

SUKHBIR SINGH AND ANR.

v.

STATE OF PUNJAB

(Criminal Appeal No. 1198 of 2007)

JANUARY 27, 2011

**[HARJIT SINGH BEDI AND CHANDRAMAULI KR.
PRASAD, JJ.]**

Penal Code, 1860: s.302 r.w. s.149 and s.120-B – Murder – Dispute over school land between the victim-deceased and his son on one hand and the accused on the other – Deceased was the village sarpanch – FIR described that two sikh youths aged 25/30 wearing kurta pajamas came to the house of deceased carrying rifles and asked him to settle the dispute over school land – Deceased was taken from his house by them – The lambardar and the member of panchayat were also taken – Son of the deceased followed them – The two sikh youths in the presence of other accused fired at the deceased resulting in his death – FIR recorded after 8 hours – Appellants arrested after 6 months of incident and identified for the first time in court by son of the deceased as those two sikh youths – Conviction of appellants u/s.302 r.w. s.120-B – High Court upheld the conviction – On appeal, held: The physical description of the appellants given in FIR would fit millions of youth in Punjab and could not by itself pin the murder on them – Prosecution did not come out how the investigation led to their identification as the primary assailants – The sub-inspector who arrested the appellants was not examined – There was substantial improvement in the statement made by son of deceased in court vis-à-vis statement made before the police – No threat was ever received by the deceased from appellants prior to the incident – Statement of lambardar was uncertain and he also made very substantial improvements in his evidence – The

A *appellants were not properly identified and, therefore, their involvement is ruled out.*

Dana Yadav v. State of Bihar (2002) 7 SC^C 295;
Ramesh v. State of Karnataka 2009 (15) SCC 35 – relied on.

B *Malkhansingh and Ors. v. State of M.P. 2003 (5) SCC 746 – distinguished.*

Case Law Reference:

C	(2002) 7 SCC 295	relied on	Para 5
	2009 (15) SCC 35	relied on	Para 5
	2003 (5) SCC 746	distinguished	Paras 5, 6

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
 No. 1198 of 2007.

From the Judgment & Order dated 12.1.2007 of the High Court of Punjab and Haryana at Chandigarh at Criminal Appeal Nos. 584 and 610-DB of 1997.

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Criminal Appeal Nos. 770 of 2011.

F P.S. Patwalia, Jagjit Singh Chhabra, Ashok Kr. Saini,
 Rajesh Sharma, Shalu Sharma and Kuldip Singh for the
 appearing parties.

The following order of the Court was delivered

ORDER

G 1. This judgment will dispose of Criminal Appeal No. 1198
 of 2007 and Criminal appeal No.770/2011 @ Special Leave
 Petition (Crl.) No. 5580 of 2008. The facts have been taken from
 Criminal Appeal No. 1198 of 2007.

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2. At about 9 p.m. on the 26th December 1991 Naranjan Singh PW-2 son of Jaswant Singh deceased a resident of village Vinjwan was in his house along with his father when there was a knock at the door. Naranjan Singh and his father, who happened to be the Sarpanch of the village, thereupon opened the door. Two Sikh youth, who were subsequently identified as the appellants herein, Sukhbir Singh and Dilbagh Singh, were standing outside carrying AK-47 rifles. They told Jaswant Singh that he was raising an unnecessary dispute with regard to the school land, part of which under the possession of Mohanjit Singh, Amir Singh and Bhupender Singh sons of Harbans Singh (all accused). Jaswant Singh answered that he alone was not the deciding factor and the other members of the Panchayat and the Lambardar be also called. Jaswant Singh was then taken towards the house of Mohinder Singh Lambardar, by the two appellants followed by Naranjan Singh. Mohinder Singh too was called out of his house and the entire group then went on to the house of Hardev Singh, Member Panchayat. Hardev Singh too was called out and the appellants told them that the dispute should be settled then and there. They also took Jaswant Singh, Lambardar Mohinder Singh and Member, Panchayat Hardev Singh towards the side of the school outside the village again followed by Naranjan Singh. The three were thereafter told to sit on the ground whereupon one of the appellants went to call Harbans Singh appellant. He returned about 5/6 minutes later accompanied by Harbans Singh and directed Jaswant Singh to stand up and after telling him that he alone was not permitting Harbans Singh and his family to live peacefully and that he was attempting to construct a school building over his land, they fired a burst each from their rifles killing Jaswant Singh on the spot. Naranjan Singh then ran away but returned after some time and seeing his father's dead body, left for the police station. He, however, came across a police party at about 4.45 a.m. on the canal bridge near village Taragarh and made a statement to Inspector Jarnail Singh PW-8 and on its basis an FIR was registered at Police Station, Sadar Batala. The Special Report was delivered to the

