

Baldev Singh and ors. Vs. the State

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Court : Jammu and Kashmir

Decided On : Dec-02-1981

Reported in : 1982CriLJ1087

Judge : Mufti Baha-Ud-Din Farooqi, Ag. C. J. and; I.K. Kotwal, J.

Appellant : Baldev Singh and ors.

Respondent : The State

Judgement :

I.K. Kotwal, J.

1. The appellants, Rasal Singh and Baldev Singh have been found guilty by Sessions Judge, Jammu, of having murdered one Sansar Singh, the real son of appellant Rasal Singh, and the real brother of appellant Baldev Singh on 26-4-1977 at village Thalwal Tehsil, Jammu. He has convicted both of them Under Section 302 R. P. C. and sentenced them to imprisonment for life and a fine of Rs. 500/-each. The appellants have appealed against their conviction and sentence. Alongside the Sessions Judge has also made a reference for confirmation of the sentence of imprisonment for life imposed on them. This judgment will dispose of the appeal as well as the reference.

2. Appellant Rasal Singh, as the prosecution story goes, had partitioned his property amongst himself and his three sons, Karnail Singh, Sansar Singh and

Baldev Singh. One room which had fallen to the share of Baldev Singh had, however, remained in possession of Karnail Singh where he had stocked hay, He not having vacated the said room, a Panchayat was called by the appellants on 26-4-77 in the village. Among others, it was attended by Sant Singh, Lakhan Chowkidar, Karnail Singh, Sansar Singh and Gulzar Singh, The Panchayat, however, failed to bring about the desired result and appellant Rasal Singh was compelled to declare that he would refer the matter to police and get the room vacated through their help. The Panchayat dispersed and the appellants also left for their houses. Soon thereafter, they came back armed with weapons. Hardly had Sansar Singh and Lakha Chowkidar moved up to the heap of cow-dung which was lying at a short distance from the place where the Panchayat had convened its meeting Sansar Singh was accosted by the appellants who declared that it was he who was at the bottom of all the trouble. Appellant Baldev Singh who was holding an axe (Chhavi) in his hand inflicted a blow with it on the head of Sansar Singh which sent him reeling on to the ground. While he was about to fall, appellant Rasal Singh who was having a sword with him took it out from the sheath and inflicted a blow on Sansar Singh which landed on his face. He inflicted two or three more blows with the sword on his chest while he lay flat on the ground. Mst. Boli wife of appellant Baldev Singh and Sansaro wife of appellant Rasal Singh were also accompanying the appellants. Mst. Boli had a stick (Danda) in her hand. While Gulzar Singh was trying to snatch away the stick from her, Baldev Singh appellant inflicted an axe blow on his head but no injury could be caused to him and only the towel which he was wearing on his head was cut. Two or three more blows were inflicted on him which also he could save with the help of the stick he was trying to snatch away from Mst. Boli, though in the process he received a minor injury on his left hand thumb. Kamail Singh caught hold of appellant Rasal Singh and took both his hand into his fold. Boli gave one blow with the stick to Kamail Singh on his back and hurled another blow at him which incidentally landed on the head of appellant Rasal Singh. Appellant Rasal Singh tried to free his arms from the grip of Karnail Singh and in the process sustained two injuries on his legs with the sword he was holding in his hand. Appellant Baldev Singh having seen Sansar Singh lying in a dangerous condition, ran away from the place of occurrence. Gulzar Singh succeeded in snatching away the

sword from appellant Rasal Singh. Both Gulzar Singh and Lakha Chowkidar who had witnessed the whole occurrence, went to the police station Sadar, Jammu, and lodged a verbal report of the occurrence with it on the same day at 7-45 P. M. A case Under Section 307 R. P. C. was registered against the appellants. Gulzar Singh also produced the sword he had snatched away from appellant Rasal Singh which was seized and also sealed by the police. The injured Sansar Singh who had been admitted to S. M. G. S. Hospital Jammu, ultimately succumbed to his injuries. Consequently offence Under Section 307 R. P. C. under which a case was initially registered against the appellant was converted into 302 .R.P.C.

