

ROOP SINGH AND OTHERS

v.

THE STATE OF PUNJAB

August 28, 1973

[H. R. KHANNA AND A. ALAGIRISWAMI, JJ.]

Code of Criminal Procedure 1898, s. 417—Reversal by High Court of verdict of acquittal passed by trial court—Principles to be observed by High Court.

The appellants were tried for murder and causing grievous hurt. They were acquitted by the Trial Court. The High Court however, relying on two of the witnesses produced by the prosecution, convicted them. In appeal by special leave to this Court it was contended that in reversing the verdict of acquittal the High Court had acted outside its jurisdiction under s. 417 Criminal Procedure Code and had not observed the principles laid down by this Court.

Dismissing the appeal,

HELD : It is well settled that the High Court in appeal under s. 417 of the Code of Criminal Procedure has full power to review at large the evidence upon which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed on that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witness. [534E]

Bishan Singh & Ors. v. The State of Punjab, Cr. App. No. 125/1972 decided on August 9, 1973, referred to

The Judgment of the High Court in the present case did not any way run counter to the above principles and called for no interference.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 189 of 1971.

Appeal by special leave from the Judgment and Order dated February 26, 1971, of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No. 96 of 1968.

Nuruddin Ahmed and *U. P. Singh*, for the appellants.

O. P. Sharma, for the respondent.

The Judgment of the Court was delivered by

KHANNA, J. This is an appeal by special leave by Roop Singh (30), Paranjian Singh (42), Nirbhai Singh (22), Maghar Singh (56), Tara Singh (30) and Naib Singh (25) against the judgment of the Punjab & Haryana High Court. The six appellants were tried along with Major Singh (14), Inder Singh (50) and Teja Singh (42) in the court of the Additional Sessions Judge Barnala on various charges in connection with an occurrence which resulted in the death of three persons, Mastan Singh (55), Amar Singh (55) and Mohinder Singh (26) and injuries to Bachan Singh (PW 9). Learned Additional Sessions Judge acquitted all the nine accused. On appeal by the State

A of Punjab, the High Court convicted the six accused appellants under
section 302 read with section 149 and section 326 read with section
149 Indian Penal Code and sentenced each of them to undergo im-
prisonment for life on the first count and rigorous imprisonment for
a period of three years on the second count. Both the sentences
were ordered to run concurrently. The State appeal against the
B acquittal of Major Singh, Inder Singh and Teja Singh was dismissed.

The case for the prosecution is that there was a long standing
enmity between the party of the accused and that of the three deceased
persons. In 1964 Kaka Singh, brother of Roop Singh accused, and
Nagender Singh, father of Major Singh accused and brother of Inder
Singh accused, were murdered. Twelve persons, included Atma
Singh Sarpanch PW, Bachan Singh PW and Mohinder Singh deceased
C were prosecuted in the case relating to the murder of Kaka Singh
and Nagender Singh. Four accused in that case, including Atma
Singh, Bachan and Mohinder Singh were acquitted, while the
remaining accused were convicted and sentenced to undergo imprison-
ment for life. Another cause of strained relations between the parties
was that Hazura Singh, father of Paranj Singh accused, had been
murdered about 12 or 13 years ago. Nek Singh, Bachhattar Singh
D and Bikar Singh, sons of Amar Singh deceased, were convicted by
the trial court in the case relating to the murder of Hazura Singh, but
they were acquitted on appeal by the High Court. Security proceed-
ings were also started by the police against the parties on account of
their strained relations.

E Mastan Singh deceased, it is stated had given his land on batai to
Amar Singh deceased. The maize crop from the land was thrashed
on November 7, 1966 at the mill of one Dalip Singh at a short
distance from the abadi of village Kangar to which the parties
belonged. The thrashing work was complete by 3 p.m. At about
5.30 p.m. on that day Amar Singh deceased and his son PW Gurmail
Singh (16) as well as Mastan Singh deceased, his son Mohinder
F Singh deceased and nephew PW Bachan Singh (45) were present at
the mills, as they were engaged at that time in removing the thrashed
maize. While these persons were busy in weighing and tying the
maize in bundles, the nine accused came there from the direction of
the village abadi. Roop Singh, Inder Singh and Major Singh were
armed with barchhas, while Teja Singh had a gun. The remaining
accused carried gandasas. Naib Singh, accused, it may be stated,
G is the son of Teja Singh. As soon as the accused arrived there, Roop
Singh shouted that the assailants of Kaka Singh and Nagender
Singh would not be spared. Naib Singh then gave a gandasa blow
on the head of Bachan Singh. The wrong side of the gandasa struck
the head of Bachan Singh, whereafter another gandasa blow was given
by Tara Singh accused on the left wrist of Bachan Singh. Naib Singh
then aimed a gandasa blow at Bachan Singh and he was struck by
H the lathi portion of that gandasa. Mastan Singh deceased then ran
towards a well. Mastan Singh had hardly covered a distance of
8 or 9 karams, when Teja Singh, who was holding a gun, came in front
of Mastan Singh and asked him to stop. Mastan Singh took shelter

