

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

Cr. Appeal no. 11/2008
Confirmation Reference No. 4/2008

Date of Decision: **24.08 .2009**

Harjeet Singh *vs.* **State**
State *vs.* **Harjeet Singh and anr**

CORAM:

**Mr. Justice Hakim Imtiyaz Hussain, Judge
Mr. Justice J. P. Singh, Judge.**

Appearing counsel:

For the appellant : Mr. Sunil Sethi, Sr. Advocate
with Ms. Veenu Gupta, Advocate.

For Respondents : Mr. P. C. Sharma, AAG.

- i) Whether approved for reporting in Press/Journal/Media : Yes

ii) Whether to be reported in Digest/Journal : Yes

J.P.Singh-J

Sentenced to Imprisonment for life and fine of Rs. 5000/-, under Section 302 RPC, besides to Imprisonment for five years and fine of Rs. 5000/- under Section 452 RPC, And to, two years imprisonment and fine of Rs. 2000/- under Section 4/25 of the Arms Act, for committing the murder of Kuldeep Kumar Badyal, Principal Government Boys Higher Secondary School, Gandhi Nagar, Jammu, the appellant, Harjeet Singh,

the appellant, has filed this appeal seeking setting aside of his conviction and sentence, ordered vide judgment of March 18, 2008 and order of March 19, 2008 respectively, of the learned Second Additional Sessions Judge, Jammu, herein after to be referred as the ‘trial court’, for short.

Facts necessary for disposal of the appellant’s Criminal Appeal and Confirmation Reference no. 4/2008 of the trial court, may be stated, in brief, thus:-

FACTS:

PW1, Rajinder Singh, the Vice Principal of the Government Boys Higher Secondary School, Gandhi Nagar, Jammu, delivered his complaint to the Police Station Gandhi Nagar, Jammu through PW 12, Madan Lal, which reads as follows:-

- “To
The Station House Officer,
Police Station Gandhi Nagar,
Jammu.
Sir,
Respectfully, I have to state as :-
(a) Today at about 11.15 AM, two sikh youth aged about 26 years and 20 years, one of them named Mr. Deepinder Singh, came to me, when I was teaching 11th Class Section A with the plea to issue a certificate certifying that Deepinder Singh has performed required numbers of practicals in Physics and Chemistry for 12th class.

I told them to approach the board authorities for necessary permission, as his application has already been submitted to Joint Secretary board.

- (b) At about 1.35 P.M. same two youth appeared in the Principal's Chamber in very furious mood and demanded the requisite certificate without getting any sanction from board. There were heated exchanges between the Principal, myself and Sikh youths in the office Chamber in presence of Subash Jamwal office clerk of the School.
 - (c) We came out of the office along with the youths in the Varanda with exchanges.

In the meantime, these two youths ran away from the school, one of them Harjeet Singh age about 26 years appeared on spot with sharp edge weapon and attacked the Principal Sahib, who became unconscious, fell down and was taken to GMC by the staff members on auto, being in old age and Cancer patient could not bear the scene and went away.

It is therefore requested that necessary investigation may kindly be initiated under law.

Yours faithfully
(Rajinder Singh)
(V. Principal)
Sr. Lect. Physics
Gandhi Nagar."

Dated: 3.2.99

FIR no. 54/1999 was, accordingly, registered on the aforementioned complaint, under Sections 307, 452, 332, 34 RPC and 4/25 of the Arms Act at Police Station Gandhi Nagar, Jammu.

After completion of the investigation, a Final Police Report, was laid with the Chief Judicial Magistrate Jammu, indicating commission of offences punishable under Sections 302, 333, 452, 34 R.P.C read with Section 4/25 of the Arms Act, by the appellant and

under Sections 302, 452, 333, 34 RPC by one Deep Inder Singh, in committing the murder of Kuldeep Kumar Badyal, with a Butcher's hatchet, called "Toka" in local dialect.

Finding prima facie case for trial, the appellant and Deep Inder Singh were charged, for commission of the offences indicated hereinabove, by the trial court.

