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AMARJIT SINGH
v.
STATE OF HARYANA
(Criminal Appeal No.739 of 2007)

B

NOVEMBER 18, 2009*

[HARJIT SINGH BEDI AND DR. B.S. CHAUHAN, JJ.]

Penal Code, 1860:

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*s.302 – Murder – Conviction – Serious injuries to one of the accused – Not explained by prosecution – **Held:** Though every injury is not liable to be explained when the accused pleads a defence, but an obligation does lie on the prosecution to explain the presence of a serious injury – In the instant case, as the prosecution has not been able to present an explanation as to how injuries were suffered by the accused and on the contrary his very presence has been denied, the courts below were in error in brushing aside this serious infirmity in the prosecution case – Conviction and sentence of accused set aside – Accused acquitted – Evidence – Injuries on accused – Not explained by prosecution – Effect.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 739 of 2007.

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From the Judgment & Order dated 20.7.2006 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 46-DB of 2004.

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WITH

Criminal Appeal No. 740 of 2007.

R.S. Cheema, K.B. Sinha, Kanwaljit Kochhar, Kusum

* Judgment Received on 6.2.2010.

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Chaudhary, D.P. Singh, Tanu, Roopansh Purohit, Rajeev Gaur, 'Naseem', Kamal Mohan Gupta for the Appearing parties. A

The following Order of the Court was delivered

ORDER

1. These appeals by way of special leave arise out of the following facts:- B

1.1. Avatar Singh, accused, since acquitted, had taken an unauthorised connection from the electricity main line for the purpose of energising his tube well situated in village Bassi about 12 kms. away from Police Station Assandh. On 2nd July 1998, the officials of the Electricity Department accompanied by some police officers came to the tube well and removed the unauthorised line and took the wire away. Avatar Singh suspected that Joginder Singh P.W.1, who had a Dera at a very short distance away, had made the complaint to the Department which had brought the officers of the Department to his Dera. Due to this grudge, Amarjit Singh armed with a shot gun, Amrik Singh and Kashmir Singh all sons of Jarnail Singh attempted to stop the tractor trolley belonging to Joginder Singh P.W.1, while it was being driven to the fields with fertilizer. Nishan Singh – P.W. 3 son of Mohinder Singh was driving the tractor trolley of Joginder Singh was also accompanied by Palaram - P.W. 2 son of Fakiria one of Joginder Singh's Siris (crop-sharers). It appears that as a fall out of this incident two applications were filed in Police Station, Assandh by both the groups accusing each other of having misbehaved in the morning. The same evening at about 4:00p.m. Joginder Singh – P.W. and his brother Gurnam Singh deceased who were present at their Dera in their fields. In the meanwhile Avatar Singh armed with a sota, Sher Singh and Amarjit Singh armed with a DBBL gun each and Avatar Singh with gandasa came to the place in a tractor. On reaching the Dera, Sher Singh fired a shot with a DBBL gun on Joginder Singh hitting him on the finger of his right hand and a second shot hit him on his right thigh. Amarjit C
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- A Singh also fired a shot at Gurnam Singh which hit him on his chest instantly resulting in his immediate death. Although Joginder Singh thereafter attempted to snatch the gun from the hands of Sher Singh as a result of which, it broke into two pieces. This incident was witnessed by P.W. 2 Pala Ram and
- B Nishan Singh – P.W. 3. Joginder Singh was removed in a tractor-trolley to the Sant Hospital at Assandh and on account of his serious condition was referred to the General Hospital, Karnal and was admitted therein. The dead body of Gurnam Singh was, however, left at the place of incident. Joginder
- C Singh's statement, Exhibit PA was recorded in the General Hospital, Karnal at about 9:15a.m. on the 4th July, 1998 and on its basis, the formal FIR was registered at Police Station, Assandh, at 10:30a.m. by Sube Singh – P.W. 5, Inspector of Police. The police after investigation did not file a charge sheet
- D against the accused on the plea that the case that had been foisted on them was false. Joginder Singh thereupon filed a complaint Exhibit PC in the court of the Judicial Magistrate, Karnal, against Avtar Singh, Sher Singh, Amarjit Singh, Amrik Singh and Kashmir Singh for offences punishable under Sections 302/307/148/149 IPC on 16th July, 1998. At the trial,
- E the prosecution in support of its case, relied on the evidence of Joginder Singh – P.W. 1, an injured witness, Pala Ram – P.W. 2, Nishan Singh – P.W. 3 who was an associate of the complainants, Dr. Raj Kumar - P.W. 4, Ram Kumar – P.W. 5, Dr. Shyam Wadhwa _ P.W. 6 who had carried out the medical
- F examination of Joginder Singh and the post mortem on the dead body, Naveen Kumar – P.W. 7 and S.K. Makkar – P.W. 8. The defendants also produced 7 witnesses in defence including Dr. Raj Kumar (earlier P.W. 4 now as D.W. 1) to
- G depose that he had examined one Gurlal Singh on 4th July, 1998 at 6:45p.m. in Primary Health Centre, Assandh and had found him seriously injured with a dislocation of the teeth and a fracture of the mandible, Sahab Singh – D.W. 2 to prove the alibi on Sher Singh, ASI Surjeet Singh – D.W. 3 who deposed with regard to the two applications which were said to have
- H been filed by the warring parties on the 3rd of July, 1998 after

