A

STATE OF PUNJAB

v.

HARI SINGH & ANR.

March 21, 1974

[M. H. BEG AND R. S. SARKARIA, JJ.]

B *Indian Penal Code—S.302, 307 read with S. 34—Murder—When the evidence of eye witnesses who were related to each other and the victims could be relied upon.*

The trial court had convicted the respondents u/s. 302/34 I.P.C. and u/s. 307/34 I.P.C. for the death of two persons—G&Z. The occurrence took place during the night between 18th & 19th June, 1969. The victims used to cultivate jointly with others. The respondents and the two acquitted accused persons were brothers who lived in the same village. It is said that there was enmity C between the deceased persons and the respondents. The prosecution case was that on the night of 18th June 1969, the respondents with two others attacked G&Z and as a result G died but Z survived.

The trial court had convicted the respondents but the High Court acquitted them. On appeal by the State, the main question was whether the three alleged eye-witnesses, P.W.3, P.W.4 & P.W.5 who were related to each other and the victims could be relied upon, when corroborated by other facts and circumstances.

D

Allowing the appeal,

HELD :—(1) It is a principle, common to all criminal appeals by special leave that this Court will refrain from substituting its own views about the appreciation of evidence if the judgment of the High Court is based on one of two alternative views each of which was reasonably open to the High Court to accept. If however, the High Court's approach is vitiated by some basically erroneous assumptions, or it adopts reasoning which, on the face of it, is E unsound, it may become the duty of this Court, to prevent a miscarriage of justice and to interfere with an order whether it be of conviction or of acquittal. [729F]

(2) In the present case, the trial court had accepted the testimony of 3 eye witnesses, despite the fact that they are relations of the victims. It has been repeatedly held by this Court that the mere fact that witness is related to the victim could not be a good enough ground for rejecting his testimony although it may be a ground for scrutinizing his evidence more critically and carefully F where facts and circumstances disclose that only relations have been produced and others, presumably independent witnesses, who were available, were not produced. [729 H]

The ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be unreliable or untruthful. In any particular respect, witnesses solemnly deposing on oath in the witness box during a trial upon a grave charge of murder, must be presumed to act with a full sense of responsibility of the consequences of what they state. It may G be that what they say is so very unlikely or unreasonable that it is safer not to act upon it or even to disbelieve them. [730 F]

In the present case, the evidence of Z who became unconscious due to fatal blows by the assailants, can be accepted when his evidence is strongly corroborated by medical and other evidence. Therefore, the present case is a fit case where this court will interefere.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 213 of 1970.

H

Appeal by special leave from the judgment and order dated the 17th June, 1970 of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No. 258 of 1970.

Harbans Singh, for the appellant. A

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

The Judgment of the Court was delivered by :

BEG, J. The State of Punjab has obtained special leave to appeal against the judgment of the High Court of Punjab and Haryana, acquitting the two respondents from charges under Sections 302 and 302/34 Indian Penal Code and under Sections 307/34 Indian Penal Code. The Trial Court had convicted the respondents under each of these two sections and sentenced Hari Singh to death under Section 302 Indian Penal Code and Gian Singh to life imprisonment under sections 302/34 I.P.C., and it had sentenced both to six years rigorous imprisonment and to pay a fine of Rs. 2,000/-, and, in default of payment of fine, to undergo further rigorous imprisonment for two years under Sections 307/34 I.P.C. B C

The occurrence which gave rise to the prosecution of the two respondents together with two others, Milkiat Singh and Dalip Singh, who were acquitted by the Trial Court, took place during the night between 18th and 19th June, 1969. The victims, Gian Singh, deceased, and his nephew, Zora Singh, P.W. 3, cultivated lands jointly with Bachan Singh, P.W. 5, his son Mukhtiar Singh, his two brothers Gian Singh and Sarwan Singh, and, Surjit Singh, P.W. 4, and Jagjit Singh, the brothers of Zora Singh and sons of Sarwan Singh. All of them also lived together in village Dhandri Kalan. The respondents and the acquitted accused persons are brothers who also lived in village Dhandri Kalan in District Ludhiana. It is said that there had been a fight between Hari Singh, respondent, and Gian Singh deceased in 19[illegible] which had been settled by the Panchayat. In 1969, sometime before the occurrence, another incident is said to have taken place. Jagjit Singh and Mukhtiar Singh, by show of force, were said to have carried away some "toori' in a cart to their house against the wishes of Hari Singh, respondent, and another person in his company. Undoubtedly, the motive disclosed was not be strong enough for a murderous assault of a rather brutal kind on Gian Singh and Zora Singh. This, however, is immaterial if the alleged eye-witnesses of the occurrence could be relied upon to establish the prosecution case. The whole question before the Courts was whether the three alleged eye witnesses, Zora Singh, P.W. 3, and Surjit Singh, P.W. 4, and Bachan Singh, P.W. 5, who are related to each other and the victims, as stated above could be relied upon, when corroborated by other facts and circumstances which may appear in the case, to sustain the conviction. D E F G