behind the raised wall of the well but he was given a barchha blow in the neck by Roop Singh. Naib Singh, Maghar Singh and Tara Singh then gave gandasa blows to Mastan Singh. After Mastan Singh had fallen down, further injuries were caused to him by Roop Singh, Tara Singh, Maghar Singh and Naib Singh with their respective weapons. Mastan Singh died at the spot. Mohinder Singh deceased tried to run towards village Dina but he was surrounded at a distance of about 18 karams by Nirbhai Singh, Paranjian Singh, Inder Singh and Major Singh. Mohinder Singh was given a gandasa blow on his head by Nirbhai Singh whereafter all the above mentioned four accused caused further injuries to Mohinder Singh with their respective weapons. Mohinder Singh too died at the spot. After giving blows to Mastan Singh, Tara Singh, Roop Singh, Naib Singh and Maghar Singh ran after Amar Singh and surrounded him near the house of one Tara Singh refugee. Tara Singh and Maghar Singh gave gandasa blows on the head of Amar Singh. A barchha blow was given in the abdomen of Amar Singh by Roop Singh, while Naib Singh gave a gandasa blow on the neck of Amar Singh. Further injuries were caused to Amar Singh by these four accused and he too died at the spot. The occurrence, it is stated, was witnessed by Bahadur Singh (PW 3), Bachan Singh (PW 9), Gurmail Singh (PW 12) and Atma Singh Sarpanch (PW 15). All the nine accused then went in pursuit of Atma Singh Sarpanch who ran inside the village abadi. Bachan Singh also ran to the house of Gajjan Singh, while Gurmail Singh ran to his own house. Atma Singh Sarpanch could not, however, be secured by the accused.

Accompanied by Gajjan Singh, Bachan Singh, according to the prosecution, went through a circuitous route to police station Dialpura, at a distance of two miles from the place of occurrence and lodged there report P.J. at 7 p.m. Bachan Singh was thereafter sent to hospital at Bhagta, where his injuries were examined by Dr. Surjit Singh at 10-40 p.m. Bhagta is at a distance of 7 or 8 miles from the police station. After report about the present occurrence had been lodged at the police station, Sub Inspector Jagjit Singh left the police station and arrived at the place of occurrence at about 8.15 p.m. The Sub Inspector found the three dead bodies lying there without being guarded by any one. As it was late in the night, the Sub Inspector could not prepare inquest reports relating to the dead bodies. On the following morning, the Sub Inspector prepared inquest report. Blood-stained earth was taken into possession from the places where the dead bodies were lying. Post mortem examination on the dead bodies was performed by Dr. Tejinder Singh at Mandi Phul at distance of 14 miles from the place of occurrence on November 9, 1966. The nine accused were thereafter arrested and the weapons of offence were recovered from them.

At the trial Bahadur Singh (PW 3) Bachan Singh (PW 9), Gurmail Singh (PW 12) and Atma Singh (PW 15) gave eye witness account of the occurrence and supported the prosecution case. The accused, in their statements under section 342 Code of Criminal Procedure,

- A denied the prosecution allegations about their having participated in the present occurrence. According to the accused, they had been falsely involved in this case due to enmity.

The trial court did not accept the evidence of the eye witnesses. The evidence about the recovery of the weapons of offence was also not accepted. The trial court was further of the view that the injuries
B which were found on the person of Bachan Singh PW were not received during the course of the present occurrence. There was also delay, in the opinion of the trial court, in lodging the first information report with the police.

The High Court in appeal, on consideration of the evidence, found that the testimony of Bachan Singh and Gurmail Singh was natural and probable. The High Court did not place reliance upon the evidence
C of Bahadur Singh and Atma Singh as, in the opinion of the High Court, the reason given by those witnesses for their presence at the scene of occurrence was not convincing. As regards the injuries on the person of Bachan Singh, the High Court was of the view that they were received by him during the course of the present occurrence. The High Court agreed with the trial court that there was delay in lodging the first information report, but that circumstance, in the opinion of the
D High Court, was not sufficient to discard the evidence of Bachan Singh and Gurmail Singh. The case against Teja Singh, Inder Singh and Major Singh, in the opinion of the High Court, was not free from doubt. The High Court in this context observed that Teja Singh, though armed with a gun had not used it. Regarding Inder Singh and Major Singh who were alleged to be armed with barchhas, the High Court observed that only one stab wound had been found on the bodies of the three
E deceased persons and the same was attributed to Roop Singh. In the result, the six appellants were convicted and sentenced as above.