the incident early that morning Inspector Prem Singh – D.W. 5 A
who had investigated the murder and deposed that on
investigation it had been found that the case was false and as
a consequence thereof a challan had not been filed against the
accused who are now facing prosecution on account of the
complaint and D.W. 6 – Gurlal Singh the injured witness who B
stated that he along with some of the accused had been
present in the police station till about 3:00p.m. on the 3rd July,
1995 but on the directions of his father, he had decided to return
home to look after the cattle taking his father's gun along with
him and as he was on his way to the Dera, he saw Joginder C
Singh and Gurnam Singh standing outside armed with lathis
and that as he had got down from the tractor he had been
assaulted by them which resulted in the breaking of his teeth
and mandible and that at this stage he had picked up the gun
from the tractor and shot at Gurnam Singh and Joginder Singh D
in his self-defence. He further stated that notwithstanding the
injuries caused to him Joginder Singh went on wielding lathi
blows breaking the gun into two pieces. He further stated that
after this incident he had reached the police station Assandh
on his tractor and reported the matter to the police and had E
ultimately been sent to the Primary Health Centre for his
medico-legal examination. He further stated that he had been
referred to the General Hospital, Karnal and further to the Post
Graduate Institute of Medical Education and Research, Rohtak
on account of his serious injuries. The defence also produced F
D.W. 8 – Dr. Munish Madan, a Lecturer in the Dental College
of the Post Graduate Institute of Medical Education and
Research, Rohtak, who confirmed the existence of very serious
injuries to the teeth and mandible of Gurlal Singh and that he
had been treated in the Institute for about 2 months.

1.2. The trial court, however, relying on the evidence of G
P.Ws. 1, 2 and 3 convicted all the accused under Section 302/
149 etc. and sentenced them to undergo a sentence of life
imprisonment for murder etc. In reaching its conclusions, the
trial court observed that not only was the prosecution story as H