- A Magistrate in Batala itself at 6.30 a.m. In the FIR, Naranjan Singh stated that two Sikh youth who had killed his father were militants 25-30 years of age, of medium build, wearing kurta pajamas and that he could identify them, if confronted. He further stated that he suspected that Harbans Singh and his sons
- B Mohanjit Singh, Amir Singh and Bhupender Singh had entered into a conspiracy along with the appellants to commit the murder. Harbans Singh and his three sons were arrested soon after the incident but Sukhbir Singh and Dilbagh Singh were arrested on the 21st May 1992 by Sub-Inspector Pyara Singh.
- C On the completion of the investigation, all the accused were brought to trial for offences punishable under section 302 read with Section 149 and 120-B of the IPC.

3. The prosecution in support of its case placed reliance on the evidence of Sukhdip Singh PW-1, the doctor who had carried out the post-mortem on the dead body, Naranjan Singh PW-2, Mohinder Singh Lambardar PW-3 who too supported the prosecution story and further stated that he had seen Harbans Singh and his sons talking to one of the appellants, and PW-8 Sub-Inspector Jarnail Singh who had recorded the statement of Naranjan Singh near the canal minor bridge and which had led to the registration of the formal FIR.
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4. The trial court relying on the aforesaid evidence convicted all the accused for offences punishable under Section 120-B of the IPC and sentenced them to RI of 7 years and to fine, Sukhbir Singh and Dilbagh Singh appellants under Section 302 of the IPC and sentenced them to life imprisonment along with fine and Harbans Singh, Mohanjit Singh, Amir Singh and Bhupender Singh under Section 302/149 of the IPC also to serve a life sentence. The matter was thereafter taken in appeal to the High Court and during the pendency of the appeal Harbans Singh passed away. The appeal against him has dismissed as having abated. The High Court observed that there was no delay in the lodging of the FIR in which the names of Harbans Singh, Mohanjit Singh, Amir Singh and Bhupender
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Singh alias Shastri had been mentioned, and although the two main accused (the appellants herein) had not been named, but they fitted the description given in the FIR and that further support with regard to the occurrence was to be found from the statements of Naranjan Singh and Mohinder Singh PWs. as to the manner in which the entire incident happened which clearly revealed that the two sets of accused had entered into a conspiracy to eliminate Jaswant Singh as he was an impediment in the efforts of Harbans Singh and others to take over the school land. The High Court observed that the two primary assailants Sukhbir Singh and Dilbagh Singh had opened fire on Jaswant Singh only after getting a green signal from Harbans Singh and his sons. The Court also observed that the identification of the appellants in Court for the first time fully satisfied the test of proper identification notwithstanding the fact that they had been arrested long after the incident on the 21st May 1992 by Sub-Inspector Pyara Singh who had not been produced as a witness. The High Court also observed that as PW-3 Mohinder Singh was an independent witness, there was no reason whatsoever to disbelieve his testimony. Two appeals have been filed against the judgment of the High Court. Criminal Appeal No. 1198 of 2007 by Sukhbir Singh and Dilbagh Singh and Special Leave Petition (Crl) No. 558 of 2008 by Amir Singh, Mohanjit Singh and Bhupender Singh. We grant leave in this Special Leave Petition as well. As already indicated above, the facts have been taken from Criminal Appeal No. 1198 of 2007.

5. Mr. Patwalia, the learned senior counsel for the appellants has raised one primary argument during the course of hearing of the appeals. He has pointed out that there was absolutely no evidence with regard to the identification of the appellants and their identification for the first time in Court during the course of the trial would not be sufficient to record a conviction in the absence of any other evidence. In this connection, the learned counsel has placed reliance on *Dana Yadav vs. State of Bihar* 2002 (7) SCC 295 and *Ramesh vs.*

- A *State of Karnataka* 2009(15) SCC 35. Mr. Kuldip Singh, the learned counsel has, however, placed reliance on *Malkhansingh & Ors. vs. State of M.P.* 2003(5) SCC 746 to contend that there was no inflexible rule that an identification made in Court for first time could not be taken as a good piece of evidence and as in the present matter the description of the appellants had been given in the FIR that itself was a corroborative circumstance to the prosecution story. Mr. Patwalia has also urged that once it was held that the appellants, the main accused were not involved in the incident as their identification was suspect, the involvement of the others with the aid of Section 120-B or 149 of the IPC too could not be spelt out.

