

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : February 24, 2014

DECIDED ON : May 30, 2014

+ CRL.A.65/2000

KANCHAN SINGH

..... Appellant

**Through : Mr.Sudhir Nandrajog, Sr.Advocate
with Mr.Sanjeev Sharma, Advocate.**

VERSUS

STATE

..... Respondent

Through : Mr.M.N.Dudeja, APP for the State.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 25.11.1999 of learned Additional Sessions Judge in Sessions Case No.206/97 arising out of FIR No.264/95 registered at police station Tilak Nagar by which the appellant was convicted under Section 308/326/324/34 IPC. By an order dated 04.12.99, he was awarded RI for seven years with fine ₹25,000/- under Section 308/34 IPC; RI for ten years with fine ₹25,000/- under Section 326/34 IPC and RI for three years with fine ₹5,000/- under section 324/34 IPC. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 14.04.1995 at about 5.30 pm in the street opposite House No.3B/103, Vishnu Garden, the appellant sharing common intention with his sons Sukhvinder Singh and Harvinder Singh inflicted injuries to Raj Rani, Deputy Singh and Bhaktawar Singh. The police machinery swung into action when information about the incident was conveyed and DD No.12 (Ex.PW-15/A) was recorded at 06.20 pm at police post Khyala. SI Jagdish Chander (PW-14) to whom the investigation was entrusted lodged First Information Report after recording complainant-Raj Rani's statement (Ex.PW-1/A) from the hospital by sending rukka (Ex.PW-14/A). Statements of witnesses conversant with the facts were recorded. The appellant and his sons Sukhvinder Singh and Harvinder Singh were arrested and crime weapons were recovered pursuant to disclosure statements. After completion of investigation, a charge-sheet was filed against the appellant and his sons, they were duly charged and brought to trial. The prosecution examined 16 witnesses in all. In their 313 statements, the accused persons denied their complicity in the crime and pleaded false implication. They raised the plea of 'alibi' and claimed that on the relevant date, they were present in village Biggar, Fatheabad (Hissar) at Gurudwara Teg Bahadur to

perform 'kirtan'. DW-1 (Dalbir Singh) and DW-2 (Ajit Singh) appeared in defence. The trial resulted in their conviction. Being aggrieved and dissatisfied, the appellant has preferred the appeal. It is pertinent to note that Sukhvinder Singh expired in Tihar Jail on 31.05.2000. Co-convict Harvinder Singh also expired during the pendency of CrI.A.No.64/2000.

3. Learned Sr.counsel for the appellant urged that the trial court did not appreciate the evidence in its true and proper perspective and fell in grave error in relying upon the testimonies of interested witnesses without independent corroboration. The trial court ignored the vital inconsistencies, discrepancies and improvements emerging in their statements. PWs deviated from their earlier statements recorded under Section 161 Cr.P.C. and were duly confronted with the material omissions. It is unclear which crime weapon was used by which of the assailants. Originally, the story in the FIR was that the appellant was holding a 'danda' throughout the incident but during deposition in the court, the 'danda' was changed into 'Khanda' by the prosecution witnesses. They gave conflicting statements about the exact place of the occurrence. Ocular testimony is at variance with the medical evidence. The trial court without any valid reasons declined to accept the appellant's valid defence whereby they had categorically asserted their presence in a

Gurudwara at village Biggar, Fatheabad. Learned Senior counsel adopted alternative plea to modify the sentence order as the appellant has lost his two sons and there is nobody else to take care of him in old age. After seeking instructions from the appellant, he voluntarily offered to pay ₹ 2.5 lacs as compensation to the victims without prejudice. Learned Additional Public Prosecutor urged that the prosecution witnesses who sustained grievous injuries on their bodies corroborated each other on material aspects and there are no sound reasons to disbelieve them.

4. The occurrence took place at around 05.30 pm on 14.04.1995. DD No.12 (Ex.PW-15/A) was recorded in promptitude at around 06.20 pm on getting information regarding use of swords at B/83 Vishnu Garden. SI Jagdish Chander (PW-14), along with Ct.Satbir went to the spot and came to know that the injured had already been taken to Deen Dayal Upadhyay hospital (in short DDU hospital). Leaving Ct.Ghasi Ram to safeguard the spot, he went to DDU hospital and found Deputy Singh, Bhaktawar Singh and Raj Rani admitted there for treatment. Deputy Singh and Bhaktawar Singh were 'unfit' to make statements. The Investigating Officer lodged First Information Report after recording complainant-Raj Rani's statement (Ex.PW-1/A) vide rukka (Ex.PW-14/A) at around 08.15 pm. MLC (Ex.PW-12/B) (of Raj Rani)

