

DARSHAN SINGH @ BHASURI & ORS.

v.

STATE OF PUNJAB

March 31, 1983

[Y.V. CHANDRACHUD C.J., AND O. CHINNAPPA REDDY, J].

Criminal Procedure Code, 1973, Section 154—First Information Report—Non-mentioning the name of an accused does not entitle him to an acquittal—Dying declaration, conviction resting on, explained—Appreciation of evidence—Sections 3 and 32 of the Evidence Act and interference under Article 136 of the Constitution by the Supreme Court.

Appellants along with three others were tried by the Additional Sessions Judge, Ferozepore for offences under Section 302 I.P.C. read with sections 120-B and 149 on the charge that, in pursuance of a conspiracy, they caused the death of five persons and injuries to three others on the night between the 29th and 30th September, 1978 in the village of Kaila. The background of the incident leading to the crime and furnishing its motive was that certain members of the family of those who were murdered in the instant case were tried for the murder in June 1977, of Buta Singh, the son of accused no. 1 but acquitted.

In order to prove the charges against the accused, the prosecution examined as many as 53 witnesses while the accused examined 16 witnesses in their defence. The case of the prosecution rested mainly on three categories of evidence : (1) the evidence of the three eye-witnesses, Mohinder Singh (PW 15), Naval Singh (PW 16) and Sant Kaur (PW 247) ; (2) the dying declaration (Exh. PV) made by Sohan Singh ; and (3) the recovery of fire arms and cartridges from the possession of Accused Nos. 3, 4, 5, 6, and 7.

The Additional Sessions Judge convicted nine out of the ten accused for the offences of conspiracy and murder, sentenced accused nos. 1, 3, 4, 5, 6 and 7 to death and accused nos. 2, 8 and 9 to life imprisonment. Accused no. 10, Harbans Kaur, wife of accused no. 2 Darshan Singh alias Bhasuri, was acquitted. The High Court of Punjab and Haryana confirmed the death sentence imposed upon accused nos. 1, 3, 5, 6 and 7, but reduced the sentence of accused no. 4 to life imprisonment. Hence the appeals by five persons who are sentenced to death and two who are sentenced to life imprisonment.

Accepting the appeals of accused 1 and 2 and acquitting them, and, while maintaining the convictions of the rest, but altering the sentence of death imposed on accused nos. 3, 5, 6 and 7 to one of life imprisonment, the court

A HELD : 1 : 1 No rule of law stipulates that an accused whose name is not mentioned in the First Information Report is entitled to an acquittal. The fact that the names of other accused are not mentioned in the First Information Report was at least a circumstance which the prosecution had to explain [609 D-E]

B In the instant case, the High Court, instead of considering the circumstances in which, and the reasons for which, Mohinder Singh did not mention the names of the other accused in the First Information Report, erroneously took the view that the omission in the F.I.R. was a matter of little consequence since it was made good by the fact that Sohan Singh had mentioned the names of all the accused in his dying declaration, further overlooking the fact that the dying declaration itself was open to grave exception. [609 E-F, 610A]

C 1 : 2 When it is said that a conviction can rest on a dying declaration, it is implied that it must inspire confidence so as to make it safe to act upon it. [610 E]

D Here, if the vital organs of Sohan Singh, according to Dr. Birinder Pal (PW 2) who conducted the postmortem examination on his body, were "completely smashed", it is impossible to believe that he was in a fit state of mind and body to make any kind of coherent or credible statement relating to the circumstances which resulted in his death. True, he was quite near his creator on the morning of the 30th, dangerously so indeed, so that one may accept that his mind was then free from failings which afflict the generality of human beings, like involving enemies in false charges. But, Sohan Singh was too ill to entertain any thoughts, good or bad, and he could not possibly have been in a position to make any kind of intelligible statement so as to implicate accused 3 to 9. His dying declaration cannot therefore, be relied upon. [610 B-D]

E 2. Liquor is no lie-detector. The evidence regarding conspiracy, let in through the mouth of Surat Singh (PW 27) an utter stranger, to implicate Accused nos. 1 and 2 to the effect that the conspirators discussed their plans to commit the murders, throwing all caution to winds and in an intoxicated condition cannot be believed. It cannot be assumed that accused nos. 1 and 2 were so drunk as to overlook the presence of a stranger in their midst and yet not so drunk so as to be unable to discuss the execution of their criminal design. Once Surat Singh is disbelieved and the story of conspiracy is discounted, the resultant conclusion obviously is the absence of Accused nos. 1 and 2 at the scene of occurrence entitling them to an acquittal. [610 F, H, 611 A-B]

F 3. If age was a circumstance in favour of one of the accused, the same criterion must be applied to all. More so in a case like this, when a large group of persons took part in the murders and untrue evidence has been mixed up with the true evidence, it becomes difficult to hold any particular accused guilty of any particular act. [612 E, F]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 429 to 437 of 1981. .