The prosecution case was that Gian Singh and Zora Singh had gone to their field for watering their sugarcane crop in it on the evening of 18th June, 1969. At about 9 p.m. Bachan Singh, P.W. 5, and Surjit Singh, P.W. 4, are said to have carried the meals for Gian Singh and Zora Singh, who were at their field situated about "100 karams" (nearly 100 paces) away from their tubewell, which was, as is usual, lit up by electric light. After that, Gian Singh and Zora Singh went to sleep a few feet from each other at their tubewell while Bachan Singh and Surjit Singh are said to have stayed on at the sugarcane H

A field nearby. At about mid-night, Zora Singh is said to have got up to urinate, and to have just laid himself down on his cot after urinating when he saw the respondents and Milkiat Singh and Dalip Singh arrive with their weapons. Hari Singh is said to have struck his kirpan on the neck of Gian Singh, deceased, and Milkiat Singh is said to have struck Zora Singh on the right arm with his Gandasa, whereupon Zora Singh raised an alarm. All the four assailants then gave blows to the B deceased and Zora Singh who had cried out: "Marditta-Marditta". Bachan Singh, P.W. 4, and Surjit Singh, P.W. 4, rushed to their aid and alleged having seen the attack and the assailants running away. They found Zora Singh unconscious when they came near him. Gian Singh and Zora Singh were removed to a Hospital in Ludhiana, where Gian Singh died at 5.45 a.m. The condition of Gian Singh, which was not such as to enable him to make a dying declaration, was des- C cribed as follows :

> "B.P. was not recordable. Pulse 60/mt. fuble, unconscious, Gasping cynotic. Pupils constricted, Reacting Slugishly to light. There was 8"×4" wound on the left side of the neck cutting deep to the muscles. The trachea was cut almost through and through and he was breathing through the D hole of the trachea. Hyoid bone was lying exposed in the wound. Could not feel the left carotid artery. No bleeding was present when patient was brought to the hospital".

Zora Singh who survived had the following injuries :

> " 1. An incised wound 3"×½"×2½" on the inner side of left hand and was cutting the 5th and 4th matacar- E pals completely.
>
> 2. Incised wound ½"×⅛"× flesh deep on the inner side of left wrist.
>
> 3. Incised wound 5"×1"×2" deep on the outer side of left hand and was chopping off the thumb completely from the hand.
>
> F 4. Incised wound 6"×¼"× flesh deep back of left forearm lower part.
>
> 5. Incised wound 4"×½"×2" deep on the right side of the face and the middle of the lower part of the nose and was cutting it and the right side of the upper jaw partially.
>
> G 6. Inside wound 3"×¼"×1½" deep on the upper part of the back of right side of the neck and was cutting the spine bone partially.
>
> 7. Incised wound 4"×1"×3" deep on the back of right elbow and was cutting the ulna bone completely and the forearm was hanging just with a flesh."

H A First Information Report of this occurrence was lodged at 5.15 a.m. at Police Station Sadar, Ludhiana, at a distance of 7 miles from village Dhandri Kalan, disclosing offences punishable under Sections 307 and 326 Indian Penal Code only as Gian Singh was still alive at

that time. It was stated in the F.I.R. that the respondents were recognised and that two other unknown assailants, who were young Sikhs, could be identified if produced before the witnesses. A

Surjit Singh, P.W. 4, the maker of the F.I.R., upon cross-examination denied that he had been tutored to state that he could not identify the two of the assailants as they had their backs towards him. He had stated in the F.I.R. that they were youngmen although Milkiat Singh, aged 53, and Dalip Singh, aged 46, years were not so young. He had also stated there that he could identify the two youngmen thereby implying that he had seen them properly. He had stated in his evidence that one or two bighas of sugarcane can be irrigated in an hour by their Tubewell. Watering was said to have commenced at ' p.m. and Zora Singh, P.W. 3, had stated that only 4 bighas of the field had to be watered. The High Court, therefore, did not think it likely that either Bachan Singh or Surjit Singh would still remain at the Sugarcane field or be awake at the time when the occurrence took place. Moreover, the High Court thought that both Bachan Singh and Surjit Singh were too far away, at abount 100 karams, to be able to reach in time to see the occurrence. B C