records her arrival time at DDU hospital at 06.20 pm with the alleged history of 'assault'. In her statement (Ex.PW-1/A) given to the police at the earliest available opportunity, Raj Rani gave detailed account of the incident and implicated the appellant and his sons for inflicting injuries to her and her sons Deputy Singh and Bakhtawar Singh. She attributed specific and definite role to each of them and also assigned ill- motive for causing injuries. Since the FIR was lodged without any delay, there was least possibility of the complainant to fabricate or concoct a false story in such a short interval. In the case of *Jail Prakash Singh v.State of Bihar & Anr.* 2012 CRI.L.J.2101 the Supreme Court held:-

“The FIR in criminal case is vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it looses the advantage of spontaneity; danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

5. On 14.04.1995 Raj Rani (MLC-E-23650) was referred to PW-8 (Dr.Abhitabh Bhasin) for radiological examination. After scanning X-ray films (Ex.PW-8/A and Ex.PW-8/B), he found a fracture on her left occipital bone as per report (Ex.PW-8/C). He also examined X-ray films (Ex.PW-8/D and Ex.PW-8/E) (of Deputy Singh) and found fracture scaphoid bone and 3rd metacarpal i.e. a bone connecting the hand with the forearm and of 3rd finger vide report (Ex.PW-8/F). He also proved reports (Ex.PW-11/A, Ex.PW-11/B and Ex.PW-11/C). PW-12 (J.C.Vashisht), Record Clerk, DDU hospital, identified signatures of Dr.Jyoti Mehta, Dr.Sanjay Rohtagi and Dr.M.N.Mansoor on MLCs Ex.PW-12/A, Ex.PW-12/B and Ex.PW-12/C. There are no sound reasons to disbelieve the testimony of expert witness whereby the victims were found to have suffered injuries on vital parts of the body. Injuries suffered by the victims, in fact, are not under challenge. Appellant's only plea is that he and his sons were not the author of the injuries and they all were away at a far long distance at the relevant time completely excluding their presence at the spot

6. To infer the appellant's involvement, testimony of star witness PW-1 (Raj Rani) is relevant and crucial. She proved the version given to the police at the first instance without major variation. She

testified that at about 05.30 pm, when she and her sons were going to purchase vegetables, Kanchan Singh, standing on the roof of his house, raised an alarm about fall of her son Deputy Singh from the scooter. When her son was about to pick the scooter, Kanchan Singh came there with a 'khanda' (double-edged sword) and dealt a blow aiming at his neck. Her son avoided the assault by moving his neck other side and the 'khanda' hit on his left cheek. Kanchan Singh then called his sons Sukhvinder Singh and Harvinder Singh. Meanwhile, her son Bakhtawar Singh came at the spot. When he (Bakhtawar Singh) was in the process to lift Deputy Singh, Sukhvinder Singh gave a sword blow to him as a result of which his three fingers were severed. Another blow was given on the left arm resulting in its hanging. Harvinder Singh caught hold Deputy Singh to prevent his escape from the spot. Ignoring her request with folded hands not to hit her son, Kanchan Singh gave a 'Khanda' blow on her head and back. Kanchan Singh threatened the public, who pleaded to spare them not to come forward or else they would be treated in the same manner. They were taken to DDU hospital. She identified Khanda (Ex.P-1), Sword/ Kirpan (Ex.P-2) used as crime weapons. In the cross-examination, she was confronted with statement (Ex.PW-1/DA) where certain facts deposed in examination-in-chief did not find mention. She elaborated that

the incident had taken place in the street. She claimed that they and not Kanchan Singh had lodged previous complaints. She denied the suggestion that accused persons had gone to a Gurudwara in village Biggar, Fatheabad and were not present at the spot.

