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JAGTAR SINGH

v.

STATE OF PUNJAB & ORS.

JANUARY 27, 1988

[B.C. RAY AND K. JAGANNATHA SHETTY, JJ.]

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Indian Penal Code, 1860: Section 302—Accused giving blow with handle of tractor—Resulting in death of deceased on spot—Report of serologist and chemical examiner—Iron handle stained with human blood—Weapon recovered pursuant to disclosure statement of accused—Acquittal ordered by High Court set aside—Conviction and sentence by Sessions Court confirmed.

C

Criminal Procedure Code, 1973: Section 154—FIR—Not expected to contain all details—Effect on value of testimony of witnesses.

The accused—respondent No. 2 in the appeal and the deceased

D were neighbours. The prosecution alleged that on October 8, 1983 at about 4 P.M. the deceased along with one of his sons, P.W. 8 were taking their buffaloes from their house towards the fields. When they were moving in the lane the accused came from the opposite side driving a tractor. While the tractor was passing, it hit one of the buffaloes whereupon the deceased asked the accused whether he could not see the buffaloes and there was altercation. The accused suddenly got down from his tractor, and taking the handle of the tractor in his hand gave a blow on the forehead of the deceased. The deceased fell on the ground with his face downward. At that time P.W. 1—appellant in the Appeal, another son of the deceased, and P.W. 2 were coming towards the spot and they saw the occurrence. The accused gave 3-4 blows on the deceased who was lying on the ground, and thereafter took to his heels leaving the tractor behind. The deceased died on the spot.

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P.W. 1 keeping P.W. 8 to guard the dead body, went to the police station which was about 12 kms from the spot of the occurrence, by bicycle, and there lodged the FIR (Ext. PA). The statement was recorded by the Sub-Inspector, P.W. 9 who came to the spot at about 7 P.M. and made an inquest report. The tractor was taken into possession by the Sub-Inspector, and after preparing the inquest report, he despatched the dead body for autopsy. The accused was arrested on October 9, 1983 and on the basis on his disclosure statement Ext. PG the handle of the tractor stained with blood was recovered.

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The accused in a statement under section 313 of the Criminal Procedure Code pleaded innocence and stated that due to enmity he had been falsely involved. The Additional Sessions Judge on a consideration and appraisal of the evidence, convicted the accused—respondent No. 2 under section 302 I.P.C. and sentenced him to suffer R.I. of life and also pay a fine of Rs.200 and in default to undergo further imprisonment of two months.

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The accused—respondent No. 2 appealed to the High Court. A Division Bench held that the occurrence was not witnessed by P.W. 1 and P.W. 8, that the accused was named in the FIR because of the previous prolonged enmity, and that it would be unsafe to rely upon the ocular evidence without any independent corroboration, and acquitted the accused.

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Allowing the complainant's appeal by Special Leave,

HELD: 1. An FIR is not expected to contain all the details. [799C-D]

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2. The statement of the eye witnesses are very clear and straightforward. There cannot be any doubt or possibility regarding the presence of the two eye witnesses, PW 1 and PW 8 at the time of the incident. [799A-B]

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3. There is no room for doubt that the tractor was left at the place of occurrence by the accused while running away with the handle of the tractor. It is also very significant that the handle of the tractor used to give blows to the deceased was recovered as per the recovery memo (Exhibit PG) in pursuance of the disclosure statement made by the accused in presence of independent witnesses. It appears from the report Exhibit PH of the Serologist and Chemical Examiner that the Iron handle was stained with human blood. [799E-F]

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4. The prosecution case has been proved beyond reasonable doubt. The judgment and order of acquittal passed by the High Court is, therefore, set aside and the order of conviction and sentence passed by the Additional Sessions Judge is affirmed. Non-bailable warrants be issued forthwith for the arrest of the accused—respondent No. 2, and to put him in jail to undergo the remaining period of sentence. [799F-G]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 532 of 1988.

H

A From the Judgment and Order dated 8.1.1985 of the Punjab and Haryana High Court in Crl. A. No. 302-DB of 1984.

M.S. Gujral and Vishnu Mathur for the Appellant.

B A.K. Mulla, R.K. Garg, R.S. Suri and N.D. Garg for the Respondents.