Appeals by Special leave from the Judgment and Order dated the 1st December, 1980 of the Punjab & Haryana High Court in Criminal Appeal Nos. 374-DB to 379-DB of 1980 and Murder Reference No. 5 of 1980

D. Mukherjee and R.L. Kohli, K. R. Nagraja, P. Krishna Rao and Arun Madan, for the Appellants, in Crl. A. No. 431 of 1981.

Harbans Singh and D.D Sharma for the Respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. Ten persons were tried by the learned Additional Sessions Judge, Ferozepur, for offences under section 302 read with sections 120B and 149 of the Penal Code on the charge that, in pursuance of a conspiracy, they caused the death of five persons and injuries to three others on the night between the 29th and the 30th September 1978 in the village of Kaile. Convicting nine out of these for the offences of conspiracy and murder, the learned Judge sentenced accused Nos. 1, 3, 4, 5, 6 and 7 to death and accused Nos. 2, 8 and 9 to life imprisonment. Accused No. 10 Harbans Kaur, wife of accused No. 2 Darshan Singh alias Bhasuri, was acquitted. The High Court of Punjab and Haryana confirmed the death sentence imposed upon accused Nos. 1, 3, 5, 6 and 7, but reduced the sentence of accused No. 4 to life imprisonment. Thus, in these appeals by special leave, we have before us five persons who are sentenced to death and two who are sentenced to imprisonment for life.

Buta Singh, the son of accused No. 1, was murdered in June 1977. Certain members of the family of those who were murdered in the instant case were tried for the murder of Buta Singh, but they were acquitted in March 1978. That is the background of the incident leading to the present crime and furnishes its motive.

Mohinder Singh (P.W. 15) who, had a farm-house in village Kaile, used to live therein with his family, including his brothers Jarnail Singh (since deceased) and Nirval Singh (P.W. 16). On the

A night between 29th and 30th September 1978, Mohinder Singh and the members of his family were sleeping in the courtyard of the farmhouse. It is alleged that accused Nos. 3 to 10, most of whom were carrying firearms, entered the courtyard from the western side and fired at the persons who were sleeping in the courtyard. Sohan Singh, a member of Mohinder Singh's family, woke up and fired at the accused in self-defence. After he was hit by a shot fired by the accused, Mohinder Singh took his gun and fired at the accused, killing a person called Darbara Singh who belonged to the party of the accused. As a result of the shots fired by the accused, Jarnail Singh, Amar Singh and Sher Singh died instantaneous deaths. Wassan Singh died soon thereafter in the hospital, while Sohan Singh died early next morning after making a dying declaration. Nirval Singh (P.W. 16) and Sant Kaur (P.W. 24) received gunshot injuries. A bullock and calf also perished and a buffalo was injured in the incident.

D Shortly after the occurrence, Tarlok Singh, the Sarpanch of the village, and a brother of his reached the place of occurrence. Wassan Singh, Sohan Singh, Nirval Singh and Sant Kaur were removed to the hospital, while Mohinder Singh went to the Dharamkot Police Station and lodged his First Information Report, Exhibit PHH, at 2.30 a.m.

E Accused No. 1 Darshan Singh alias Bhasuri, accused No.2 Joga Singh and accused No. 9 Sadha Singh were put under arrest after they surrendered themselves in October-November 1978. Accused No. 6, Bakhshish Singh, was arrested on October 20, 1978. One SBBL boregun (Exh. P-60) and four live cartridges were recovered from his person under the recovery memorandum Ex. P.GGG. Accused F Nos. 3 and 7, Sarbjit Singh and Manohar Singh, were arrested on the night between 22nd and 23rd October, 1978. One SBBL 12 bore unlicensed gun (Exh. P-76) and three live cartridges were seized from the person of accused No. 3 under the Memo Exh. P. ZZZ. A self-loaded unlicensed rifle (Exh. P. 73) loaded with 2 live cartridges along with 2 spare cartridges were recovered from Accused No. 7 G under the Memo Exh. P. XXX. Accused No. 5, Darshan Singh was arrested on October 23, 1978. An unlicensed 303 rifle (Exh. P.67) and 5 live cartridges were recovered from his person under the Memo Exh. P. TTT. Accused No. 4, Swaran Singh was arrested on October H 24, 1978. An unlicensed country-made 315 pistol (Exh. P. 80) and four live cartridges were seized from his person under the Memo Exh. P. CC. The empties which were recovered from the place of occurrence were sent for examination to the Forensic Science Laboratory.

