearly established

that the accused aimed at the head of the deceased and fired the shot. Accordingly, the High Court dismissed the appeal.

4. The stand taken before the High Court was re-iterated by learned counsel for the appellant in this appeal.

5. Learned counsel for the State on the other hand supported the judgment of the trial Court as affirmed by the High Court.

6. Merely because the eye-witnesses are family members, their evidence cannot 'per se' be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases,

the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.

7. In Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364) it has been laid down as under:-

> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

8. The above decision has since been followed in Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar v. State of Madras (AIR 1957 SC 614) was also relied upon.

9. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in – 'Rameshwar v. State of Rajasthan' (AIR 1952 SC 54 at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

10. Again in Masalti and Ors. v. State of U.P. (AIR 1965 SC 202) this Court observed: (p. 209-210 para 14):

> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested

> witnesses.....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

11. To the same effect is the decisions in State of Punjab v. Jagir Singh (AIR 1973 SC 2407), Lehna v. State of Haryana (2002 (3) SCC 76) and Gangadhar Behera and Ors. v. State of Orissa (2002 (8) SCC 381).

12. The above position was also highlighted in Babulal Bhagwan Khandare and Anr. v. State of Maharashtra [2005(10) SCC 404], Salim Saheb v. State of M.P. (2007(1) SCC 699) and Sonelal v. State of M.P. (SLP (Crl.) No.3220 of 2007 disposed of on 22.7.2008).

13. In this case though one pellet was recovered and there was only one injury. But that does not on the facts of the case take the offence out of the purview of Section 302 IPC. It cannot be laid down as a rule of universal application that when there is one shot fired, Section 302 IPC is ruled out. It would depend upon the factual scenario, more particularly, the nature of weapon, the place where the injury is caused and the nature of the injury. In

the instant case it has been clearly established that the accused aimed at the head of the deceased and fired the shot which hit him on his head and that too was fired from a close range.

14. Above being the position the applicable offence is Section 302 IPC. We do no find any merit in this appeal which is accordingly dismissed.

……J.
(Dr. ARIJIT PASAYAT)

……J.
(ASOK KUMAR GANGULY)

New Delhi,
February 27, 2009