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Bhagat Singh Vs. State

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SooperKanoon Citation : sooperkanoon.com/848848

Court : Delhi

Decided On : May-21-2010

Judge : A.K. Sikri and; Ajit Bharihoke, JJ.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149, 188, 304, 307, 308, 395, 411, 427, 435, 436 and 452; ;Code of Criminal Procedure (CrPC) - Sections 173, 173(2), 173(8) and 313

Appeal No. : Criminal Appeal No. 735/2009

Appellant : Bhagat Singh

Respondent : State

Advocate for Def. : H.S. Ahluwalia, Special Public Prosecutor,; K.K. Sud, Sr. Adv. and;

Advocate for Pet/Ap. : S.P. Singh Chaudhari,; Y.R. Sharma and; Shailendra Kumar

Judgement :

Ajit Bharihoke, J.

1. Above referred appeals are directed against the impugned judgment dated 22nd August 2009 in Sessions Case No. 7/2000, FIR No. 489/1984 Police Station Sarai Rohilla convicting the appellants Mangal Sain @ Billa, Bhagat Singh and Brij

Mohan Verma for the offences punishable under Section 148 IPC, Section 395 IPC, Section 435 IPC as also Section 307 IPC all read with Section 149 IPC and the consequent order on sentence dated 29th August 2009.

2. Briefly put, case of the prosecution is that in the aftermath of assassination of Smt. Indira Gandhi, late Prime Minister of India communal riots directed against the Sikh community erupted in Delhi.

3. Shastri Nagar, Delhi also witnessed riots involving a series of attacks on Sikh population by non-Sikhs between 31st October 1984 and 3rd November 1984. On 1st November 1984, on the complaint of one Ajaib Singh regarding arson, looting, mischief , culpable homicide and attempt to commit murder which took place at B-1764, Shastri Nagar, B-1638, Shastri Nagar and B-1600, Shastri Nagar, an FIR was registered being FIR No. 489/84 under Sections 147, 148, 149, 304, 308, 427, 436,452, 411 and 188 IPC. The police investigated the matter and filed a charge sheet against 18 accused persons dated 30th November 1984 in the court. The charge sheet related to a number of Sikhs houses which were subjected to communal assaults by the rioters including House No. B-1580 belonging to Joginder Singh, father of PW3 Manohar Singh, PW4 Jagmohan Singh and PW8 Gurinder Singh and the name of Joginder Singh also appeared in the list of witnesses relied upon by the prosecution in the said charge sheet.

4. The role of the police during the communal riots and post- communal riots came under heavy criticism because of omission to take steps to curb the riots and also the failure of the police machinery to properly investigate the riot cases. Accordingly, Govt. of India constituted a Commission of Inquiry in the year 1985 known as 'Justice Ranganath Misra Commission' to look into the role of the police and the Government machinery during as well as post-riots. The Commission invited affidavits from the victims of riots and advertisements to that effect were given. Victim Joginder Singh, who was resident of B-1580 also submitted his affidavit dated 9th September 1985 on the same day. Jagmohan Singh PW4 s/o Joginder Singh also submitted his affidavit qua the incident which took place at their house No. B-1580, Shastri Nagar wherein Jagmohan Singh and his brother Gurinder Singh were seriously injured and their house was looted and set on fire.

5. The affidavits of Joginder Singh and his son Jagmohan Singh were referred by Justice Ranganath Misra Commission to a committee constituted in that behalf. The said affidavits were considered initially by Justice Jain-Potti-Rosha Committee, thereafter by Justice JainBanerjee Committee and ultimately by Justice Jain-Aggarwal Committee which Committee, vide its recommendations dated 10th August 1992 took the view that earlier investigation conducted in the case FIR No. 489/1984, Police Station Sarai Rohilla was perfunctory and directed further investigation in the case under Section 173(8) Cr.P.C. The Committee also directed that the investigating agency, while undertaking further investigation, should also inform the court concerned about the aforesaid recommendation of the Committee. Said recommendation was followed by the order of the Lt. Governor, Delhi issued under the signatures of Joint Secretary (Home) dated 23rd October 1992.