In order to prove the charges against the accused, the prosecution examined as many as 53 witnesses while the accused examined 16 witnesses in their defence. The case of the prosecution however rests mainly on three categories of evidence : (1) the evidence of the three eye-witnesses, Mohinder Singh (P.W.15), Nirval Singh (P.W.16); and Sant Kaur (P.W. 24), (2) the dying declaration (Exh. PV) made by Sohan Singh; and (3) the recovery of firearms and cartridges from the possession of accused Nos. 3, 4, 5, 6 and 7. The evidence of the Ballistic Expert Kumar (P.W. 53) shows that the empty shells and cartridges recovered from the place of occurrence were fired from the various weapons recovered from these accused. On the question of conspiracy, the prosecution led the usual kind of puerile evidence, as for example, of someone over-hearing something while on way to answering a call of nature. Here the strain was changed by alleging that Suran Singh (P.W. 27) heard a most damaging conversation between the accused while he was negotiating the purchase of a tractor. Evidence was also produced to show that a wallet was found at the scene of offence, containing a letter (Ex. P. 53) sent by one of the accused to another of them, discussing the threads of conspiracy.

The First Information Report lodged by Mohinder Singh (P.W. 15) mentions the names of accused Nos. 2, 3, 8 and 9 only. The fact that the names of the other accused are not mentioned in the F.I.R. was at least a circumstance which the prosecution had to explain, though no rule of law stipulates that an accused whose name is not mentioned in an F.I.R. is entitled to an acquittal. But instead of considering the circumstances in which, and the reasons for which, Mohinder Singh did not mention the names of the other accused in the F.I.R., the High Court took the view that the omission in the F.I.R. was a matter of little consequence since it was made good by the fact that Sohan Singh had mentioned the names of all the accused in his dying declaration. The High Court says :

"Dying declarations is a sacred statement given by a dying man and it is settled law that much value is to be attached to a dying declaration, especially when it is corroborated by other independent evidence In fact, the shadow of immediate death is the best guarantee of the truth of the statement made by a dying man regarding the causes of circumstances leading to his death which are absolutely fresh in his mind and is unstinted or discoloured by any other consideration except speaking the truth."

A The High Court, with respect, overlooked that the dying declaration itself is open to grave exception in this case. It implicates accused Nos. 3 to 9 but the evidence of Dr. Birinder Pal (P.W. 2) who conducted the postmortem examination on the body of Sohan Singh shows that his vital organs like the peritoneum, stomach and spleen were "completely smashed" and that "there were remote chances of his remaining conscious after receipt of injury No. 3", that is to say, the injury on the left iliac fossa which caused the rupture of the spleen. The incident took place at about midnight of the 29th and 30th while the dying declaration is alleged to have been made by Sohan Singh at 7 a.m., on the 30th. If the vital organs of Sohan Singh were "completely smashed", it is impossible to believe that he was in a fit state of mind and body to make any kind of coherent or credible statement relating to the circumstances which resulted in his death. True, he was quite near his Creator on the morning of the 30th, dangerously so indeed, and we may accept that his mind was then free from failings which afflict the generality of human beings, like involving enemies in false charges. But Sohan Singh was too ill to entertain any thoughts, good or bad, and he could not possibly have been in a position to make any kind of intelligible statement. Therefore, his dying declaration cannot be relied upon for any purpose and has to be excluded from consideration. When it is said that a conviction can rest on a dying declaration, it is implied that it must inspire confidence so as to make it safe to act upon it.

F The evidence regarding conspiracy is as weak as the evidence about the dying declaration of Sohan Singh, Surat Singh (P.W. 27) speaks of a meeting between the co-conspirators in the house of accused No. 1, Darshan Singh alias Bhasuri. We cannot believe that in the presence of an utter stranger like Surat Singh, the conspirators would discuss their plans to commit these murders, throwing all caution to the winds. The answer of the High Court is that the conspirators were taking liquor while discussing the conspiracy and,

G "When liquor is taken, then under its influence sometimes most secret things are divulged in the presence of a person who is not so intimately connected. It is often said, when liquor goes in, truth comes out."