3. On the same day another case Under Sections 324 and 325 R.P.C. was also registered with the same police station against Gulzar Singh and Karnail Singh on the report lodged by appellant Baldev Singh. The police 1982 Cri. L. J./69 swung into action. Statements of a number of witnesses including the four eye witnesses, namely, Gulzar Singh, Karnail Singh, Lakha Chowkidar and Mst. Kamla were recorded Under Section 161 Cr. P. Code. The deceased Sansar Singh while he was still alive was got examined by Dr. Prithvi Raj Sharma Casualty Medical Officer, S. M. G. S. Hospital, Jammu, who found the following injuries on his person:

1. Incised wound over the vertex in ant. half transversely semi-circular 7' bone cut brain tissue exposed bleeding profusely;
2. Incised wound over the right half of maxilla extending from tooth edge over the cheek prominence to the lateral canthus of right eye maxilla bone cut teeth dislodged;
3. Incised wound over the medial 1/3 of rt. clavical 2', Penetrating bleeding profusely;
4. Incised wound over the right s of chest 6' skin deep (superficially);
5. Incised wound over the right side of neck 1 1/2' skin deep;
6. Abrasion over the right lower eye lid 1 cm x 1 cm;

7. Abrasion over the right arm front side 2 1/2 cm x 1 cm.

His dead body was autopsied by Dr. R.N. Sachdev who also found these injuries on his person. In his opinion Sansar Singh had died as a result of injury No. 1 though his death was accelerated by injury No. 2.

4. Appellants Baldev Singh, Rasal Singh and Mst. Boli were also examined by Dr. A. K. Gupta on 26-4-1977. On examination, he found the following injuries on the person of Baldev Singh:

1. Incised wound on the right parietal region of scalp 3' x 1/2' and bone deep; and
2. Incised wound over the left ring finger.

In his opinion injury No. 1 was simple, whereas injury No. 2 was grievous in nature and both had been caused by a sharp edged weapon.

5. He also found the following injuries on the person of appellant Rasal Singh.

1. Incised wound on lower third of right upper leg 4' x 1' x 2';
2. Incised wound over upper third_ of right lower leg; and
3. Incised wound over right parietal region 3' x 4' and bone deep.

In his opinion all the aforesaid injuries were simple in nature and had been caused by a sharp edged weapon.

6. Similarly, he found the following injuries on the person of Mst. Boli:

1. Incised wound over right forearm in the middle third region 2' x 1/2' x 1/2'; and
2. Incised wound over right parietal region 1' x 1 1/4' x 1 1/4'.

Injury No. 2, according to the Doctor, was simple in nature but there was suspicion of fracture in so far as injury No. 1 was concerned. Both these injuries, according to him, had been caused by a sharp edged weapon. All the aforesaid injuries found on these three persons were bleeding and the bleeding was found to be

fresh.

7. The appellants were challenged by the police in the Court of City Magistrate, Jammu, who charge-sheeted appellant Rasal Singh Under Section 302 R. P. C, and appellant Baldev Singh Under Sections 302/324 R. P. C. and committed them to stand their trial before Sessions Judge, Jammu, for the aforesaid offence.

8. During the trial the prosecution examined a number of witnesses, including the four eye witnesses. Statements of Doctors Prithvi Raj and R; N. Sachdev were also recorded. The defence set up by the appellants was that P. Ws. Gulzar Singh, Karnail Singh and deceased Sansar Singh were in fact the aggressors who had injured the two appellants and Mst. Boli and Mst. Sansaro. They denied having caused any injury to the deceased or any one else. They examined in defence only one witness, namely, Dr. A. K. Gupta. The learned Sessions Judge on consideration of the evidence eventually accepted the prosecution version in toto and holding that the appellants were in fact the aggressors convicted and sentenced them as already pointed out. In doing so he relied upon the evidence of the aforesaid four eye witnesses, the recovery of weapons of offence from the appellants, the medical evidence furnished by P, Ws. Doctors Prithvi Raj and R.N. Sachdey, the earlier fight which had taken place between the deceased and the appellants which in his opinion, constituted the motive for the crime and failure of the defence plea raised during the course of arguments that the appellants, even if they were held to have caused the fatal injuries to the deceased, had done so in exercise of their right of self defence.