Denying the charge, the appellant and his co-accused claimed trial.

In order to sustain the charge, the prosecution examined 33 out of 39 witnesses listed in the Final Police Report.

Denying the incriminating circumstances appearing in the prosecution evidence, the appellant and his co-accused put up the plea of total denial of the incident opting not to lead any evidence in defence.

After appreciating the prosecution evidence and the material placed on the records, the trial Court acquitted Deep Inder Singh but convicted and sentenced the appellant as indicated at the threshold.

Questioning the judgment and order of the trial Court, the appellant's learned counsel urged as follows:-

APPELLANT'S COUNSEL'S SUBMISSIONS:

1. Prosecution having failed to lead any evidence to prove that the appellant had hit the deceased at his office with a Toka, his conviction and sentence was unwarranted, particularly when almost all the prosecution witnesses, in unambiguous terms, had refused to identify the appellant as the same sikh boy, who had attacked the Principal on the day of occurrence.
2. The statement of PW-1, Rajinder Singh, was un-worthy of credence, in that, his presence on spot at the time of the occurrence has not been proved by the prosecution.
3. The attesting witnesses to EXPW/VP, the appellant's alleged Disclosure Statement, having not supported the prosecution regarding appellant's making the disclosure statement leading to the recovery of Toka, the trial court erred in relying upon the Disclosure Statement and the recovery of Toka made pursuant thereto, on the basis of the statement of PW-39, Yash Pal Bakshi, the

Investigating Police Officer, which could not be relied upon, in absence of any corroboration thereto, being the statement of the Police Officer interested in success of the prosecution case.

4. The investigating agency having failed to hold any Test Identification Parade for identification of the appellant, during investigation of the case, the statement of PW-1 could not be believed, in view of the admitted case of the prosecution that the witness had neither seen the appellant before the occurrence nor would he know his name or other particulars for his identification.
5. Suffering from tainted investigation, and based on ante-timed FIR, the prosecution case was liable to be rejected when the prosecution had failed to prove the appellant's motive for commission of the offence.

STATE ADVOCATE'S SUBMISSIONS:

The learned Additional Advocate General submitted that the evidence and the material produced in the case by the prosecution was sufficient enough to sustain the appellant's

conviction and sentence, notwithstanding the prosecution witnesses' resilience from a part of their statements made under Section 161 Cr.P.C., regarding, identification of the appellant. According to the State counsel, the statement of PW-1, supported by EXPW-RS, his written FIR, has proved, beyond any reasonable doubt that it was the appellant and appellant alone, who was responsible for the murder of the Principal. There was no need to hold any Test Identification Parade during investigation of the case, because according to the evidence led in the case, it has been proved beyond any shadow of reasonable doubt that PW-1 had seen the appellant thrice on the day of the occurrence in the school and had thereafter identified him in the Court as the same person who had attacked the Principal in his office, says the learned counsel. Absence of motive, according to the counsel was not fatal to the prosecution case, in view of the law settled by the Hon'ble Supreme Court of India in this respect. According to him, the

statement of the Investigating Police Officer is worthy of credence and cannot be dis-believed merely because he happens to be a police officer, in the absence of any infirmity appearing therein.

We have considered the submissions of learned counsel for the parties and gone through the statements of the witnesses and the other material available on the records.

DISCUSSION

We do not want to burden this judgment by reproduction of the statements of all the prosecution witnesses, resume whereof is contained in the judgment of the trial court, and shall refer to the statements of the witnesses, wherever necessary to deal with the appellant's Appeal and the submissions made by learned counsel for the parties at the Bar.

The prosecution had cited PW-2 Ramesh Lal, PW-4 Gurcharan Singh, PW-5 Subash Singh, PW-6 Mst. Ravinder Kour, PW-7 Mst. Savita Sharma, PW-8 Mst. Reeta Sharma and PW-9 Mst. Manjit Kour, besides PW-1 Rajinder Singh as **eye witnesses** to

the occurrence; but while appearing in the Court, these witnesses, barring PW-1 Rajinder Singh, had refused to identify the appellant and his co-accused as the same Sikh boys who visited the school and the Principal on the day of the occurrence.