A given by the complainants fully proved on facts but the defence
version given by Gurlal Singh was not worthy of belief for the
primary reason that it was impossible to come to a firm
conclusion with regard to the fact that the injuries had been
suffered by Joginder Singh, Gurnam Singh and Gurlal Singh in
B the same incident and the defence story that Gurlal Singh had
fired two shots in self-defence causing a fatal injury to Gurnam
Singh and serious injuries to Joginder Singh could not be
believed as Gurlal Singh was physically handicapped and was,
therefore, not in a position to use his weapon in an effective
C manner. The trial court also concluded the story given by him
that the gun that he had used had been broken on a persistent
attack by the opposite party could not be believed as the injuries
caused to him were so severe which precluded the possibility
that he could not have caused the injuries to Joginder Singh
D and Gurnam Singh thereafter. The trial court also rejected the
alibi set forth on behalf of Sher Singh as the evidence was not
conclusive and it was possible that Sher Singh could have
committed the crime and then rushed to Ghannori, his place of
posting which was only about 17 kms. away. The trial court,
E accordingly, accepted the prosecution version in toto.

1.3. The matter was thereafter taken in appeal by all the
accused before the High Court. The High Court made very
significant observations completely upsetting the conclusions
drawn by the trial court and whereas the trial court had
F expressed its doubt as to the presence of Gurlal Singh at the
place of the murder and as to the manner under which the
injuries had been suffered by him, the High Court gave a
conclusive finding that Gurlal Singh had been present at the
place of occurrence and had received injuries in the incident
G in which Gurnam Singh had been killed. The High Court,
however, accepted the evidence of P.Ws. 1,2 and 3 and
rejected the circumstantial evidence with regard to the breaking
of the weapon as propounded by the defence and observed
that in such matters the possibility of false implication could not
H be ruled. The Court then dissected the evidence yet further and

held that the presence of Avtar Singh, Amrik Singh and Kashmir Singh had to be ruled out whereas Amarjeet Singh and Sher Singh had undoubtedly been present as they were the ones who had caused the injuries to Gurnam Singh and Joginder Singh. The appeal qua the first three was allowed and dismissed qua the last two. It is in this situation that the matter is before us after the grant of special leave.

2. Several arguments have been raised by Mr. R.S. Cheema and Mr. K.B. Sinha, the learned senior counsel for the appellants. It has been argued that the fact that some incident had happened on the morning of 2nd July was clear from the statements - Exhibits DE and DD, the two applications that had been filed by the two warring parties in the police station. It has also been submitted that the fact that Amarjeet Singh was indeed in the police station in the evening had been found correct to be in the investigation made by Inspector Prem Singh DW 5 and it was on that basis that the prosecuting agency had declined to file a challan against the accused. It has further been pleaded that there was absolutely no reason whatsoever as to why the alibi given by Sher Singh appellant duly supported by some of the staff in the PSEB office where he stood posted and was residing with his family had been disbelieved as he had been present in the morning at 7:30a.m. on the day of the incident and again at about 3:30p.m. the same afternoon and that it would have been impossible for him to have visited village Bassi, committed the murder and returned to his place of posting at village Ghannori 17 kms. away. It has finally been submitted that in any case there was absolutely no explanation for the injuries that had been suffered by Gurlal Singh and as this onus had not been discharged by the prosecution an inference could rightly be drawn that the defence version was the correct one. For the last submission, Mr. Cheema has placed reliance on *Lakshmi Singh v. State of Bihar* (1976) 4 SCC 394.

3. Mr. Roopansh Purohit, the learned State counsel has,

A however, pointed out that there was absolutely no reason to disbelieve the statement of the three prosecution witnesses, more particularly, for the reason that Joginder Singh had been injured and P.W. 2 Pala Ram was an independent witness. He has further submitted that there was no evidence to suggest that

B Gurlal Singh had suffered the injuries in the same incident in which Gurnnam Singh had been killed and Joginder Singh had been injured as there was no contemporaneous record to show this fact and further that Gurlal Singh had made absolutely no effort to make a statement to the police giving his version of

C the events or after he had reached Assandh on 3rd July, 1998 at 6:20p.m. It has further been pleaded that Gurlal Singh was a handicapped person and it would not have been impossible for him to have fired two shots as suggested by him in his defence.

D 4. We have heard the learned counsel for the parties in extenso and gone through the record as well.