9. The appellants have assailed their conviction and sentence on the grounds: firstly, that there was inordinate delay in sending to the Magistrate the report of the occurrence in terms of Section 157 Cr. P. Code; secondly, that there was no evidence to prove the motive for the crime, nor was the circumstance of or previous fight put to the appellants when their statements Under Section 342 Cr. P, Code were recorded; thirdly, that the recovery of the weapons of offence from the appellants was highly doubtful; fourthly, that even the eye witnesses were not to be believed because they had contradicted each other in material particulars on the happening of the incident; fifthly, that even if the appellants were found to have

caused injuries to the deceased, they were entitled to do so in exercise of their right of self defence, irrespective of the fact whether or not it was specifically pleaded by them; and sixthly, that in any event there being no reliable evidence as to which out of the two parties was the aggressor, the appellants were entitled to acquittal.

10. Copy of the F. I. R. was admittedly received in the Court of Chief Judicial Magistrate, Jammu, on 28-4-1977 i.e. two days after the report of the occurrence was lodged with the police. Mr. Sethi relying upon the authority of a Division Bench of this Court in Criminal first Appeal No. 7 of 1974 : Hazara Singh v. State, decided on 20-11-1974 has argued that this unexplained delay in sending the report in terms of Section 157 which enjoins upon the police to send it forthwith to the Magistrate, is fatal for the prosecution case and the appellants are well within their right to urge that the case put up against them is a concocted one, or in any case, an exaggerated one. It is difficult to accept this wide proposition of law propounded by the learned Counsel. One of the objects of sending forthwith a copy of the report to the Magistrate is no doubt to guard against any concoction in the prosecution case, but failure to do so will not be always destructive of it, and each case shall have to be decided on its own peculiar facts. The moment a report of the occurrence is received in the police station, it is entered verbatim in the concerned register. Investigation thereafter ensues, during which, besides other things, recoveries are made and statements of witnesses acquainted with the facts of the case are recorded. Where the FIR is shown to have been, recorded without delay and no suspicion is attached to its recording and investigation also starts on its basis, which too is not tainted with any infirmity, then the mere fact that there has been some delay in sending the report to the Magistrate Under Section 157 will be hardly of any consequence. In taking this view we are supported by a Supreme Court decision in *Pala Singh v. State of Punjab* : 1973 CriLJ59

Mr. Kohli strongly criticised the fact that the occurrence report contemplated by Section 157 Cr. P, C, was sent to the magistrate concerned very late. Indeed, this challenge like the argument of interpolation and belated despatch of the inquest report, was developed for the purpose of showing that the investigation was not just, fair and forthright, and, therefore, the prosecution case must be looked at with

great suspicion. This argument is also unacceptable. No doubt, the report reached the magistrate at about 6 p. m. Section 157 Cr. P. Code requires such report to be sent forthwith by the police officer concerned to a magistrate empowered to take cognizance of such offence. This is really designed to keep the magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction Under Section 159. But when we find in this case that the F. I. R. was actually recorded without delay and the investigation started on the basis of that F. I. R. and there is not infirmity brought to our notice, then, however, improper or objectionable the delayed receipt of the report by the magistrate concerned it cannot by itself justify the conclusion that the investigation was tainted and the prosecution insupportable. It is not the appellants' case that they have been prejudiced by this delay.

11. We are not impressed by the argument to the contrary addressed by the learned Additional Advocate General either that in no case can delay in sending the special report to the Magistrate adversely affect the prosecution case. Delay in sending the report may by itself be of no consequence, but when coupled with the suspicion or other infirmities attaching to the recording of the report, or the conduct of the investigation thereafter, it may have a very telling effect on the prosecution case. His reliance upon *Ramlagan Singh v. State of Bihar* : 1973 CriLJ44 is, in our opinion, not well placed. Their Lordships in that case never meant to say that delay in sending the special report could be of no consequence. What they actually held was that where the prosecution case has been concurrently accepted by two courts below, mere delay in sending the report will not constitute a sufficient ground for granting special leave to appeal under Article 136 of the Constitution. The other authority, namely, *Ghulam Nabi v. State* AIR 1953 J. & K. 113:1953 Cri LJ 296) also cannot persuade us to take a contrary view. In this authority it was held by a learned single Judge of this Court that unless prejudice was shown to have occurred to the accused, mere delay in sending the report to the Magistrate Under Section 157 will not vitiate his trial as it would be merely an irregularity curable Under Section 537 Cr. P, Code. With due respects to the learned single Judge, we are unable to accept this reasoning, for Section 537 Cr. P. Code has no application to a stage prior to the enquiry held by the court. This is borne out from Section 537 itself.