6. Pursuant to the directions, special teams were created within Delhi Police which took up further investigation in the matter and on conclusion of further investigation, came up with a supplementary charge sheet dated 3rd December 1993 against 14 accused persons, including the three appellants. Even the supplementary charge sheet suffered from defect inasmuch as that it clubbed two separate instances of rioting relating to house Nos. A-302, Shastri Nagar and B1580, Shastri Nagar. Aforesaid defect was rectified by the learned trial court directing segregation of the charge sheets by filing supplementary charge sheets vide order dated 8th May 2000. Pursuant to the said direction, supplementary charge sheet was filed against the appellants and one Radhey Shyam. The names of their co-accused persons Om Prakash, ration wala and Mahender, Kachori wala were not included in the list of the accused persons sent for trial as they were allegedly not traceable.

7. We may note that in the meanwhile, the trial of the first charge sheet submitted in FIR No. 489/1984 continued and it ultimately resulted in acquittal of all the accused in that case vide judgment of the concerned learned Additional Sessions Judge dated 29.03.1993.

8. The appellants including their co-accused Radhey Shyam Verma were charged by the learned Additional Sessions Judge under Sections 148 IPC, Section 395 read with Section 149 IPC, Section 436 read with Section 149 IPC, Section 307 read with Section 149 IPC. The appellants as well as Radhey Shyam Verma pleaded not guilty to the charge and claimed to be tried. During the course of trial, Radhey Shyam expired and proceedings against him stood abated.

9. In order to bring home the guilt of the appellants, the prosecution has examined nine witnesses in all. The case of the prosecution, however, hinges on the testimony of the purported eye witnesses, namely, PW3 Manohar Singh, PW4 Jagmohan Singh (injured), PW7 Smt. Baljit Kaur, wife of Jagmohan Singh and PW8 Gurender Singh who also allegedly sustained injury in the incident, besides the medical evidence provided by PW5 Dr. U.C. Tyagi and PW6 Dr. Pritam Singh.

10. PW3 Manohar Singh is younger brother of the injured Jagmohan Singh. He testified that on 01.11.84 at about 10:00 am in the morning a crowd of people armed with lathis came to their house No. B-1580 Shastri Nagar, Delhi and started damaging the house. They burnt the house and looted their belongings. Due to fear, he ran away and took shelter in the house of his friend and he returned back to his house 3/4 days later. He stated that he could not properly see any of the members of the crowd.

11. PW4 Jagmohan Singh is the star witness of the prosecution. He has testified that on 01.11.84 at around 3/4:00 pm a crowd of 300/400 rioters armed with 'lathis' visited his house. The appellants Mangal Sain, Brij Mohan, Bhagat Singh and Radhey Shyam (since deceased) besides 'Om Prakash Ration Wala', 'Billa Ice Vendor' and 'Mahender Kachauriwala' were also present in the crowd of rioters. He deposed that the aforesaid crowd burnt his house and looted his belongings. Radhey Shyam hit him with a sharp weapon and Bhagat Singh also assaulted him and the appellant Mangal Sain @ Billa and Brij Mohan looted his household property. PW4 Jagmohan Singh also stated that in order to escape from those rioters, he ran towards the 'gurdwara' but gate of the 'gurdwara' was not open, so he turned towards the lane where the accused persons caught hold of him and assaulted him. As a result of beating, he became unconscious and regained

consciousness after 8 days in Hindu Rao Hospital. He produced his original discharge slip purportedly issued by Hindu Rao Hospital as Mark A which was subsequently exhibited as Ex.PW5/A by PW5 Dr. U.C. Tyagi, Additional Medical Superintendent of the hospital.