Perusal of their statements, however, reveals that some facts disclosed by these witnesses, have remained unchallenged during their cross-examination. The facts so revealed, are as follows:-

1. Mr. Kuldeep Kumar Badyal, the Principal and PW-1 Rajinder Singh, the Vice Principal of the Government Boys Higher Secondary School, Gandhi Nagar, Jammu, were present in the school on 03.02.1999 along with all the witnesses cited by the prosecution as eye witnesses to the occurrence.
2. Two Sikh boys were demanding issuance of a certificate for having completed practical from the Principal in his office Chamber.
3. One of the Sikh boy, having a *Toka* in his hand, was seen running from the school towards the road.
4. The Principal died in the hospital, of the injuries sustained in the chamber.

In the background of the aforementioned facts, the statement of PW1-Rajinder Singh needs to be examined in detail.

PW1- Rajinder Singh, says in his statement that he was posted as Vice Principal of the Government Boys Higher Secondary School Gandhi Nagar, Jammu on 3.2.1999, when at about 11 a.m. the appellant and Deep Inder Singh, whom he identified in the Court, had come to him demanding a certificate regarding completion of the practical in Physics and Chemistry subjects, when he was delivering lecture in the class room, to which he replied that the application had been forwarded to the Board of School Education. They thereafter left the class but again appeared in the school at about 1.30 p.m. By that time the Principal of the school, too, had reached his room. They informed the Principal that according to the Board officials, he was competent to issue the certificate and, accordingly, demanded the certificate from him. They were vigorously thumping the table lying in the Principal's

room. The Principal told them that let us ask the Board officials in this behalf and saying this the Principal got up from his seat. The prosecution witnesses Subash Singh and Darshan Lal, too, were in the Principal's room at that time. The accused, however, came arguing out of the Principal's room. Tilak Raj and Subash Singh took them out of the school gate. In the meanwhile, Mrs. PW-Ravinder Kour, who had gone to the Bank to get salary, too came back informing that the appellant was having a Toka in his hand and that they should run away. The appellant, however, in the meanwhile, appeared there and started arguing with the Principal. Being a cancer patient he ran away and could not see anything thereafter. He had, however, seen the appellant lifting the weapon in his hand upwards. Getting frightened, he bolted himself in a room in the school. He came out of the room only after about two hours to see that the public was there to inform that the Principal had breathed his last in the hospital.

EXPW-RS/1, written by him was thereafter lodged in the Police Station.

While under cross-examination, he says that the deliberations, which had taken place at 1.35 p.m., continued for about 15/20 minutes whereafter at about 2 p.m, PWs-Tilak Raj and Subash took the accused out of the school gate. The Appellant entered the school alone with the weapon at about 2.15 p.m. He had seen the occurrence for about $\frac{3}{4}$ minutes only. He came out of his room where he had bolted himself only after one and a half hour to lodge the complaint that the Principal had died. He had drafted the complaint after about 10/15 minutes of his coming out of the room. He would not know as to how much time PW-Madan Lal had taken to carry the complaint to the Police Station, which had been given to him at 4 p.m. PW-Ravinder Kour was not present when the complaint had been drafted. He had been working in the school for the last two years and during this period Harjeet Singh did not remain his student. He did not know Harjeet Singh

personally and had seen him for the first time on the day of the occurrence and would not know his name before that. He was unaware as to whether anyone present there revealed the appellant's name to him or was it someone from the public or a teacher of the school, who had revealed the appellant's name. After the occurrence he had seen the appellant for the first time in the Court. He however, saw the photographs of the appellant and Deep Inder Singh on the second day of the occurrence, when these had appeared in the news paper. No identification parade, for the identification of the accused was conducted. He had not indicated *Toka* as weapon of the offence in the FIR, which was, however, indicated as a sharp edged weapon in the report.