5. To our mind, the basic issue which would arise in this case is the inference that is to be drawn from the non-

E explanation of the injuries of Gurlal Singh. He had first been examined by Dr. Rajinder Kumar, D.W. 1 of the C.H.C., Assandh on 3rd July, 1998 at 6:45p.m. And had found the following injuries:-

F “2 upper incisors were missing and fresh bleeding was present from the sockets mucosa was congested and the lower jaw teeth were malaligned and were bleeding.”

6. He further deposed that the injuries were subject to x-

G ray at the General Hospital, Karnal at 9:00a.m. on 4th October, 1998 and the mandible was found fractured and the injuries were all grievous in nature. This evidence is further reinforced by the statement of D.W. - 8 – Dr. Munish Madan of the Post Graduate Institute of Medical Education and Research, Rohtak, who yet again deposed to the very serious nature of injuries of

H Gurlal Singh. The learned counsel for the State has, however,

referred to the fact that the trial court was somewhat uncertain about Gurlal Singh's presence at the place of incident but on the contrary we find that the High Court has given a positive finding (contradicting the trial court) that Gurlal Singh was indeed present at the site of murder. We are, therefore, of the opinion that an obligation lay on the prosecution to explain as to how Gurlal Singh received such serious injuries. It will be seen that P.Ws. 1, 2 and 3 have been categorical in denying any injury to Gurlal and P.W. - Joginder Singh went so far as to deny Gurlal Singh's place of residence although he was living with his father in a Dera only half a kilometre away from his own Dera. P.W. 3 – Nishan Singh, on the other hand, admitted that Gurlal Singh was a resident of the Dera but he denied that any injury had been suffered by him. It is true, as contended by the learned State counsel, that every injury is not liable to be explained when the accused pleads a defence but but contrarily an obligation does lie on the prosecution to explain the presence of a serious injury. In assessing a similar situation, this Court has said in *Lakshmi Singh and Others* (supra):-

"It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about ;the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:

1. that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;
2. that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;
3. that in case there is a defence version which explains the injuries on the person of the accused

A it is rendered probable so as to throw doubt on the prosecution case.

B The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the court to rely on the evidence of PWs 1 to 4 and 6, more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* (surpa) there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises."

G 7. We are, therefore, of the opinion that as the prosecution has not been able to present an explanation as to how injuries had been suffered by Gurlal Singh and on the contrary his very presence has been denied the ratio of the observations in the above quoted judgment would apply to the facts of the present

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case. Equally, the prosecution story that Gurlal Singh being an amputee would have been unable to handle a shotgun, cannot be accepted. Gurlal Singh in his testimony as D.W. - 6 stated that he had lost his left hand in an accident but had been fitted with an artificial one which he could use with dexterity. He emphatically denied that he could not use a gun effectively on account of his handicap. Moreover, experience tells us that even the absence of an arm does not completely make an amputee incapable of using a shot gun.

8. There is yet another circumstance which would, to some extent, go to the aid of the appellants. Gurlal Singh was prosecuted as a consequence of his own statement for the injuries that he had caused to Gurnam Singh and Joginder Singh. In that case, the present P.Ws. Joginder Singh, Pala Ram and Nishan Singh also appeared as prosecution witnesses but they stuck to the version given in these present proceedings and disowned any criminal act qua Gurlal Singh as a consequence of the position taken by them, Gurlal Singh too was acquitted by the trial court for the injuries he claimed to have caused to Gurnam Singh and to Joginder Singh. No appeal has been filed by the State challenging the acquittal of Gurlal Singh.

9. In view of what we have held above, we deem it unnecessary to go into the question of alibi or any other issues raised by Mr. Cheema and Mr. Sinha.

10. We, accordingly, allow these appeals, set aside the conviction of the appellants and order their acquittal. The appellants are stated to be in jail. They shall be released forth with if not required in any other case.

R.P.

Appeals allowed.