12. PW7 Baljit Kaur is the wife of PW4 Jagmohan Singh. She deposed that on 01.11.84 at about 09:00/10:00 a.m., a crowd of people armed with 'lathis' and 'sarias' came to their house i.e. B-1580, Shastri Nagar. On this, they left the house and hid themselves in the house of Gurbachan Singh. She showed her inability to identify anyone from the said crowd of rioters and categorically stated that none of the appellants was seen by her in the crowd. She was declared hostile on the request of the learned Prosecutor and in her cross-examination by the learned Prosecutor, she stated that in the evening of 01.11.84, when they came back to their house, she found that the house was burnt and their belongings were damaged. She denied the suggestion that she had deliberately refrained from supporting the case of the prosecution to help the accused persons who were her neighbours. In her cross-examination by the accused persons, PW7 Stated that her husband was a 'sewadar' at Bangla Sahib Gurdwara and he used to leave for his duty at 07:00 a.m. She categorically stated that on the relevant day also, her husband had left the house at 07:00 a.m. and he returned back about 07:00 p.m.

13. PW8 Gurinder Singh is the other brother of PW4 Jagmohan Singh. He stated that on 01.11.84 at about 09:00/10:00 a.m., rioters came to their House No. B-1580, Shastri Nagar, Delhi. Those rioters included the appellants. They had 'lathis' in their hands and one of the rioters had hit him on his head with the 'lathi'. His brother Jagmohan was beaten so badly that he appeared to be almost dead. He took his brother to Hindu Rao Hospital in a police jeep where he remained admitted for about 10 days. In the cross-examination, this witness stated that PW4 Jagmohan Singh was a 'sewadar' at Bangla Sahib Gurdwara and he used to leave for duty at about 08:00 a.m. He also stated that his father was an employee of Akali Dal and used to participate in the activities of Akali Dal as well as 'Gurdwara Prabandhak Committee. According to him, they reached at the hospital at about 04:00 p.m. and he stayed with his brother in the hospital on the night of 01.11.84. He denied the suggestion that he had deposed falsely against the appellants at

the instance of the leaders of Akali Dal or that his brother Jagmohan Singh was not present at the spot of occurrence at the time of riots.

14. PW5 Dr. U.C. Tyagi, Additional Medical Superintendent, Hindu Rao Hospital stated that on 20.07.93, he was posted as Deputy Medical Superintendent, Hindu Rao Hospital and he issued a letter Ex.PW1/A stating that no MLCs pertaining to the person injured in the riots were prepared in 1984. He also proved the purported discharge slip of injured Jagmohan as Ex.PW5/A.

15. PW6 Dr. Pritam Singh was working as Medical Officer of Guru Harkishan Hospital, Bangla Sahib. He has certified that Jagmohan Singh, who was admitted in Hindu Rao Hospital as a case of head injury from 01.11.84 till 08.11.84 was having fracture on 'Maxillee' (left side), and his injuries were grievous in nature. He proved the certificate issued by him as Ex.PW6/A.

16. The appellants, when examined under Section 313 Cr.P.C., denied the prosecution evidence and claimed that they have been falsely implicated in this case.

17. In defence, appellants examined one Amrik Singh. He deposed that in the year 1984, he was residing in House No. 1578-D, Shastri Nagar. He also stated that on 01.11.84, he did not hear anything about the riot at the house of Jagmohan Singh and that after the riots Jagmohan met him and informed that nobody from mohalla was there in the mob involved in the riots in 1984.

18. Learned Additional Sessions Judge, relying upon the testimony of ocular witnesses, particularly PW4 Jagmohan Singh (injured), PW8 Gurinder Singh and the medical evidence provided by PW5 Dr. U.C. Tyagi and PW6 Dr. Pritam Singh found the appellants guilty of offences punishable under Sections 148 IPC as well as Section 395, 436 and 307 IPC read with Section 149 IPC.

19. Shri Ramesh Gupta, Sr. Advocate on behalf of the appellant Mangal Sain, Shri S.P. Singh Chaudhary, Advocate on behalf of the appellant Bhagat Singh and Sh. Puneet Ahluwalia, Advocate on behalf of the appellant Brij Mohan Verma have challenged the impugned judgment on facts as well as law. They have argued on

almost similar pattern. We are not reproducing the specific arguments advanced on behalf of the respective appellants for the sake of brevity.