The Judgment of the Court was delivered by

C RAY, J. This appeal by special leave is against the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 302-DB of 1984 reversing the conviction and sentence passed by the Additional Sessions Judge, Patiala and acquitting the appellant Paul Singh (respondent No. 2 in this appeal) of the charge under section 302.

D On October 8, 1983 at about 4 P.M. the deceased, Karnail Singh who was the next door neighbour of Paul Singh, along with his son Kuldip Singh (PW 8) were taking their buffaloes from their house towards the fields. When they reached near the house of one Baldev Singh in the lane where the houses of Weaver community are situated, respondent No. 2, Paul Singh came from the opposite side driving a tractor. While the tractor was passing, it hit one of the buffaloes whereon Karnail Singh asked Paul Singh whether he could not see the buffaloes. There was some altercation between the parties. Paul Singh suddenly got down from his tractor taking the handle of the tractor in his hand and gave a blow on the forehead of Karnail Singh, the deceased. The deceased fell on the ground with his face downward. At that time Jagtar Singh (PW 1), another son of the deceased, Karnail Singh along with Gurmit Singh was coming towards the spot and they saw the occurrence. Paul Singh gave 3-4 blows on Karnail Singh lying on the ground and took to his heels as Jagtar Singh (PW 1) and Gurmit Singh were hastening to the spot to intervene. The tractor was left behind. The deceased died at the spot on receipt of the injuries. Jagtar Singh (PW 1) keeping Kuldip Singh (PW 8) and Gurmit Singh to guard the dead body, went to the police station by bicycle which is about 12 KMs from the place of occurrence in Village Sangatpur Sodhian and reached there at about 5.15. P.M. The statement of Jagtar Singh (Exhibit PA) was recorded as FIR by the Sub-Inspector, Harbans Singh (PW 9). The Sub-Inspector and Jagtar Singh came to the spot at about 7 P.M. and made an inquest report. The said report H (F.I.R.) was despatched by the Sub-Inspector to Illaqa Magistrate who

received the same at about 8.15. P.M. on October 8, 1983. The tractor of the respondent No. 2, Paul Singh was taken into possession by the Sub-Inspector vide Memo Exhibit PL. After preparing the inquest report (Exhibit PE), the Sub-Inspector despatched the dead body of Karnail Singh for autopsy. The respondent No. 2 was arrested on October 9, 1983 and on the basis of his disclosure statement (Exhibit PG) the handle of the tractor (Exhibit PF) stained with blood was recovered by the Sub-Inspector. Respondent No. 2 in his statement under Section 313 of Code of Criminal Procedure pleaded his innocence and stated that due to enmity he has been falsely involved in this case.

The learned Additional Sessions Judge after hearing the counsel for the parties and on a consideration and appraisal of the evidences on record, convicted the accused Paul Singh under section 302 I.P.C. and sentenced him to suffer R.I. for life and also pay a fine of Rs.200 in default of payment of fine to undergo further R.I. for 2 months. It was also ordered that the period of detention already undergone by him during the investigation, inquiry or trial would be allowed to be set off under section 428 of Code of Criminal Procedure.

Against this judgment and order the accused, Paul Singh filed an appeal being Criminal Appeal No. 302-DB of 1984 in the High Court of Punjab and Haryana at Chandigarh. The said appeal was heard by a division bench of the High Court and without properly considering and marshalling the evidences of the eye-witnesses, Jagtar Singh (PW 1) and Kuldip Singh (PW 8) as well as the FIR (Exhibit PA) and also the Inquest Report (Exhibit PE) and other evidences on record, wrongly held that the occurrence was not witnessed by Jagtar Singh and Kuldip Singh and Paul Singh, respondent No. 2 in this appeal was named in the FIR because of the previous prolonged enmity with him. It was also held that it would be unsafe to rely upon the ocular evidence without any independent corroboration and acquitted the respondent No. 2 setting aside the conviction and sentence awarded by the Additional Sessions Judge.