12. The F. I. R. was recorded by the police on the same day. Barring the recovery of the axe at the instance of appellant Baldev Singh, all other recoveries were also made on the same day. Even the appellants were arrested on the following day from the hospital to which they had been admitted for the treatment of their injuries. Statements of the witnesses were also recorded soon; after the case was registered and case diaries were regularly sent to the S. P's office. This is amply borne out from the statement of P.W. Shanti Saroop Anand, who had investigated the case. No infirmity could be found with all this, even though the witness was grilled during cross-examination. In these circumstances, therefore, even if the special report was received in the court of C. J. M. Jammu, on 28-4-1977, that by its own force will not be destructive of the prosecution case.

13. The learned Additional Advocate General has frankly conceded, and in our opinion rightly so, that there is hardly any evidence to sustain the finding recorded by the learned Sessions Judge that the appellants had motive to commit the crime because of some fight which had taken place between them and the deceased some time back. Even otherwise, absence of motive or inadequacy of motive loses all importance, provided there is direct evidence to prove the crime which is 'clear, cogent and convincing, Motive no doubt is of great importance where the prosecution case solely rests upon circumstantial evidence. Absence of motive in such cases may be considered as a circumstance in favour of the accused, though the court, if satisfied that the circumstances are such that they can lead to one and one conclusion only that the accused is guilty, it may still hold that absence of motive will not vitiate the conviction. But, where the prosecution relies upon ocular testimony, motive does not have much role to play. In this case, the prosecution has relied upon the statements of as many as four eye witnesses and even if motive for the crime is not said to have been established, the prosecution case will still not fall, if it can otherwise stand.

14. There are two weapons of offence alleged to have been used by the appellants in the commission of the crime. Out of these one is axe (Chhavi) and the other is sword. Admittedly, no recovery has been made from appellant Rasal Singh. According to P.W. Gulzar Singh he had snatched away the sword from him during the occurrence. The sword has been admittedly produced before the police

by P. W, Gulzar Singh at the time of lodging of the F. LR. It has been seized by the police vide seizure memo Ex. P. C. which itself shows that it was produced by P.W. Gulzar Singh. On evidence in regard to the circumstances under which it was produced before the police, there is material contradiction between the statements of P.Ws Gulzar Singh and Lakha Chowkidar, Whereas P.W. Gulzar Singh says that after he had snatched away the sword from appellant Rasal Singh, he had handed it over to P.W. Lakha Chowkidar, P.W. Lakha Chowkidar does not say so. It is in evidence that P. W Gulzar Singh had made utmost attempt to snatch away the stick from Mst. Boli, but he could not succeed in doing so. If he could not snatch away a stick from a woman, it is difficult to believe that he succeeded in snatching away a sword from a man. We are, therefore, unable to accept the prosecution case and cannot up-hold the finding of the learned Sessions Judge that the sword was in fact lying with appellant Rasal Singh which had been snatched away from him by P.W. Gulzar Singh, who later on produced it in the police station. Who had brought the sword and under what circumstances it was produced before the police, appears to us to be shrouded in mystery.

15. So far as the recovery of the axe from appellant Baldev Singh is concerned, we are in agreement with the view taken by the learned Sessions Judge. Mr. Sethi's main attack against this recovery is that it was effected nearly nine days after the appellants were arrested. Mere delay in recovering the axe cannot in the circumstances of the case, raise any doubt in regard to its genuineness. It is in the statement of P.W. Shanti Saroop Anand that the information that he had concealed the axe under a cow-dung heap was supplied by appellant Baldev Singh after he had been interrogated for a number of days. We have no reason to disbelieve this statement which appears to us to be quite natural. Those who commit crime do not easily provide clues or proof of its commission. May be that after being interrogated for a number of days, appellant Baldev Singh had blurted out that he would tell where he had concealed the axe, provided he was taken to his village. If he supplied the information under these circumstances, such information cannot be dubbed as doubtful.