20. Firstly, it is submitted on behalf of the appellants that this is a peculiar case in which the appellants were put to trial on the basis of a supplementary charge sheet filed pursuant to the FIR No. 489/84, P.S. Sarai Rohilla on 03.12.1993, ignoring the fact that the trial based on the main charge sheet earlier filed in respect of the said FIR in November 1984 had already concluded in acquittal of the accused persons arrayed in the aforesaid earlier charge sheet vide judgement dated 29.03.1993 of learned Shri S.S. Bal, Additional Sessions Judge, Delhi. The aforesaid acquittal order had attained finality before the filing of supplementary charge sheet as no appeal against the above referred judgement of acquittal dated 29.03.1993 was preferred by the State. In the above backdrop, learned Counsels for the appellants submitted that once the trial in respect of the main charge sheet based upon the same FIR had concluded on 29.03.1993, there was no occasion for filing of supplementary charge sheet in already concluded case and the only option available with the police, if it wanted to reopen or further investigate the case in relation to the incident of rioting which purportedly took place at House No. 1580-B, Shastri Nagar was to have a fresh FIR registered with regard to said incident before undertaking the investigation. Since this has not been done, the trial of the appellants on the basis of the aforesaid supplementary charge sheet is bad in law and amounts to mistrial, which in itself is sufficient to entitle the appellants to acquittal.

21. Section 173(8) is a new provision introduced by the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Code?), which was not there in the earlier Code. It empowers the police to further investigate the matter even after submitting a report under Section 173 Cr.P.C. or taking cognizance of the offence by the Magistrate. A report under Section 173 Cr.P.C. is normally the end of the investigation. Sometimes, however, after the submission of the report, some new evidence having bearing upon the guilt or innocence of the accused arrayed in the charge-sheet or otherwise may crop up. Section 173(8) of the Code is tailored precisely to meet such a situation and empowers the police officer to further investigate the matter to collect evidence in the interest of justice and to send the

report to the Magistrate.

22. In the instant case also, something similar has happened. Ex.PW4/DC is the copy of the complaint filed by Joginder Singh (since 'deceased?), father of PW4 Jagmohan Singh, to SHO, P.S. Sarai Rohilla wherein he reported the incident of arson, looting and assault resulting in serious injuries to his sons PW4 Jagmohan Singh and PW8 Gurinder Singh in the incident of rioting on 1st of November, 1984 by a mob of people in the aftermath of the assassination of Smt. Indira Gandhi, former Prime Minister. This complaint was got proved by the appellants in the cross-examination of PW4 Jagmohan Singh by putting to him a suggestion in that regard. Perusal of the original charge- sheet filed in respect of case FIR No. 489/84, P.S. Sarai Rohilla reveals that FIR No. 489/84 was general in respect of the riots involving several properties in B-Block, Shastri Nagar with particular reference to the incident of rioting which took place at the house No. B-1764, Shastri Nagar. The original charge-sheet was submitted against 14 accused persons other than the appellants in relation to the incident of rioting at the house of Ajaib Singh. The charge framed in that case did not include the incident which took place at House No. 1580-B, Shastri Nagar, Delhi, which is the subject matter of the instant appeal. From this, it is obvious that SHO, P.S. Sarai Rohilla did not take pains to investigate into the allegations made in the complaint Ex.PW4/DC of Joginder Singh dated 09th November, 1984. Precisely because of the aforesaid reason, Justice Jain-Aggarwal Committee recommended to Government of NCT of Delhi to further investigate into the affidavits filed by Late Joginder Singh and his son Jagmohan Singh (PW4) under Section 173(8) Cr.P.C.

23. We may note that the Government of India, taking into account the heavy criticism of the role played by the police and the State machinery during 1984 Anti-Sikh riots had constituted an Inquiry Commission known as 'Justice Ranganath Misra Inquiry Commission?. The aforesaid Commission had invited affidavits from the victims of riots who were not satisfied with the role played by the State agency. Pursuant to that, hundreds of victims including Joginder Singh (deceased) and his son Jagmohan Singh (PW4) submitted their affidavits before the Commission. Those affidavits Ex.PW4/DD and Ex.PW4/DA were forwarded by Justice Ranganath Misra Commission to Justice Jain-Aggarwal Committee, specifically