Before dealing with the appellant's counsel's submissions, reference to the statements of some more prosecution witnesses, which may be relevant to deal with the submissions made at the Bar, becomes necessary.

PW-29 Dr. Anayatullah Shiekh, on conducting the autopsy had found the following injuries on the person of Kuldeep Kumar Badyal. These read as under:-

1. *Incised chopped wound from left angle of mouth to the angle of mandible on left side 11 c.m. x 1 c.m. and deep into the oral cavity, cutting soft tissues left upper and central incisors. The fractured remnants of the teeth as produced by the I.O. were corroborated with the body-injury and found to have been separated from the deceased.*
2. *Incised chopped wound on left lateral aspect of scalp, cutting of the posterior third of external ear 11 c.m. x 1 c.m., cutting the underlined bones and brain substance. It was deep interiorly.*
3. *Incised chopped wound on the right lateral side of occipital region. The flap was directed towards the nape of neck of 8 c.m. x 7 c.m. The underlying bone was fractured.*
4. *Incised chopped wound on the right arm and forearm on lateral aspects across the elbow 24 c.m. x 3 c.m. underlying bones cut and fractured into multiple pieces.*
5. *Incised wound on the right wrist on the lateral aspect 5 c.m. x 3 c.m. underlying muscles tendons and blood vessels were cut.*
6. *Incised wound on the right wrist 5 c.m. x 3 c.m., 3 c.m. above the injury No.5. The soft tissue and bones were cut underneath.*
7. *Incised wound 3 cm. x 2 cm. on front of the left elbow 3 c.m. x 2 c.m.*
8. *An incised chopped wound on the left elbow on the lateral aspect 3cm x 2 cm.*
9. *An incised wound on the left side of the chest in the posterior axillaries 3cm x 1cm into muscle deep.*
10. *Contusions on the left ankle on the posterior aspect.*

According to Dr. Anayatullah Shiekh, the cause of the Principal's death was hemorrhage and shock as a result of the multiple injuries caused by a sharp cutting weapon. The time since death, according to

him, was about one hour. The Post Mortem Report, EXPW-AS, and the certificate EXPW-AS-1 indicating that the *Toka* produced before him by the police could possibly cause the injuries found on the person of the deceased, were admitted to have been issued by him.

PW-27, H.C.Bhagat, Scientific Officer, Forensic Science Laboratory Jammu, testifies to have issued EXPW-KKP, his report, after conducting the chemical and morphological examination of the articles which he had received in the Laboratory on 8.2.1999 from the Sub Divisional Police Officer, City South, Jammu, which, pursuant to his examination, had indicated presence of human blood of AB group on, (1) Exhibit K-416/99, the *Toka* with wooden handle, seized in the case, (2) Exhibits K-425/99 and K-426/99, the cream coloured shirt and blue coloured pant of the appellant, and (4) Exhibit K-436/99, the blood of the deceased.

PW-39, Yashpal Bakshi has proved the Disclosure Statement made by the accused to him,

the recovery of the weapon of offence, the seizure of the clothes of the appellant, the site plan, the seizure of the parts of the body of the deceased, i.e., a piece of the ear and a tooth, from the place of occurrence besides the documents which were prepared by him during investigation of the case. According to him there was no need to hold the Test Identification Parade because the employees of the school and others would know the accused. Appellant, Harjeet Singh had made disclosure about the weapon of offence when, after arrest, he was being carried in a vehicle to the Police Station.

Perusal of the statement of PW-1, Rajinder Singh, reveals, that his testimony to the facts appearing hereunder, has remained un-challenged during his cross-examination. These facts are as follows:-

1. Appellant Harjeet Singh along with the co-accused came to the school firstly at about 11.a.m, when they had met him in a class room of the Government Boys Higher Secondary School,

Gandhi Nagar, Jammu where he was delivering lecture to the students, and for the second time at about 1.35 p.m in the Principal's room. Third time, it was appellant Harjeet Singh alone, who came to the Principal's room at about 2 p.m with a *Toka* in his hand. He had seen him lifting the *Toka* upwards whereafter he got frightened and ran away therefrom to bolt himself in a room.