In appeal before us Mr. Nuruddin on behalf of the appellants has argued that the trial court on consideration of the evidence had come to the conclusion that the same was not reliable. The High Court, it is submitted, should not have, in the circumstances, interfered with the
F judgment of acquittal of the trial court. As against that, Mr. Sharma on behalf of the State has contended that there was no cogent ground for the trial court to reject the evidence of Bachan Singh and Gurmail Singh. The High Court, according to the learned counsel, accepted the evidence of those two witnesses and interfered with the judgment of acquittal for substantial reasons.

It has not been disputed before us that a number of injuries were
G caused to Mastan Singh, Amar Singh and Mohinder Singh deceased during the course of the occurrence as a result of which they died. Dr. Tejinder Singh, who performed post mortem examination on the three dead bodies, found nine incised wounds and 14 abrasions on the body of Mohinder Singh deceased. There was also a post mortem wound on the body due probably to eating by some animal. Two of the incised wounds, one of which was on the lower part of the neck
H and had resulted in the cutting of the muscles, oesophagus and trachea, and the other on the right side of the abdomen, were individually sufficient to cause death. Mastan Singh had five incised wounds, four contusions and five abrasions. One of the incised wounds, which was on

A
the right side of the neck and had resulted in the cutting of the third vertebra and the main vessels of the right side of the neck, was individually sufficient to cause death in the ordinary course of nature. Amar Singh had five incised wounds, one stab wound, two lacerated wounds, one contused wound, three abrasions and an injury which had resulted in fracture of the left radius and ulna. Two of the injuries of Amar Singh, namely, an incised wound which had resulted in the cutting of the skull bones completely on the back side of the head, and a stab wound with lacerated margins on the right side of the abdomen, were individually sufficient to cause death in the ordinary course of nature, Omantum under the stab wound in the abdomen had also a wound measuring $\frac{1}{2} \times \frac{1}{2} \times \frac{1}{2}$ ".

B

C
The nature of the injuries which were found on the bodies of the three deceased persons leaves no doubt that the assailants intended to cause their death. According to the case of the prosecution, the injuries to the three deceased persons which resulted in their death had been caused by the appellants. The appellants are further stated to have caused injuries to Bachan Singh PW. The appellants have denied these allegations. The High Court in holding the prosecution allegations in this respect to be well founded has relied upon the evidence of Bachan Singh (PW 9) and Gurmail Singh (PW 12). The High Court disagreed with the learned Additional Sessions Judge who was of the view that the above mentioned two witnesses were not present at the scene of occurrence. There were, in our opinion, good and weighty reasons for the High Court to accept the evidence of Bachan Singh and Gurmail Singh and to disagree with the trial court in this respect. According to both Bachan Singh and Gurmail Singh, they were present at the mills of Dalip Singh along with the three deceased persons as they had to remove thrashed maize. Bachan Singh PW is the nephew of Mastan Singh deceased and had gone to the mills to assist in the removal of the maize from the mills premises. Gurmail Singh is the son of Amar Singh deceased and, as such, had been taken by Amar Singh for the purpose of thrashing and carriage of the maize. The evidence of Sub Inspector Jagjit Singh shows that he found two quintals and 35 kg of maize lying at the place of occurrence when he arrived there. The said maize was taken by the Sub-Inspector into possession. The evidence of the Sub-Inspector further shows that scale P5, weight measure of 5 kg P10, groom P11 and chajli P12 were also found there and were taken into possession. These articles, it would seem, were being used for the batai (division) of the maize as Mastan Singh's land had been cultivated on batai by Amar Singh. It is natural for a father in rural areas to take his son to a maize thrashing mills if the maize has to be carried home after being thrashed at the mills. The explanation given by Bachan Singh and Gurmail Singh regarding their presence at the scene of occurrence is, in our opinion, convincing and there appears to be no cogent ground to disbelieve their evidence in this respect. The fact that Bachan Singh had injuries on his person, which are alleged to have been received during the course of the present occurrence, lends further assurance to the testimony of Bachan Singh. We are not impressed by the suggestion on behalf of the accused appellants

D

E

F

G

H

A which seems to have found favour with the trial court that the injuries on the person of Bachan Singh were self-inflicted or self-suffered. Bachan Singh was found to have the following three injuries :

B “(1) Incised wound (margin clean cut) $2\frac{1}{2}$ " x $\frac{1}{2}$ " x 1" on the dorsum of left wrist joint cutting the tendons underneath and also cutting the head of ulna of left arm. The tendons were extensor tendon of left arm. The head of the ulna was cutting through and through.