constituted in this regard for consideration and recommending the required necessary action. The Committee, on consideration of those affidavits found that the investigation conducted into FIR No. 489/84, P.S. Sarai Rohilla by the police was perfunctory and recommended further investigation into the allegations made in those affidavits. The recommendation was sent by the Secretary of the Committee to the Lieutenant Governor of NCT of Delhi vide letter Ex.PW9/B alongwith the relevant affidavits. Pursuant to that recommendation, the Government of NCT of Delhi directed further investigation into the affidavits of Joginder Singh and Jagmohan Singh, which direction was communicated to the Commissioner of Police, Delhi by Joint Secretary (Home) vide letter Ex.PW9/A dated 23rd October, 1992. Accordingly, further investigation under Section 173(8) of the Code was taken up by the police, which culminated into the supplementary charge-sheet, which is the subject matter of this appeal. We may also note that we have perused the record pertaining to the main charge-sheet and on perusal of the case diaries dated 18.02.1993, we find that intimation pertaining to decision to further investigate the matter was conveyed by the Investigating Officer to the concerned Additional Sessions Judge in writing by Assistant Commissioner of Police (Headquarter), Riot Cell, New Delhi through the Senior Public Prosecutor. Thus, it is clear that before the conclusion of the trial on the main charge-sheet, the Additional Sessions Judge was informed about the further investigation taken up in case FIR No. 489/84, P.S. Sarai Rohilla. Thus, we do not find any illegality in the trial of the appellants based on supplementary charge-sheet filed after the judgment of acquittal in the main charge-sheet, particularly for the reason that Section 173(8) clearly stipulates that nothing contained in Section 173 of the Code shall be deemed to preclude further investigation in respect of an offence after report under Section 173(2) has been forwarded to the Magistrate.

24. The second limb of contention on behalf of the appellants is that the police authorities, if they wished to take up further investigation in the matter, should have registered a fresh FIR. Ideally, it would have been better if the police had registered an independent FIR on the basis of the allegations made in the complaint dated 09.11.84 of Joginder Singh but the failure of the police authorities to register an FIR on the basis of said complaint cannot be taken advantage of by the appellants. Purpose of FIR is a principal object of FIR from the preparation of

the complainant or informant is to set the criminal law into motion and from the point of view of the investigating agency is to obtain the information about the commission of alleged offence so as to collect evidence and bring the actual culprit to the book. The idea is to obtain earlier information of alleged criminal activity to record the circumstances before those are forgotten due to passage of time and this also helps in eliminating possibility of distortion of facts on an afterthought. That purpose in the instant case is already achieved because the complaint of Joginder Singh Ex.PW4/DC records his version, which satisfies the basic object behind insisting for the registration of FIR. Thus, we do not find any merit in the above contention of the appellants.

25. This brings us to the factual merits of the case. The prosecution has examined six purported eye witnesses to bring home the guilt of the appellants. Testimony of PW1 Gurnam Singh and PW2 Kulwant Singh is not relevant for the purpose of this appeal as their testimony does not relate to the incident which is the subject matter of this appeal. Thus, we are left with the testimony of three brothers, namely, PW3 Manohar Singh, PW4 Jagmohan Singh (injured), PW8 Gurinder Singh (injured) and PW7 Baljit Kaur, wife of PW4 Jagmohan Singh.

26. It is submitted on behalf of the appellants that on perusal of the impugned judgment, it appears that while appreciating the evidence of the ocular witnesses, namely, PW3 Manohar Singh, PW4 Jagmohan Singh, PW7 Baljit Kaur and PW8 Gurinder Singh, the learned trial Judge was overwhelmed by the circumstances which prevailed at the time of anti-Sikh riots which erupted in the aftermath of the assassination of Smt. Indira Gandhi, the former Prime Minister and because of that he returned the finding of the guilt of the appellants, ignoring the fact that ocular as well as documentary evidence produced by the prosecution is contradictory and unreliable. Dilating on the above argument, learned Counsels for the appellants submitted that the learned Trial Court failed to appreciate that out of the four ocular witnesses examined by the prosecution, PW3 Manohar Singh and PW7 Baljit Kaur have not supported the case of the prosecution inasmuch as they have given the time of occurrence as 10:00 am in the morning of Ist November, 1984 which is contradictory to the time of occurrence mentioned in the charge and they have not identified either of the appellants as member of the group of rioters

who had attacked their House No. 1580-B Shastri Nagar, Delhi. It was further submitted on behalf of the appellants that even the medical evidence to corroborate the version of PW4 and PW8 that they sustained injuries in the incident is not satisfactory. It is argued that in view of the infirmities, it is unsafe to rely upon the testimony of PW4 and PW8 because a possibility of introducing the names of the appellants on an afterthought at the influence of political groups cannot be ruled out.