PW-2 (Deputy Singh), other injured, corroborated her mother's testimony and clarified that on 14.04.995 at about 05.30 pm, he and his mother had started from the house to purchase some goods from the market. Since the road was rough, her mother left the house on foot to board the motor-cycle at a distance. The house of the accused persons was situated in the same gali after 2/3 houses from their house. He further deposed that when he reached in front of Kanchan Singh's house, while standing on the roof, he exhorted 'Thahar ja' after abusing him. He applied breaks as a result of which a stone came under the wheels and the imbalance caused its fall. He saw Kanchan Singh coming towards him and attacked him with a khanda in his hand on his neck. He succeeded to avoid it twice but at the third attempt, Kanchan succeeded to hit him on left side of his face. Defying her mother's request not to kill him, he called his sons Sukhvinder Singh and Harvinder Singh who arrived at the spot armed with a talwar (sword) and axe respectively. Bakhtawar Singh reached the spot on hearing his cries. Kanchan Singh again hit him on his

head with the 'Khanda'. He saved it with his left hand but his thumb and first two fingers were severed and he started bleeding from his hand and face and became unconscious. Later on, he came to know that Bakhtawar's two fingers were cut off by the accused. He identified Khanda (Ex.P-1) and kirpan (Ex.P-2) used in the crime and their blood-stained clothes Ex.P-3 (1 to 5); Ex.P-4 (1 to 2) and Ex.P-5 (1 to 2). In the cross-examination, statement (Ex.PW-2/DA) was put and he was confronted with the facts which did not find mention therein. He further disclosed that the quarrel which originated at 05.30 p.m. continued for about 30 minutes. He came to know about the severance of three fingers of Bakhtawar in the hospital. He denied that no quarrel took place with the accused persons and they were falsely implicated in the incident.

PW-3 (Bakhtawar Singh) another victim implicated Kanchan Singh and his sons for causing injuries to him, his brother Deputy Singh and mother Raj Rani. He deposed that when he tried to intervene to save his brother, Harvinder Singh grappled with him and Sukhvinder Singh who was armed with a sword gave a blow which he received on his left hand as a result of which his three fingers were completely cut off. Sukhvinder Singh gave another blow of sword which cut off half of the elbow resulting its hanging with the arm. He further deposed that after

causing sword injuries, both Harvinder and Sukhvinder inflicted the injuries on his leg. Kanchan Singh gave a 'Khanda' blow on Raj Rani's head and back. In the cross-examination, the witness stated that he became unconscious after sustaining injuries and did not know who took him to the hospital. He was also confronted with the statement (Ex.PW-3/DA) where certain facts deposed for the first time before the court were found omitted therein.

7. In the cross-examination of these injured witnesses, many questions have been put but the defence could not brought on record that the appellant and his sons were not present at the crime spot or they had not participated in the commission of the crime in question. Only there are certain minor contradictions in the evidence of these witnesses regarding specific evidence about the nature of assault given by the particular accused to a particular victim. Such minor contradictions are bound to occur where a group of persons had attacked three persons. In such a situation, it would not be reasonable to expect that every witness should describe with mathematical accuracy about each and every injury sustained by all the injured persons giving minor details. The totality of the evidence of a witness has to be taken into consideration for fixing the probative value. In the instant case, the unarmed victims who were

brutally assaulted with sharp weapons, were taken by surprise having no inkling about the impending danger. The altercation ensued all of a sudden. Multiple wounds were inflicted to all of them in quick succession. In such a scenario it was not expected from the victims who were under great mental shock and horror to tell the exact sequence of the injuries and the weapon used. All the victims were consistent about the presence of the assailants and injuries caused by them to all of them with sharp weapons. They have given cogent, credible and trustworthy version about the participation of all of them sharing common intention. Despite cross-examination, their testimony about the role attributed to the appellant and his sons could not be shattered. Improvements and inconsistencies in the evidence of eye-witness regarding the part played by each of the accused would not be a ground to disbelieve them when having regard to the number of injuries on them, it would have been impossible to give a detailed account of the incident. There cannot be mathematic accuracy as to how many blows were given by whom. The prosecution case would fail only when inconsistencies are major and go to the root of the matter. The trial court observed and noted the injuries suffered by the victims as demonstrated during their examination in the court. PW-1 (Raj Rani) had mark of injuries on her head; PW-2 (Deputy

Singh) had mark of injury on the face from temporal region to chin and his left hand had only two fingers; PW-3 (Bakhtawar Singh) had only a thumb and a finger in the left hand and injury on elbow, left leg. Ocular testimony of these witnesses is in consonance with medical evidence referred above. The Court has no valid reasons to disbelieve the testimonies of all these witnesses who would be least disposed to falsely implicate the appellant and his sons or substitute them in place of real offenders. Involvement of the appellant and his associates had emerged soon after the incident and they were specifically named in the FIR.