Bachan Singh, P.W.5, had supported the statement of Surjit Singh, P.W.4, that he ran up to help the attacked persons after hearing Zora Singh Shouting: "Marditta-Marditta". He said that he saw the assailants from a distance of 15 karams. He also said that Hari Singh was using his kirpan to attack and that the other assailants had used their gandasas. On cross-examination, this witness also stated that he could not recognise the companions of Hari Sngh and Gian Singh as they had their backs towards him, although it was proved that he had stated before the Police that the unidentified persons were young Sikhs with Gandasas whom he could identify if produced before him. D E

The High Court had found some difficulty in getting over the statement of Zora Singh, P.W. 3. It had observed that Zora Singh, aged only about 16 years, would have tried to run away as soon as he saw four assailants by electric light attacking Gian Singh only at a distance of 10 feet, if he was really awake. It had also opened that he would have cried out earlier than the moment of time when he received the injury on his right arm if he was actually awake when the assault on Gian Singh, deceased, took place. It was not disposed to rely upon the statement of Zora Singh that he was lying awake because he had got up to urinate 5 minutes before the occurrence as this appeared to it to be an improvement upon his previous statement. Zora Singh, on cross-examination, had explained that he had not stated this earlier as he was not questioned about it. The High Court had doubted the veracity of Zora Singh because he disclaimed knowledge that Milkiat Singh and Dalip Singh were employed in the Air Force although their fields adjoined his own fields. The High Court thought that it was likely that Zora Singh would have become unconscious after receiving injuries before he could recognise his assailants. The High Court had also attached importance to the fact that no special report of the occurrence was proved to have been sent to a Magistrate. It has considered the explanation that this was due to the fact that the F.I.R. disclosed only offences punishable under Sections 307 and 326 I.P.C. to be insuffi- F G H

A cient to explain this omission. After relying upon the observations of this Court in *Sarwan Singh Rattan Singh* Vs. *State of Punjab*(1) that the prosecution must traverse the whole gap between "what may be true" and "what must be true" before a conviction could be recorded in a criminal case, the High Court had given the respondents the benefit of doubt and acquitted them.

B The Trial Court, on the other hand, which had the additional advantage of seeing the witnesses depose in the witness box, was impressed by the evidence of the three alleged eye witnesses and had convicted the respondents. It had not relied upon the alleged recoveries by Hardit Singh, Sub-Inspector, P.W.8, of a kirpan on 28th June, 1969, from a straw-bin at a tube well at the instance of Hari Singh and a gandasa on the roof of a tubewell at the instance of Gian Singh. Both the weapons C were proved to be stained with human blood. As the recovery was shown to have taken place 4 days after the arrest of the respondents the Trial Court thought that it must have resulted from the use of 3rd degree methods during the interrogation of the accused. The Trial Court had also considered it unsafe to rely upon the sole testimony of the Investigating Officer on this question when other witnesses of the recovery were not produced for some unexplained reason. The Trial D Court, had, however, relied upon the circumstance that the respondents could not be found when searched in their village and could only be arrested several days later.

The question raised before us is: should we, even if we do not entirely agree with the reasoning of the High Court, substitute our own views and reverse an order of acquittal by it? It is enough to refer to the *State of Madras Vs. A. Vaidyanatha Iyer*(2) to point out that this E Court's power of interference under Article 136 of the Constitution with Judgments of acquittal is not exercised on principles which are different from those adopted by it in dealing with convictions. It is a principle, common to all criminal appeals by special leave, that this Court will refrain from substituting its own views about the appreciation of evidence if the judgment of the High Court is based on one of two alternative views each of which was reasonably open to the High F Court to accept. If, however, the High Court's approach is vitiated by some basically erroneous apparent assumption or it adopts reasoning which, on the face of it, is unsound, it may become the duty of this Court, to prevent a miscarriage of justice, to interfere with an order whether it be of conviction or of acquittal.