The sequence of the events, given by all those prosecution witnesses, who were cited as eye witnesses to the occurrence, but have refused to identify the appellant in the court as the same person who had attacked the Principal, are the facts indicating the occasions, cause and the effect of the relevant facts necessary to determine as to whether or not it was the appellant who had attacked the Principal of the School on 3.2.1999 with a *Toka*, as a result whereof he succumbed to the injuries received in the incident.

The statement of these witnesses corroborate the version of the incident as narrated by PW 1-

Rajidner Singh, both in his statement in the Court as also in his written report to the police, on the day of the occurrence, barring, however, appellant's identification as the same person who had attacked the Principal on the day of occurrence.

It is no doubt true that none of the prosecution witnesses have deposed to their having actually seen the appellant hitting the deceased with a *Toka* on the day of occurrence, yet the sequence of events narrated by these witnesses, rule out completely the possibility of some one else's, other than the appellant, attacking the deceased.

The appellants' act of having lifted the *Toka* to attack the Principal, having been witnessed by PW-1 Rajinder Singh, the running of a Sikh boy from the school with a *Toka* in his hand, and the teachers and other employees, present in the school at that time, finding the Principal in an injured condition having received injuries with sharp edged weapon, after the exit of the Sikh boy from the school with a *Toka* in his hand, lead to the only conclusion that it was the

appellant and the appellant alone, who was the author of the injuries found on the person of the deceased.

According to PW 1 Rajinder Singh, the only person who was LAST SEEN in the Principal's room was the appellant with a *Toka* in his raised hand to attack the Principal. The Principal was immediately thereafter found having injuries with sharp edged weapon in the school by all those who were present there. These circumstances, taken together, amply demonstrate that it was the appellant and appellant alone, who had injured the deceased with the *Toka* in his hand and none else.

The first plea of the appellant's learned counsel, that the prosecution had failed to lead evidence that the appellant had hit the deceased at his office with a *Toka*, cannot, thus, be sustained because the course of events narrated by the prosecution witnesses and the appellant having been seen last with the Principal with an attacking mood and having a *Toka* in his hand, immediately

whereafter the Principal was found having injuries with sharp edged weapon, proved beyond any reasonable shadow of doubt that it was the appellant and none else who was responsible for causing the injuries on the person of the Principal.

The second ground of the attack to the impugned judgment and order in question, too, is found to be without any substance, in that, PW-1 Rajinder Singh's statement is found worthy of credence and his presence on spot at the time of occurrence has been duly proved by the prosecution from the statement of all the eye witnesses who have, in unambiguous terms, stated about his presence in the school on the day of the occurrence.

Coming to the third submission of appellant's learned counsel, it is found that the attesting witnesses to the Disclosure statement have not supported the making of the statement by the appellant, as indicated in EXPW/VP and the recovery of *Toka* at the instance of the appellant, pursuant to the making of the Disclosure statement,

yet the factum of appellant's having made the Disclosure statement and got the weapon of offence recovered from a place which he alone knew, is proved by the Investigating Police Officer, who had drawn the Disclosure Statement and the Seizure Memo. The trend of the cross-examination of the Investigating Police Officer indicates that he has not been questioned by the appellant as to appellant's making the Disclosure Statement and recovery of the weapon of offence pursuant thereto. We do not find any material in the cross-examination of the investigating Police Officer to discredit him on the question of appellant's having made disclosure to him and his recovering the weapon of offence pursuant thereto.

Merely because PW-39 is a Police Officer, would not render his statement suspicious, as sought to be projected by the appellant's learned counsel, in that, a Police Officer too is a competent witness and his statement cannot be brushed aside merely because he is a Police Officer entrusted with

the duty to investigate the crime, UNLESS proved to be otherwise unacceptable for one or the other reasons. The status of a witness as a police officer would not, of itself, affect the acceptance of his statement because the law in force does not contemplate any distinction in the statement of a police officer or for that matter of a civilian. It is only a rule of caution that while appreciating the statements of the Police Officers, investigating a crime, that the courts have to be careful in accepting the statement, as is required to be done in case of interested witnesses.