8. Plea of 'alibi' set up by the appellant and his sons, for valid reasons, was out-rightly rejected by the trial court. When a plea of alibi is raised by an accused, it is for him to establish the said plea by positive evidence. The burden is on the accused to show that he was somewhere else other than the place of occurrence at the time of incident. The burden on the accused is undoubtedly heavy. This flows from Section 103 of Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. Plea of 'alibi' must be proved with absolute certainty so as to completely exclude the possibility of his presence at the time and place where the incident took place. In the present case, the appellant examined DW-2

(Ajit Singh) who claimed that the appellant and his sons were sent to perform 'kirtan' in a gurudwara at village Biggar, Fatehabad (Hissar) on 13/14.04.1995 vide certificate (Ex.DW-2/A) and they reported back on 16.04.1995. In the cross-examination, he admitted that document (Ex.DW-2/B) was a photocopy of the carbon copy. Carbon copy (Ex.DW-2/B) was not on the letter head of Delhi Sikh Gurudwara Management Committee. It was a loose sheet and did not form part of any register and did not bear the number of any consecutive series. He also admitted that the letter did not bear the signatures of any of the accused. Ex.DW-2/B, is a photocopy of a carbon copy original of which has not been brought on record. Contents of this document reveal that the appellant's group was assigned a duty to report at village Biggar Distt. Fatehabad, on 14.04.95 to perform kirtan. They were directed to reach there by the evening of 13.04.95 and to contact Gurbaksh Singh Mukhtar. The appellant did not produce any evidence to prove that pursuant to this letter, he and his sons had performed any journey or reported their arrival at a particular time to perform kirtan in the Gurudwara on 13.04.95 or 14.04.95. It is not revealed as to by which mode they had gone to the said village and when the return journey was undertaken. They did not examine any witness from the said Gurudwara/village to prove their physical presence at the

relevant time at the said place to perform the kirtan. There is nothing on record if any remuneration was given to them. The authenticity of document (Ex.DW-2/B) is highly suspect and cannot be believed. The appellant and his son Sukhvinder Singh were arrested in Delhi on 14.04.1995 itself and personal search memos Ex.DW-14/D & 14C were prepared. Harvinder Singh could be arrested on 09.05.95 vide personal search memo Ex.DW14/F. Kanchan Singh was in custody on 16.04.95 and it belies DW2's statement that appellant and his sons had reported their arrival in the Gurudwara at Delhi on 16.04.95. Once the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence of PW-1, 2 and 3, it was incumbent upon the appellant to prove plea of 'alibi' with absolute certainty which he utterly failed. The plea of 'alibi' seems to have been set up to avoid conviction. False explanation given by the appellant in 313 statement about his presence in village Biggar is an additional incriminating circumstance to connect him with the crime.

Admittedly, there was long standing bitter animosity between the parties. The appellant and his sons nurtured a grievance due to election of Raj Rani's husband as President in the Gurudwara where the appellant and his sons used to sing songs (Ragies) in praise of God. They

were distantly related to each other and lived in the same vicinity. The victims had no ulterior motive to falsely implicate them for the grievous injuries sustained by them.

9. In the light of the above discussion, I have no hesitation to uphold the findings of the trial court on conviction. Turning to the plea to take lenient view, it is true that the appellant has lost his two young sons during the pendency of the appeal; he has suffered ordeal of trial/appeal for about 19 years; offer has been made voluntarily to pay ₹ 2.5 lacs to the victims as compensation and he has also remained in custody for six months and three days besides remission for three months and three days. All these mitigating circumstances, however, do not dilute the gravity of the offence whereby the appellant and his sons inflicted brutal injuries without any provocation to the unarmed victims including a lady with sharp weapons including 'khanda' kept as religious insignia. The injuries were caused on the auspicious day of 'Baisakhi'. Long pendency of a matter by itself would not justify lesser sentence. Offer of compensation after 19 years would not heal the wounds which physically crippled three innocent victims for no fault of theirs. Considering the mitigating and aggravated circumstances, the sentence order is modified to the extent that the appellant shall undergo RI for five years with fine ₹5,000 and failing

to pay the fine to undergo SI for one month under Sections 308/326 IPC each; and RI for two years with fine ₹2,000/- and in default of payment of fine to undergo SI for 15 days under Section 324/34 IPC. All the sentences shall operate concurrently. Needless to state, he will avail benefit under Section 428 IPC. The appellant shall pay compensation of ₹1 lac to the victims; deposit it within fifteen days before the Trial Court and it shall be released to the victims as a token of compensation after due notice in equal proportions.

10. The appeal stands disposed of in the above terms. The appellant shall surrender before the Trial Court on 06.06.2014 to serve the remaining period of sentence. The Registry shall transmit the Trial Court records forthwith along with the copy of this order.

(S.P.GARG)
JUDGE

May 30, 2014/sa