27. Learned Counsel for the State, on the other hand, has submitted that the learned trial Judge has rightly relied upon the evidence on the eye witnesses, namely, Manohar Singh (PW3), Jagmohan Singh (PW4), Baljit Kaur (PW7) and Gurinder Singh (PW8). It is submitted that although PW3 and PW7 have failed to identify either of the appellants as members of the crowd of rioters, at the same time, they have supported the case of the prosecution regarding the attack by a crowd of rioters at their House No. 1580-B, Shastri Nagar and also about the arson and looting, which version corroborates the version of PW4 Jagmohan Singh and PW8 Gurinder Singh who are natural witnesses and whose presence cannot be doubted as they both had sustained injuries in the occurrence. Learned Counsel for the State submitted that much importance cannot be attached to the failure of the prosecution to prove the treatment record pertaining to treatment of PW4 Jagmohan Singh and PW8 Gurinder Singh at Hindu Rao Hospital because non-production of said record is not wilful and it can safely be attributed to the delay in investigation caused on account of inaction on the part of the police in properly investigating the matter and negligently filing the initial charge sheet in this case FIR No. 489/84 P.S. Sarai Rohilla on the basis of perfunctory investigation. Learned Counsel for the State has drawn our attention to the affidavit of Jagmohan Singh Ex.PW4/DA dated 09.09.85 which was submitted before the Justice Ranganath Misra Inquiry Commission and submitted that even in this affidavit, which was sworn back in 1985, PW4 Jagmohan Singh had stated that he and his brother Virender Singh (should be Gurinder Singh) were beaten by the crowd with lathis and sarias consequent to which they sustained several injuries and thereafter they were admitted in Hindu Rao Hospital. In view of this, learned Counsel submitted that the learned Trial Court has rightly accepted the version of PW4 and PW8 and the impugned judgment of conviction cannot be

faulted.

28. We have carefully considered the rival contentions. The case of the prosecution as discussed above is based mainly upon the purported eye witness account of the occurrence given by PW4 Jagmohan Singh and PW8 Gurinder Singh. Other two eye witnesses examined by the prosecution are PW3 Manohar Singh and PW7 Baljit Kaur. Manohar Singh has not supported the case of the prosecution at all. He claimed that hundreds of rioters attacked their house in the morning of 01.11.84 at around 10:00 am and on seeing them, he ran away from the spot due to fear and hid himself in the house of his friend. He has neither identified any of the rioters nor has he stated about presence of either of his brothers, namely, PW4 Jagmohan Singh and PW8 Gurinder Singh at the time of said attack. He was not even cross-examined by learned APP to controvert his version regarding the time of occurrence or to suggest to him that Jagmohan Singh and Gurinder Singh were present at the spot or that they sustained injuries in the aforesaid attack.

29. PW7 Baljit Kaur is the wife of PW4 Jagmohan Singh. Though she has stated about the attack at their house by a crowd of rioters armed with lathis and sarias, she did not identify any of the appellants as members of that crowd. She also gave the incorrect time of attack i.e. between 9:00 to 10:00 am in the morning. She was cross-examined by the learned prosecutor with the permission of the court but even in the cross-examination, she did not state anything incriminating against the appellants. In her entire testimony, she is silent about the presence of PW4 and PW8 at the time of occurrence or their having sustained any injuries. In her cross-examination by learned Counsel for the appellants, she admitted that her husband Jagmohan Singh was a sewadar at Bangla Sahib Gurudwara and on the date of occurrence, he left the house for his duty at 7:00 am in the morning and returned back at about 7:00 pm. If aforesaid version is to be believed, then the presence of PW4 Jagmohan Singh at the spot of occurrence i.e. House No. 1580-B, Shastri Nagar at the relevant time is ruled out. Jagmohan Singh in his cross-examination recorded on 23.02.2005 did try to explain the aforesaid infirmity by stating that his wife Baljit Kaur has deposed to that effect under pressure of the accused persons. We are not convinced with the explanation given by PW4 Jagmohan Singh