16. Mr. Sethi also tried, even though faintly, to challenge this recovery on the basis of some contradictions in the statements of the witnesses to the recovery, but the

contradictions which he pointed out are, in our opinion, very minor which cannot disprove the factum of recovery at the instance of the appellant. The first contradiction pointed out by the learned Counsel, is about the time of making the disclosure and recovery. Whereas P.W. Gulzar Singh has stated that it was noon, P.W. Karnail Singh has stated that it was 2 P. M. It is common knowledge that villagers seldom remember time. The other contradiction pointed out is in regard to the manner in which the axe was concealed by the appellant. In this behalf, whereas P. W. Gulzar Singh has stated that the appellant had told the police that he had thrown the axe into the sugar cane field, the other witnesses namely, Karnail Singh and Lakha Chowkidar have stated that he had told that he had concealed it under a heap of cow-dung in a sugar ;cane field. This too, in our opinion, is [a very minor contradiction which need not be taken notice of. We, therefore, hold and thereby confirm the finding recorded by the learned Sessions Judge that the axe was recovered at the instance of appellant Baldev Singh.

17. What would be the effect of these recoveries i.e. one from P.W. Gulzar Singh and the other from appellant Baldev Singh, we shall discuss a little later.

18. Equally untenable, in our opinion, is the argument advanced by Mr. Sethi that the eye witnesses were not present at the time of the occurrence as there are contradictions in their statements in so far as the occurrence is concerned. We find no such contradictions in their statements. How the appellants came, how they started the assault, what happened during the assault, and who sustained how many in-'juries and in what manner, there is hardly any contradiction worth the name between the statements of the eye-witnesses. There are no doubt some minor contradictions in so far as the convening of the Panchayat is concerned, but those contradictions in our, opinion, cannot be said to be contradictions on material particulars. Even P.W. Kamla does not improbabilise the prosecution story as contended by the learned Counsel. She has no doubt stated that she and her husband the deceased had proceeded from their house together; she going with a bucket of cow-dung to the field and her husband, the deceased going to his shop. this statement does not necessarily exclude the possibility of a Panchayat having been convened in the meantime, and the witness seeing only the occurrence on her return from the field. It is in the prosecution evidence itself that

the meeting of the Panchayat lasted for a very short time. P.W. Kamla does not give any time in her statement as to after how long she returned from the field to witness the occurrence. May be, that in the meantime the Panchayat had been convened which ended in a fiasco and which she had no occasion to see. We have, therefore, no reason to disbelieve that the eye witnesses produced by the prosecution were not present at the time of the occurrence to witness the same with their own eyes. This should not, however, mean that we are accepting their testimony unreservedly.

19. It is common ground that as many as five persons sustained injuries during the occurrence. The dispute, however, is about 'he manner in which the injuries were sustained by them. From the evidence brought on the record, it is not possible to say as to how the fight originated, and which party was the aggressor. We have already found that appellant Rasal Singh was not holding the sword which was allegedly snatched away from him by P.W. Gulzar Singh. If he was not holding any sword then the part attributed to him by the prosecution witnesses becomes extremely doubtful. On the complainant's side only Sansar Singh deceased is shown to have received injuries, which eventually resulted in his death. The minor injury received by P. W, Gulzar Singh, the only other injured among the complainant party, which is attributed by him to appellant Baldev Singh, has not been held to have been proved even by the learned Sessions Judge. On the other hand, a number of injuries are shown to have been received by both the appellants and Mst. Boli who have been clinically examined by D. W. Dr. A K. Gupta. AH the injuries sustained by these three persons were caused, according to the said witness, by a sharp edged weapon. The prosecution has tried to explain the injuries on the person of appellant Rasal Singh alone but they have not tendered any explanation in so far as the injuries received by appellant Baldev Singh and Mst. Boli are concerned Even the explanation given by the prosecution witnesses in regard to the injuries sustained by appellant Rasal Singh is contrary to the medical opinion. As far the head injury, the explanation is that when Mst. Boli was trying to hit P.W. Karnail Singh with the stick in her hand while he was having appellant Rasal Singh in his grip, one of the blows incidentally landed on his head resulting in the aforesaid injury. This injury as already noticed, is also an incised wound, which could be caused only by a sharp edged weapon like an axe