The incident occurred on October 8, 1983 at about 4 P.M. and the FIR was lodged by Jagtar Singh (PW 1) who is the son of the deceased, Karnail Singh at Police Station Moolepur which is at a distance of 12 KMs. from the place of occurrence in Village Sangatpur Sodhian at about 5.15 P.M. In the FIR (Exhibit PA) it has been stated by the informant, Jagtar Singh (PW 1) that he and his brother, Kuldip Singh (PW 8) and one Gurmit Singh were present at the place of

- A occurrence and witnessed the assault by the accused, Paul Singh with the handle of the tractor on the deceased, Karnail Singh over an altercation as to the striking the tractor against one of the buffaloes of the deceased. It also appears that in the FIR it has been stated that the accused gave a blow with the handle of the tractor to the father of the informant hitting his forehead towards the left and he also gave 3-4
- B blows with the handle while the deceased fell down on the ground with his face downward hitting his head. He and Gurmit Singh were hastening to intervene when the accused fled away with the handle. It is also evident from the Inquest Report (Exhibit PE) prepared by the Sub-Inspector (PW 9) on the date of the incident that he found amongst other articles one tractor—Escorts bearing registration No. PUC 5206
- C which he sealed vide Memo Exhibit PL. Admittedly, there was long-standing enmity between the accused and the deceased. The accused filed papers which were exhibited in the case showing that several criminal cases were filed between the parties and this long-standing enmity between the parties was the motive on the part of the accused to inflict injuries on the deceased, Karnail Singh and the immediate
- D motive was the altercation which the deceased had with the accused when the tractor of the accused struck one of the buffaloes of the deceased.

- E It has been urged on behalf of the respondents that in the FIR (Exhibit PA) it was merely stated that the accused gave one handle blow on the forehead of the deceased. Then the deceased fell down and the accused gave 3-4 handle blows to the deceased whereas in his deposition before the Court the informant made the improvement by stating that out of the 3-4 handle blows one hit him on the right side of the forehead, one on the back of the left side of the head, one on the back of the right side of the head and one on the back of the head. It
- F has also been urged that in the FIR it was not stated that Jagtar Singh, PW 1 and Gurmit Singh tried to intervene when the accused was giving blows to the deceased with the handle. It was therefore urged that because of these improvements, the prosecution story as made out in the FIR was doubtful. It was further submitted that in the FIR it was not stated that the accused left the place leaving the tractor at the place
- G of occurrence though the FIR stated in detail about the occurrence. This submission cannot be sustained as it is evident from the FIR which was lodged with utmost promptitude that PW 1 had stated therein that 'he and Gurmit Singh went ahead in order to separate him'. As regards the statement in his evidence regarding the 3-4 blows made with the handle of the tractor it cannot be said to be an improvement but it merely explains the places where the assault was made on

the body of the deceased. On this basis, it cannot be said that there was an improvement made on what was stated in the FIR. The statements of the eye witnesses cannot be discarded on this score. The statements of the witnesses are very clear and straight forward. There cannot be any doubt or possibility regarding the presence of the two eye witnesses PW 1 and PW 8 at the time of the incident.

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On a careful appraisal of the evidences of these two eye witnesses we cannot but hold that they were present at the place of occurrence and witnessed the entire incident. It appears from the post mortem report also that that there were six injuries on the person of the deceased and these injuries according to the opinion of the Doctor, PW 2 were sufficient to cause death in the ordinary course of nature.

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The appellate court held that the recovery of the tractor was of no help to the prosecution case as in the FIR it was not mentioned that the accused had left the tractor at the spot. FIR is not expected to contain all the details. This finding of the appellate court is wholly erroneous in as much as it is evident from the inquest report (Exhibit PE) made on the date of occurrence i.e. October 8, 1983, that the tractor was seized on that date from the place of occurrence vide recovery memo No. PL by the Sub-Inspector, Harbans Singh, PW 9. There is therefore, no room for doubt that the tractor was left at the place of occurrence by the accused while running away with the handle of the tractor. It is also very significant to note that the handle of the tractor used to give blows to the deceased was recovered as per the recovery memo (Exhibit PG) in pursuance of the disclosure statement made by the accused in presence of independent witnesses, Nirmal Singh and Jarnail Singh. It appears from the report Exhibit PH of Serologist and Chemical Examiner that Iron handle was stained with human blood.

In view of the reasons stated hereinbefore the prosecution case has been proved beyond reasonable doubt. The judgment and order of acquittal passed by the High Court is therefore, set aside and the order of conviction and sentence passed by the learned Additional Sessions Judge is hereby affirmed. Let non-bailable warrants issue forthwith for the arrest of the accused, Paul Singh, respondent No. 2 and to put him in jail to undergo the remaining period of sentence.

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N.V.K.

Appeal allowed.