because it has come in the testimony of PW4 as well as PW8 that sometime after the occurrence, they shifted to Amritsar and started living there. According to PW4 Jagmohan Singh, they shifted to Amritsar in December, 1984 whereas, according to PW8 Gurinder Singh, he shifted to Amritsar in 1985. Be that as it may, the fact remains that the family of the complainant shifted to Amritsar shortly after the occurrence. That being the case, a possibility of there being any pressure of the accused persons on PW7 Baljit Kaur is too remote. PW7 is the wife of PW4 Jagmohan Singh, therefore, it is highly improbable, if not impossible, that she would depose falsely to support the appellants against the version of her husband. Thus, we do not find any reason to disregard the above said version of PW7 which renders the presence of PW4 Jagmohan Singh at the time of occurrence highly doubtful. This circumstance, by itself, raises a strong doubt that PW4 and PW8 are not telling the truth.

30. The case of the prosecution is that both PW4 and PW8 sustained injuries in the occurrence. On careful reading of the evidence, we find that PW8 Gurinder Singh has claimed that he sustained one lathi blow on his head but his brother Jagmohan Singh so was badly beaten that he appeared to be dead and had become unconscious. He also testified that he took PW4 Jagmohan Singh to Hindu Rao Hospital in a police jeep on 01.11.84 where his brother was admitted for treatment, but he was discharged after treatment on the same day. If that was the case, there ought to have been some medical record pertaining to the treatment of Jagmohan Singh at Hindu Rao Hospital. The Investigating Officer, SI Jitendra Kumar Tyagi (PW9) deposed that during the investigation, he had seized medical record pertaining to treatment of PW4 Jagmohan Singh as well as PW8 Gurinder Singh vide a seizure memo Ex.PW9/C. On perusal of the seizure memo Ex.PW9/C, it transpires that copy of one OPD card pertaining to the treatment given to Gurinder Singh was allegedly seized by the Investigating Officer. The aforesaid OPD card has not been proved on record despite of the fact that as per the Investigating Officer, Jagmohan Singh at the time of seizure of those documents had assured that he would produce the originals at the relevant stage. In absence of medical evidence to corroborate the version of PW8 Gurinder Singh, we find it unsafe to rely upon his testimony, particularly when the other purported eye witnesses, namely, PW3 Manohar Singh, PW4 Jagmohan Singh and PW7

Baljit Kaur, who are closely related to PW8 Gurinder Singh, are silent about his presence at the time of occurrence or his having sustained injury in the incident.

