

BHAG SINGH AND ORS. ETC.

A

v.

STATE OF PUNJAB

SEPTEMBER 3, 1997

[M.K. MUKHERJEE AND K. T. THOMAS, JJ.]

B

Criminal law—Evidence of eye witness cannot be assailed merely on the ground of exactitude/precision—Precision or vagueness in testimony depends on the individual—A broad angle taking aspects like examination in court, the narration, etc. to be considered.

C

The appellants were found guilty of murder of B, by the Sessions Court which finding was upheld by the High Court. On appeal before this Court, it was submitted on behalf of the appellants, that the evidence of the witnesses who were convicted in an earlier murder case involving the father of one of the appellants, and who were consequently antagonistic towards the appellants should not be relied on; the appellants acted in retaliation; that it was not possible for the witnesses to recount accurately what transpired and since the witnesses in this case have done so, their testimony should not be relied upon.

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Dismissing the appeals, the Court

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HELD : 1. There is no good ground to interfere with the conviction and sentence passed on the appellants as confirmed by the High Court. There is no dispute that PW-13, was present at the scene and he also sustained serious injuries including lacerated and incised wounds on the head. This fact helps to agree with the finding of the two courts that PW-13, was able to see the assailants who attacked him and the deceased. He mentioned the names of the appellants as assailants without doubt. Evidence shows that it was a moonlit night. The other two eye witnesses - PW-12, and PW-14, supported the version of PW-13. It may be true that PW-12, PW-13, and PW-14, must have been simmering with grouse against the appellants for giving evidence against them which led to their conviction. Bad blood would have existed as between them. But it is a fact that PW-13, had also suffered injuries in this occurrence. Hence it is most unlikely that he would have spared the actual assailants and falsely implicated these appellants merely because he is otherwise ill disposed to

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A them. It is in evidence that despite conviction and sentence passed on the accused in K murder case they were released on bail as per orders of this Court during the pendency of the appeals filed by them. So the fact of conviction would not have quenched the revenging thirst towards the murderers of K. [744-D-H]

B 2. It is a general handicap attached to all eye witnesses, if they fail to speak with precision their evidence would be assailed as vague and evasive; on the contrary if they speak to all events very well and correctly, their evidence becomes vulnerable to be attacked as tutored. Both approaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. In a particular case an eye witness may be able to narrate the incident with all details without mistake if the occurrence had made an imprint on the canvass of his mind in the sequence in which it occurred. He may be a person whose capacity for absorption and retention of events is stronger than another person. It should be remembered that what he witnessed was not something that happens usually but a very exceptional one so far as he is concerned. If he reproduces it in the same sequence as it registered in his mind the testimony cannot be dubbed as artificial on that score alone. Here the trial court which had the opportunity to hear the narration of the incident from those witnesses was impressed by the truth of the version. It is not fair to say now that the testimony of those witnesses deserved rejection for its precision. That apart, they would have spoken in the court as answers to different questions put to them by the chief examiner. It depends on the ability of the chief examiner in eliciting answers from the witness in the correct order of events. Looking at the evidence from this angle this Court is not disposed to castigate the evidence of the eye witness in this case for speaking to the details correctly. [745-C-G]

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 638 of 1995 Etc.

From the Judgment and Order dated 30.1.90 of the Punjab & Haryana High Court in Crl. A No. 641-DB of 1987.

H U.R. Lalit and T.S. Arunachalam, L.K. Pandey, for the appellants in Crl. A. No. 638/95.

K.B. Sinha, H.S. Munjral, Vikrant Rana and Ms. B. Rana for the appellants in CrI. A. No. 402/95 for M/s S.S. Rana & Co. A

Ajay Bansal, for R.S. Sodhi for the Respondent.

The Judgment of the Court was delivered by

THOMAS, J. This is the story of a murder committed as revenge for another murder. Appellants were involved in the second murder and they challenged the conviction and sentence imposed on them by the sessions court and confirmed by the High Court in appeal. B

The murdered person in this case was one Bagicha Singh. There was a dispute over one house building as between the said Bagicha Singh and one Jagtar Singh which remained alive for some time. In that dispute, Karnail Singh (father of accused Nos. 1 to 3) gave support to Jagtar Singh. In a previous incident the said Karnail Singh was murdered and a criminal case was charge-sheeted against PW-12 Balkar Singh, PW-13 Swaran Singh and PW-14 Hardip Singh and some others. C D