After going through the statement of the Investigating Police Officer, we have not been able to find any such material therein, on the basis whereof the making of Disclosure Statement by the appellant and seizure of the weapon of offence at his instance be doubted. The third submission made by appellant's learned counsel, too therefore, fails and is accordingly rejected.

We do not find merit in even the fourth submission of appellant's learned counsel, in that, no Test Identification Parade was required to be conducted for the identification of the appellant, as PW-1 Rajinder Singh had seen the appellant in the broad day light, not only once but thrice on the day of the occurrence in the school and had further identified him when his photograph appeared in the Newspaper on the second day of the occurrence. The capacity of the witness to identify the appellant as the same person who was seen by him with a Toka in his hand in the Principal's room, having not been questioned in the cross-examination, we do not find any difficulty in accepting his statement, holding that there was no need to carry out any Test Identification Parade in the case as the appellant stood properly identified by PW-1 Rajinder Singh, as the same person who had come to the school, met him when he was delivering lecture in the class room and was possessing a Toka in his hand while

arguing with the Principal in his office chamber, on the day of the occurrence.

Coming to the last submission of the appellant's counsel, although we find that the police has anti-timed the FIR reflecting it to have been lodged at 2 p.m., when it is stated to have reached the Police Station after 4 p.m., but that, by itself would not, in our opinion, affect, in any way, the veracity of the prosecution case because of the unnecessary anti-timing of the FIR by the over zealousness of the officer, in indicating the FIR to have been made at 2 p.m., rather than at 4 p.m. to demonstrate its prompt lodging, avoiding criticism which the police officers usually face for omitting to lodge police reports with promptitude.

Even otherwise, there is no reason to disbelieve the prosecution story, as indicated in the FIR, for, what we find from the records, is, that the Special Report under Section 157 Cr. P. C., in the case, had reached the Chief Judicial Magistrate,

Jammu, on the second day of the occurrence, i.e., 04.02.1999, without any loss of time.

The motive of the appellant to kill the Principal, for the latter's refusal to issue certificate demonstrating completion of practical in Physics and Chemistry for the 12th Class by the appellant's co-accused, Deep Inder Singh, too stands proved from the statements of the cited eye witnesses and PW-1 Rajinder Singh.

That apart, the appellant has not tendered any explanation about the presence of the blood on the clothes which he was wearing at the time of his arrest and which were found smeared with blood, of the group of the deceased as proved by PW-27, H.C. Bhagat by his Report EXPW-KKP.

Another piece of evidence produced by the prosecution in the case, indicating the blood of the same group as that of the deceased, on the *Toka* recovered at the instance of the appellant, pursuant to his Disclosure Statement, has remained unexplained by the appellant.

In view of the above discussion, we are of the view that the prosecution has successfully proved its case from the statement of its witnesses and the material placed on the records, proving that it was the appellant, and none else, who had struck the deceased Principal at his office chamber on 03.02.1999 at about 2 p.m., as a result whereof, he succumbed to the injuries, which he had received at the hands of the appellant with a *Toka* seized in the case, which according to PW-29 Dr. Anayatullah Sheikh, could have caused the injuries found on the person of the deceased.

Finding no sustainable reason or ground to disbelieve the statement of PW-1 Rajinder Singh, which finds support and corroboration from the statements of other prosecution witnesses, and the material placed on the records, we uphold the findings and the conviction recorded by the trial court against the appellant.

Accordingly, confirming the sentence proposed by the trial court and allowing the Confirmation

Reference, we would dismiss the appellant's appeal, directing the Registrar Judicial to send a copy of this judgment, under the seal of the Court, to the trial court.

(J. P. Singh)
Judge

(Hakim Imtiyaz Hussain)
Judge

JAMMU:
24.08 .2009
Tilak, Secy.