31. Learned Counsel for the State submitted that presence of PW4 Jagmohan Singh at the time of incident cannot be doubted as he sustained injuries and to prove the injuries sustained by PW4 Jagmohan Singh, the prosecution has relied upon a discharge slip Ex.PW5/A purportedly issued by Hindu Rao Hospital. Prosecution examined PW5 Dr. U.C. Tyagi, Additional Medical Superintendent, Hindu Rao Hospital to prove said discharge slip. Dr. U.C. Tyagi is neither the author of the discharge slip nor a signatory. PW4 Jagmohan Singh was not under his treatment during the relevant period i.e. from 01.11.84 to 08.11.84 mentioned in the discharge slip Ex.PW5/A. No treatment record of Jagmohan Singh relatable to the period mentioned in the discharge slip has been placed on record. Therefore, under the circumstances, we find it difficult to place reliance upon the discharge slip Ex.PW5/A, particularly when the MLC of PW4 Jagmohan Singh has not been proved. The doubt against the contents of the discharge slip Ex.PW5/A gets compounded by the fact that the prosecution has examined Dr. Pritam Singh (PW6), Medical Officer Guru Harkishan Hospital, Bangla Sahib. He has proved a certificate Ex.PW6/A purportedly issued by him certifying that Jagmohan Singh, who was admitted in Hindu Rao Hospital as a case of head injury on 01.11.84 and discharged on 08.11.84, was having a fracture of Maxilla (left side) and the injuries suffered by him were grievous in nature. If this certificate is to be believed, then Jagmohan Singh, apart from the head injury had also sustained fracture of nasal bone i.e. Maxilla (left side) and that fracture had still not healed when he was purportedly discharged from the hospital. If that was true, under the natural course of circumstances, the discharge slip ought to have mentioned about the said fracture of Maxilla. This, however, is not the case. Otherwise also, the testimony of PW6, if true, indicates that Jagmohan Singh after his discharge from Hindu Rao Hospital took treatment at Guru Harkishan Hospital, Bangla Sahib Gurudwara. Even the treatment record of the aforesaid hospital is not proved by the prosecution. Further, Ex.PW4/DA and Ex.PW4/DD are the respective affidavits of PW4 Jagmohan Singh and his father Joginder Singh. In these affidavits, both of them have alleged that the rioters had assaulted Jagmohan Singh and his brother Virender Singh (should have been Gurinder Singh) with lathis and sarias and as a

consequence thereof, they sustained injuries. If the allegations in those affidavits are to be believed, then both the brothers i.e. PW4 and PW8 were assaulted by hundreds of rioters with lathis and sarias. In that eventuality, both of them must have sustained injuries all over their bodies, which fact is not projected in the discharge slip Ex.PW5/A which speaks only of a head injury. This circumstance, coupled with the circumstances discussed above, raises a strong doubt against the genuineness of the discharge slip Ex.PW5/A and medical certificate Ex.PW6/A produced by the prosecution in support of its case. Aforesaid doubt is further compounded by the fact that the Investigating Officer, Inspector J.K. Tyagi (PW9) in his cross- examination has stated that though he seized the aforesaid copies of medical records pertaining to the treatment of PW4 Jagmohan Singh and PW8 Gurinder Singh, he did not make any effort to verify the genuineness of those documents. In absence of any cogent evidence pertaining to the injuries sustained by PW4 Jagmohan Singh and PW8 Gurinder Singh, we do not find it safe to rely upon their ocular testimony, which is not corroborated by the other two eye witnesses, namely, PW3 Manohar Singh and PW7 Baljit Kaur who are the members of the same family. As noted above, the testimony of PW7 Baljit Kaur even rules out the possibility of the presence of PW4 Jagmohan Singh at the time of occurrence.

32. We may note that on perusal of the affidavits Ex.PW4/DA and Ex.PW4/DD submitted by Jagmohan Singh and his father Joginder Singh before Justice Ranganath Misra Inquiry Commission, it transpires that in the said affidavits PW4 and his father alleged that one Master Srikishan, member Municipal Corporation was also present at the time of occurrence. Those affidavits admittedly were forwarded by Justice Jain-Aggarwal Committee to Delhi Government along with their recommendation for further investigation into the case FIR No. 489/84, P.S. Sarai Rohilla under Section 173(8) Cr.P.C. That being the case, it was expected of the investigating agency to examine Master Srikishan during investigation and cite him as a prosecution witness. Master Srikishan has neither been cited as a witness nor examined by the prosecution. This circumstance also goes against the prosecution because the only independent eye witness of the occurrence whose identity was available to the police has been withheld by the prosecution. This raises a presumption that had Master Srikishan been produced in the court, he

would not have supported the case of the prosecution.

33. The result of above discussion is that the testimony of PW4 Jagmohan Singh and PW8 Gurinder Singh is highly suspect and it is not safe to base conviction of the appellants on the aforesaid evidence, particularly when other two purported eye-witnesses PW3 and PW7 have not supported the prosecution case against the appellants. Therefore, we set aside the impugned judgment of conviction and acquit the appellants on all the counts, giving them benefit of doubt.

34. The appellants are in Jail. They be released forthwith, if not required in any other case.

35. The appeals are accordingly disposed of.

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