According to the prosecution version the occurrence in this case happened on the night of 27-1-1985 at about 8.00 P.M. when deceased Bagicha Singh was going in the company of PW-12, PW-13 and PW-14 to reach their village. They were waylaid by eight assailants including the appellants herein near the yard of one Harbans Singh. Appellant Gurmukh Singh (A-1) made an exhortation to his companion assailants to carry out the onslaughts for avenging the murder of his father Karnail Singh. A-4 Satnam Singh shot at the deceased with a gun and A-1 Gurmukh Singh, A-3 Gurbinder Singh and A-6 Gurbux Singh attacked the deceased with kirpans and A-2 Harjinder Singh with a spear. A-5 Mohinder Singh and A-7 Darshan Singh dealt blows on PW-13 Swarn Singh with kirpans while A-8 Bhag Singh fired a gun shot at him. As the assailants thought that their mission was accomplished they all fled from the place with the weapons. E F

Bagicha Singh died on the spot and PW-13 Swarn Singh injured was removed to the hospital. First Information was lodged by PW-14 Hardip Singh. All the accused were arrested and some weapons were recovered by the police and on completion of investigation eight persons including the appellants were challaned. Though the Sessions Court convicted all the eight accused of offences of murder, attempt to commit murder and rioting G H

A etc. the High Court of Punjab and Haryana acquitted A-2 Harjinder Singh, A-4 Satnam Singh and A-5 Mohinder Singh. The conviction and sentence passed on the appellants were, however, confirmed by the High Court and hence these appeals by special leave.

B There is no dispute that PW-13 Swarn Singh was present at the scene and he also sustained serious injuries including lacerated and incised wounds on the head. This fact helps us to agree with the finding of the two courts that PW-13 Swarn Singh was able to see the assailants who attacked him and the deceased. He mentioned the names of the appellants as assailants without doubt. Evidence shows that it was a moonlit night. The other two eye witnesses - PW-12 Balkar Singh and PW-14 Hardip Singh supported the version of PW-13 Swarn Singh.

D Learned counsel for the appellants adopted a three-pronged contention on the above evidence. First is, as the witnesses were all ill-disposed to the appellants by the fact that they were convicted in the earlier murder case (in which Karnail Singh died) on the strength of the evidence given by the appellants, the testimony of those witnesses ought not have been relied on. Second is, there was no reason for the appellants to persist with the revenge for the murder of Karnail Singh as the murderers were convicted by the court. Third is, it was impossible for any person to recount with meticulous exactitude the various individual acts done by each assailant and since the witnesses in this case have testified so, their testimony should have been rejected on that score alone.

F It may be true that PW-12 Balkar Singh, PW-13 Swarn Singh and PW- 14 Hardip Singh must have been simmering with grouse against the appellants for giving evidence against them which led to their conviction. Bad blood would have existed as between them. But it is a fact that PW-13 Swarn Singh had also suffered injuries in this occurrence. Hence it is most unlikely that he would have spared the actual assailants and falsely implicated these appellants merely because he is otherwise ill disposed to them.

G It is in evidence that despite conviction and sentence passed on the accused in Karnail Singh murder case they were released on bail as per orders of this Court during the pendency of the appeals filed by them. So the fact of conviction would not have quenched the revenging thirst towards the murderers of Karnail Singh.

The third point which was forcibly pressed into service by counsel is that no eye witnesses can be expected to speak with precision regarding the respective roles played by each assailant including the situs of the body where each blow fell particularly since the occurrence happened during night time and in that case when the witnesses spoke with exactitude their testimonay becomes highly incredible.

It is a general handicap attached to all eye witnesses, if they fail to speak precision their evidence would be assailed as vague and evasive, on the contrary if they speak to all events very well and correctly their evidence becomes vulnerable to be attacked as tutored. Both aproaches are dogmatic and fraught with lack of pragmatism. The testimony of a witness should be viewed from broad angles. It should not be weighed in golden scales, but with cogent standards. In a particular case an eye witness may be able to narrate the incident with all details without mistake if the occurrence had made an imprint on the canvass of his mind in the sequences in which it occurred. He may be a person whose capscity for absorption and retention of events is stronger than another person. It should be remembered that what he witnessed was not something that happens usually but a very exceptional one so far as he is concerned. If he reproduces it in the same sequences as it registered in his mind the tetimony cannot be dubbed as artificial on that score alone.

Here the trial court which had the opportunity to hear the narration of the incident from those witnesses was impressed by the truth of the version. It is not fair to say now that the testimony of those witnesses deserved rejection for its precision. That apart, they would have spoken in the court as answers to different questions put to them by the chief examiner. It depends on the ability of the chief examiner in eliciting answers from the witness in the correct order of events. Looking at the evidence from this angle we are not disposed to castigate the evidence of the eye witness in this case for speaking to the details correctly.

We do not find any good ground to interfere with the conviction and sentence passed on the appellants as confirmed by the High Court. Accordingly, we dismiss these appeals.

I.M.A.

Appeals dismissed.