In the case before us, the Trial Court, which had the additional ad- G vantage of seeing the witnesses depose in the witness box, had accepted the testimony of the three eye witnesses, despite the fact that they are relations of the victims. It has been repeatedly held by this Court that the mere fact that a witness is related to the victim could not be a good enough ground for rejecting his testimony although it may be a ground for scrutinizing his evidence more critically and carefully where facts and circumstances disclose that only relations have been produced and H others, presumably independent witnesses, who were available, were not produced. In the instant case, there is no evidence that anyone

(1) AIR 1957 SC 637. (2) 1958 SCR 580

besides the witnesses produced had actually witnessed the attack upon Gian Singh and Zora Singh. A

The High Court's reasons for doubting the correctness of some of the statements of Surjit Singh, P.W. 4, and Bachan Singh, P.W. 5, as, for instance, that they had actually failed to recognise Milkiat Singh and Dalip Singh because they had their backs towards them when these very witnesses had asserted before the police that the two other participants were youngmen who could be identified by them, if produced before them, are quite sound and reasonable. If, however, a false implication was really intended and the F.I.R. was the result of some conspiracy, there was no reason to omit the names of Milkiat Singh and Dalip Singh, the two brothers of the respondents, from the F.I.R. The prosecution had an explanation for this omission. This was that Zora Singh, who had seen and recognised these two accused persons had become unconscious before their names could be communicated to Surjit Singh. The High Court had itself accepted the evidence that Zora Singh had actually become unconscious. In fact, it had gone to the extent of holding that he must have become unconscious even before he recognised any of the assailants. On the last mentioned point, we certainly do not find it possible to accept the view adopted by the High Court. B C D

It is in dealing with the evidence of Zora Singh, P.W. 3, that the High Court seems to us to have adopted a patently erroneous approach and to have given grounds which do not appear to us to be reasonably sustainable. The High Court seems to have assumed that Zora Singh must have invented the story that he had got up to urinate so that he may pose as an eye witness of the occurrence. E

The ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be untruthful or unreliable in any particular respect. The High Court, reversing this approach, seems to us to have assumed that witnesses are untruthful unless it is proved that they are telling the truth. Witnesses, solemnly deposing on oath in the witness box during a trial upon a grave charge of murder, must be presumed to act with a full sense of responsibility of the consequences of what they state. It may be that what they say is so very unlikely or unnatural or unreasonable that it is safer not to act upon it or even to disbelieve them. The High Court had no doubt tried to show that this was the position with regard to the whole of the testimony of Zora Singh. But, we do not think that it was successful. F G

It is true that the statement of a witness that he had got up to urinate just before a murder was committed, so that he could witness the murder, looks suspicious. But, the statement is not, for that reason necessarily untrue. Again, if, as the High Court believed, both Gian Singh and Zora Singh were attacked almost simultaneously, its view, that Zora Singh would have got up and run away or shouted earlier than he was attacked had he been really awake, is unreasonable. H

Let us, however, assume, for the sake of argument, that the High Court's guess is correct that Zora Singh was actually asleep when the

attack upon Gian Singh and then Zora Singh began. Even then it would be quite unreasonable to believe and hold, as the High Court did, that Zora Singh must have become unconscious before he could see and recognise his assailants. There was the light of the electricity at the tubewell where Zora Singh lay on his bed whether asleep or awake. Zora Singh must have necessarily got up at least when he was struck on the arm. He could not have avoided seeing and then recognising his assailants, whom he knew very well, before he became unconscious. His account, that he was struck first on the arm and then he cried out, is corroborated by the fact that other injuries indicate that his face and jaw were aimed at and struck probably in an attempt to silence him. The injuries were of such a nature that he must have been awakened, shouted, writhed in pain, and seen the assailants before he became unconscious. The absolutely unacceptable guess work indulged in by the High Court, that Zora Singh must have become unconscious before he could see and recognise his assailants, is utterly unsupported by evidence and seems very unreasonable.

Even if other parts of his evidence are, for some reason, not accepted, Zora Singh's statement that he saw and recognised assailants before he became unconscious cannot be held to be capable of arousing doubts. There is no evidence that the assailants covered him up with a blanket or a cloth, so as to disable him from seeing them, before attacking him. If we accept this part of the evidence of Zora Singh, as we think we must, since it is so strongly corroborated by the medical evidence and there is nothing on record which conflicts with this inference, it becomes evident that he must have shouted for help. If that be so, it is difficult to understand why Surjit Singh and Bachan Singh would not go to his rescue as they naturally would on hearing shouts even if they were at some distance. We think that, judging from the number of injuries on the two victims, the incident must have lasted long enough to enable Surjit Singh, P.W. 4, and Bachan Singh, P.W. 5, to rush towards the scene of occurrence and to see and recognise at least the escaping assailants. It is possible that they may have exaggerated in stating that they actually saw the attack on both the victims. But, that would not be enough to discard the whole of their testimony on the ground that they were not likely to be present at their field nearby at the time of the attack. There is no evidence to suggest that they were elsewhere at the time. Indeed, the fact that they arranged for the transport of the victims to a hospital in Ludhiana and took them there before day-break shows that they were there to be able to do all this. We do not think that the reasons given for suspecting their presence near enough from the tubewell, at their sugarcane field, are strong enough to make it incredible that they should come to the help of the two attacked persons and to see at least the escaping assailants out of whom they recognised two.