H This is somewhat artless. Liquor is no life-detector and we cannot assume that accused Nos. 1 and 2 were so drunk as to overlook the presence of a stranger in their midst yet not so drunk

so as to be unable to discuss the execution of their criminal design. Besides, Surat Singh forgot all about the incident and was contacted by the police a few days later. The learned Sessions Judge was right in holding that Surat Singh's evidence suffers from certain infirmities, because of which one could not place implicit reliance upon him. We would go further and say that his evidence is too unnatural to merit serious attention. Apart from the evidence of motive, Surat Singh's evidence in regard to the conspiracy is the only evidence against accused No. 1 Bhasuri and accused No. 2 Joga Singh. It is on that evidence that these two accused have been convicted under section 120-B read with section 302 of the Penal Code, the former being sentenced to death and the latter, because of his young age, to life imprisonment.

The evidence of the three eye-witnesses, Mohinder Singh (P.W. 15), Nirval Singh (P.W. 16) and Sant Kaur (P.W. 24) is broadly true and since that evidence has been accepted by both the courts, we will not scan it any further. It is, however, necessary to state that these eye-witnesses are not likely to have seen the specific part played by each one of the accused. The night was dark, the time midnight and the witnesses, who were fast asleep, were woken up either by barking of the dogs or by the sound of gun-shots. There was a small lantern hanging a few feet away. Mohinder Singh concealed himself behind a pillar and fired shots at the accused in self-defence, killing a person on the side of the accused. He has named accused 3, 5, 6 and 8 while Nirval Singh and Sant Kaur who received gun-shots injuries have named accused 3 to 9. The evidence of the last two witnesses in regard to the presence of accused 3 to 9 and their being armed appears to us to be open to no exception. Shri Kohli who appears on behalf of accused No. 5 says that the name of that accused was not mentioned in the F.I.R., not even in the supplementary F.I.R., and that he was not involved in the conspiracy. That is so, but the failure of Mohinder Singh to refer to everyone of the accused in the F.I.R., does not detract from the evidence of the two injured witnesses in regard to the presence of accused No. 5. Hiding behind a pillar, Mohinder Singh was evidently not in a position to see the whole of the incident.

The evidence of these two eye-witnesses is corroborated by the circumstance that fire-arms and cartridges were recovered from the possession of accused Nos. 3 to 7 at the time of their arrest. The evidence of the Ballistic Expert, Kumar (P.W. 53) shows that the

A empty shells and cartridges recovered from the place of occurrence were fired from the various weapons recovered from these accused.

B The result of this discussion is that in so far as accused Nos. 1 and 2 are concerned, there is no evidence on the basis of which they can be convicted, once Surat Singh is disbelieved and the story of conspiracy discounted. Accused 1 and 2 were not present at the scene of occurrence and obviously, Mohinder Singh involved accused No. 2 on a surmise by naming him in the F.I.R. He corrected himself during his evidence in the court which he had to do since Accused 2's presence at the scene of offence was impossible to accept. **C** In so far as the other accused are concerned, namely, accused Nos. 3 to 9, their presence and participation in the incident in question is proved beyond doubt. Their conviction under section 302 read with section 149 of the Penal Code must therefore be upheld.

D In so far as the death sentence imposed upon accused Nos. 1, 3, 5, 6 and 7 is concerned, accused No. 1 is entitled to an acquittal, as a result of which the death sentence imposed upon him has to be set aside. The learned Sessions Judge did not impose death sentence upon accused No. 2 because he was young, that is, about 20-22 years of age. We find that accused Nos. 3, 6 and 7 are much younger than accused No. 2 : accused 3 and 6 were 19 while accused No. 7 was 18 years of age on the date of offence. If age was a circumstance in favour of accused No. 2, it is even more so in the case of accused Nos. 3, 6 and 7. Besides, in a case like this when a large group of persons took part in the murders and untrue evidence has been mixed up with the true evidence, it becomes difficult to hold any particular accused guilty of any particular act. Therefore, while upholding the conviction of accused 3, 6 and 7, we set aside the death sentence imposed upon them and sentence them to imprisonment for life. **E** Accused No. 5 was about 35 years of age but it makes no sense to sentence him to death for the reason merely that he is older than the others. He was certainly not the leader of the gang as one could have said about accused No. 1, had he been present. The death sentence imposed upon accused No. 5 must therefore be set aside which we hereby do. We sentence him to life imprisonment. **F** **G**

H In the result, accused Nos. 1 and 2 are acquitted and the order of conviction and sentence recorded against them is set aside. They are entitled to be released forthwith. We uphold the conviction of accused Nos. 3 to 9 but set aside the sentence of death

imposed upon accused Nos. 3, 5, 6 and 7 and sentence them to imprisonment for life. The sentence of life imprisonment imposed upon accused 4 stands. The conviction of accused Nos. 8 and 9 under section 302 read with section 149 of the Penal Code is upheld as also the sentence of life imprisonment imposed upon them.

S.R.

Appeal partly allowed. B