(2) Lacerated wound (Martin's ragged) $1\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{2}$ " deep on the right side of the head on the posterior side, 4" from the right pinea.

C (3) Bruise reddish blue in colour, 3" x 1" with intervening area clear on the outer side of the right deltoid region."

D Enjury No. 1 after X-ray was declared to be grievous. It is also in evidence that Bachan Singh had to stay as an indoor patient in the hospital for 21 or 22 days because of the injuries received by him and that during that period he could not carry on his ordinary avocations of life. The nature of injuries on the person of Bachan Singh was such as would not, in our opinion, be normally suffered by a person with a view to create evidence regarding his presence at the scene of occurrence. We may mention in this context that no question was put to Dr. Surjit Singh on the point as to whether the injuries of Bachan Singh could be self-inflicted or self-suffered. It is also, in our opinion, highly improbable that after the murder of the three deceased persons, Bachan Singh instead of going to the police station would spend time on getting grievous and other injuries inflicted on his person with a view to show his presence at the scene of occurrence.

E The fact that Bachan Singh received these injuries on the evening of the day of occurrence cannot be disputed because Bachan Singh was found to have those injuries when he was examined at 10.40 p.m. by Dr. Surjit Singh at Bhagta at a distance of about 7 or 8 miles from police station Dialpura.

F It has been argued by Mr. Nuruddin that Bachan Singh and Gurmail Singh would run away and would not remain present near the scene of occurrence after the assailants commenced their attack. This submission, in our opinion, is not well-founded. Gurmail Singh is the son of Amar Singh deceased, while Bachan Singh is the nephew of Mastan Singh and cousin of Mohinder Singh. Gurmail Singh and Bachan Singh would naturally be interested to know the fate of their close relatives who were being attacked by the assailants.

G There would be consequently nothing surprising in the act of Gurmail Singh and Bachan Singh stopping at a safe distance and from there looking behind and seeing the assault on the three deceased persons. The High Court on careful scrutiny of the evidence of Bachan Singh and Gurmail Singh found the same to be natural and probable. We see no cogent ground to take a different view. The evidence of the above mentioned two witnesses has also been found by the High Court to be in accord with the medical evidence. It may be mentioned that the heights of Mohinder Singh, Mastan Singh and Amar Singh were 5 ft.-11 $\frac{1}{2}$ in., 6 ft-1 in. and 5 ft-10 in. respectively. All of them were

H

fairly well built. The fact that all the three of them were killed and a very large number of injuries were found on their bodies as also the fact that their fourth companion Bachan Singh too was injured shows that the number of assailants was large. We find in the circumstances no valid reason to disbelieve the evidence of Bachan Singh and Gurmail Singh that all the six appellants participated in the assault on the deceased persons as alleged by the prosecution.

Argument has been advanced on behalf of the appellants that the occurrence took place at a late hour when it had become dark and no one was in a position to fix the identity of the assailants. There is no force in the above argument because it is established by the prosecution evidence that the attack was made on the deceased persons when they were engaged in the removal of the maize. It is not likely that the deceased persons to whom the maize belonged would not remove the maize from the mills before it became dark. The fact that the deceased persons were killed before they could remove the maize shows that the occurrence took place at a time when it had not become dark. It is also not very likely that Bachan Singh would have been in a position to go to Bhagta primary health centre at 10.40 p.m. after lodging the report at the police station at Dialpura if, in fact, the occurrence had taken place after night fall. Some time must have also been taken by Sub Inspector Jagjit Singh in examining the injuries of Bachan Singh and preparing the injury statement P.C. regarding those injuries. The said injury statement too was sent to Dr. Surjit Singh at Bhagta when Bachan Singh was sent there for being examined by the doctor.

As mentioned by us recently in the case of *Bishan Singh & Ors. v. The State of Punjab*⁽¹⁾ it is well settled that the High Court in appeal under Section 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as (1) the views of the trial judge as to the redibility of the witnesses; (2), the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the allowance of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses. We have been taken through the judgment of the High Court and we find nothing in it which runs counter to the principles enunciated above. The judgment of the High Court, in our opinion, calls for no interference. The appeal consequently fails and is dismissed.

G.C.

Appeal dismissed.

(1). Cr. App. No. 125/1972 decided on 9-8-1973.