As human testimony, resulting from widely different powers of observation and description, is necessarily faulty and even truthful witnesses not infrequently exaggerate or imagine or tell half truths, the Courts must try to extract and separate the hard core of truth from the whole evidence. This is what is meant by the proverbial saying

that Courts must separate "the chaff from the grain". If, after considering the whole mass of evidence, a residue of acceptable truth is established by the prosecution beyond any reasonable doubt the Courts are bound to give effect to the result flowing from it and not throw it overboard on purely hypothetical and conjectural grounds. In so far as the grounds given for rejecting the evidence of Zora Singh appear to us to be patently unreasonable and highly conjectural, we think that the case before us calls for interference by this Court. That evidence, as we have already pointed out, is corroborated by medical evidence as well as by the statements of Surjit Singh and Bachan Singh. Hence, although, the statements of Bachan Singh and Surjit Singh, taken by themselves, may not have been enough to warrant the conviction of the respondents, yet, when the evidence of Zora Singh, strongly corroborated by medical evidence is there, we think that the statements of Surjit Singh & Bachan Singh could be used to support the conclusion thus reached without going to the extent of holding that Surjit Singh and Bachan Singh must be wholly believed before their evidence could serve any useful purpose at all as the High Court seems to have erroneously thought. Indeed, it is very difficult to find a witness whose evidence is so flawless that it has to be wholly, completely and, unqualifiedly accepted. We think that the High Court had, without saying so, ignored the principle repeatedly laid down by this Court in appraising evidence, that Courts do not, in this country, act on the maxim: "*falsus in uno falsus in omnibus*". In considering the effect of each allegation proved to be incorrect or the likelihood of its being true or untrue, we have to view it in the light of a whole setting or concatenation of facts in each particular case.

There may be reasons for doubting the worth of the evidence of recovery from the respondents, but, that does not mean that the evidence given by Hardit Singh, S.I., P.W.8, relating to recoveries, is necessarily false so that the investigation itself is tainted. Similarly, the mere fact that, after the lodging of the F.I.R., the necessary precaution of sending the special report to a Magistrate speedily was not shown by the prosecution to have been observed, does not mean that the whole prosecution case is false or unacceptable. On the other hand, the fact that the F.I.R. discloses only offences punishable under Sections 307 and 326 I.P.C. indicates that it must have been lodged before 6. a.m. In any event, before the Inquest report on the morning of 19-6-1969, the police had before it the prosecution version contained in the F.I.R. to which a reference is made in the Inquest report. The statements of Bachan Singh and Surjit Singh were also recorded before that. Therefore, the alleged suspected delay in the lodging of the F.I.R. or in sending a special report to a Magistrate do not, on the facts of this case, indicate an attempt to conspire and fabricate. Indeed, if this was so, as already observed, one would have expected to find the names of Milkiat Singh and Dalip Singh also in the F.I.R. instead of a description given of the unidentified youngmen which did not fit these two acquitted accused persons who were, therefore, given the benefit of doubt. This feature of the evidence indicates that the names of these two accused were introduced in the case only after Zora Singh had regained consciousness and revealed them as the pro-

A secution alleged. Hence, it is likely that the F.I.R. must have been made soon enough to contain the earliest version before Zora Singh's version could get into it after he regained consciouness.

We think that the High Court had missed the core of truth in the case and had unjustifiably rejected the prosecution case which was strong enough on the statement of Zora Singh alone corroborated by medical evidence. It had, we think, made the error of throwing away the prosecution case, without attempting to separate the chaff from the grain on the wrong assumption that the two were inseparable here. We, therefore, set aside the order of acquittal by the High Court and convict the respondents for the offences with which they were charged. As, however, the occurrence took place several years ago, we refrain from awarding a death sentence in this case. We sentence both Hari
C Singh respondent u/s 302 I.P.C. and Gian Singh respondent sons of Arjan Singh to life imprisonment under Sections 302/34 I.P.C. We also sentence each of them to six years rigorous imprisonment and to pay a fine of Rs. 2,000/- each, and, in default of payment of fine, to rigorous imprisonment for a further period of two years under Sections 307/34 I.P.C. The sentences awarded shall run concurrently.

S.C. *Appeal Allowed.*