or sword. Had the injury been caused by a stick, as stated by the prosecution witnesses, it should have been a lacerated wound but not an incised wound. Similarly, out of the two injuries on the legs' of Rasal Singh, only one of them according to Dr, A. K. Gupta could have been caused in the manner suggested by the prosecution. Here also there is a clear conflict between the statements, of the eye witnesses and the medical evidence. It is true that medical evidence is hardly conclusive or decisive because it is primarily an evidence of opinion and not of fact. But, it is equally true that when medical evidence is in conflict with the statements of eye witnesses, it gets better of their testimony and discredits the eye witnesses. This contradiction assumes greater importance where it is difficult to believe the eye witnesses unreservedly. Where, therefore, the eye witnesses are interested witnesses it is extremely unsafe to act upon their testimony which is contradicted by the medical evidence. The case may be however, different where the eye witnesses are totally disinterested and their evidence is quite cogent and convincing. In the instant case the eye witnesses cannot be said to be absolutely disinterested and it is not possible to accept their explanation in regard to the injuries found on the person of the appellants and Mst. Boli unreservedly.

20. The prosecution case is that barring the deceased who had a sickle (Dranti) in his hand, none other from the prosecution party was carrying any weapon with him. It is here that failure on the part of the prosecution witnesses to satisfactorily explain injuries suffered by the two appellants and Mst. Boli assumes importance. And it is here that the sword which appellant Rasal Singh is. alleged to have used for the commission of the crime, but which was admittedly produced by P.W. Gulzar Singh before the police, also acquires significance. If none of the prosecution witnesses had any weapon with him and nor had the deceased used even the sickle which he was carrying with him, how then these three persons sustained injuries and under what circumstances. It is not the prosecution case either that after the appellants had attacked the complainant party the prosecution witnesses had also brought weapons to retaliate in self defence. The defence plea on the other hand is that the appellants and Mst. Boli had sustained injuries because they were attacked by the complainant party. Presence of injuries on their person, there can be no manner of doubt, does probably this version. It is true that failure on the party of prosecution to explain injuries sustained by the accused

during the occurrence is not always fatal to its case, but, where the accused pleads that he was not the offender but was himself a victim of the offence, failure on the part of the prosecution to explain the injuries on his person, of giving a false explanation in regard to such injuries will surely make its case, doubtful the only beneficiary in such an event being the accused.

21. Whereas the prosecution witnesses allege that the aggressors were the appellants, the appellants allege that the aggressors were the prosecution witnesses themselves. The appellants do not go further to state as to how the fight between the parties in which both sides sustained injuries originated and the prosecution version about the origin of the fight, or as to who was in fact the aggressor is also unacceptable beyond reasonable doubt. We are, therefore, unable to say as to how the fight had originated and who was the aggressor. When neither the prosecution nor the defence has come forward with a true version of the occurrence, and the court is consequently unable to say as to how the fight originated and which out of the two parties was the aggressor, the accused shall be entitled to acquittal. In taking this view we are fortified by the following observations made by their Lordships in *State of Bihar v. Mohammad Khursheed* : 1972 CriLJ661

The learned Counsel for the State contends that there is no evidence that there was a sudden fight and the injury was inflicted in the heat of passion upon a sudden quarrel. It seems to us, however, that the finding of the High Court that there was a clash between the respondent on the one side and the deceased on the other, about the time and place of occurrence is not vitiated as there is some material to support this finding. Once this finding is accepted then it must follow that the prosecution has not put forth the genesis and the manner of the occurrence fully. The prosecution has not been able to explain why the respondent should suddenly take in his head to attack the deceased while he was in the company of three persons, mentioned above, and there must have been some immediate reason why this incident took place. If there is a doubt as to the origin of the fight the benefit must go to the respondent.' A similar view was taken by the Punjab High Court in *Gulab Amar Singh v. Emperor*. AIR 1941 Lah 333 : 1941-42 Cri LJ 861.

22. For the foregoing reasons, we allow the appeal, and giving benefit of doubt to the appellants we acquit them of the charge. As a consequence, the reference made by the, learned Sessions Judge is rejected.

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