6. We have considered the arguments advanced by the learned counsel for the parties. It will be seen that the incident happened at about 9 p.m. on the 26th December 1991. In the FIR recorded about 8 hours later, the appellants had been described as two Sikh youth 25/30 years of age wearing kurta pajamas. The appellants were arrested on the 21st May 1992 by Sub-Inspector Pyara Singh, (who was not examined as a witness) and they were identified for the first time in Court by Naranjan Singh on the 21st September 1993. We are of the opinion that the physical description of the appellants given in the FIR would fit millions of youth in Punjab, and could not by itself pin the murder on them. The prosecution has also not come out with the steps in the investigation which had led to their identification as the primary assailants. It was, in this background, obligatory on the part of the prosecution to have produced Sub-Inspector Pyara Singh who could have testified to the steps in the investigation made by him which had enabled him to identify the appellants as the killers. This was not done. In this view of the matter, the judgments cited by Mr. Patwalia fully apply to the facts of the case. There is absolutely no evidence other than in the identification in court made by Naranjan Singh long after the incident. It is true that there is no inflexible rule that an identification made for the first time in

Court has to be always ruled out of consideration but the broad principle is that in the background there is no other evidence against an accused on identification in Court made long after the event is clearly not acceptable. The judgment cited by Mr. Kuldip Singh of Malkhansingh's case (*supra*) is on the facts of that particular case, as a prosecutrix, who was the victim of a gang rape, had identified some of the accused for the first time in Court on which this Court opined that the identification was acceptable as a good piece of evidence.

7. We now consider the case of the appellants in the connected matter. The suggestion made by the prosecution is that Sukhbir Singh and Dilbagh Singh had been engaged by the other appellants to settle scores with Jaswant Singh as he was apparently an obstacle in their way with respect to the school land. We have, in this connection, gone through the evidence of Naranjan Singh PW-2 and Mohinder Singh PW-3, in the background of these facts. We are of the opinion that the involvement of Sukhbir Singh and Dilbagh Singh has to be ruled out as they were not properly identified and the charge qua them under Section 302 read with Section 120-B of the IPC must fail. It is the prosecution story that a dispute regarding the school land existed between Jaswant Singh and Naranjan Singh on the one side and Harbans Singh and his sons Amir Singh, Mohanjit Singh and Bhupender Singh appellants on the other. It is also clear that in this dispute PW-3 Mohinder Singh, the Lambardar was siding with Jaswant Singh. We have gone through the evidence of PW-2 and PW-3 very carefully. We see very substantial improvements in the statements made by PW-2 in Court vis-a-vis his statement made to the Police. Confronted with these statements, he could not give any cogent explanation for making them. It is also clear that except for his ipse-dixit with regard to the dispute, there is no other evidence that any dispute did exist. It has come in the evidence that no threat had ever been received by Jaswant Singh from militants prior to the incident. We are, therefore, of the opinion that the statement of this witness cannot be relied upon. The statement

A of PW-3 is equally uncertain. PW-3 made very substantial improvements in his evidence as well. The story that after seeing the murder, he had not made any attempt to meet Naranjan Singh, and his plea that after the incident he had returned home and had gone to sleep is difficult to swallow as
B it would be contrary to normal human behaviour. He also stated that a grant of Rs.1,00,000/- had been received for the school about 12 days prior to the incident and that the Qanungo had demarcated the school land which was legitimately in possession of Harbans Singh. No cogent evidence to this effect
C has been produced by the prosecution. We are, therefore, of the opinion that the evidence of this witness cannot also be believed.

D 8. We therefore have no option but to allow Criminal Appeal No. 1198 of 2007 as well as Criminal Appeal No...../2011 arising out of SLP (Crl.) No. 5580 of 2008 filed by Amir Singh and others. The judgment of the trial court dated 7th August 1997 and that of the High Court dated 12th January 2007 are set aside.

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Appeals allowed.