

Court No. - 44

Case :- CRIMINAL APPEAL No. - 1217 of 1985

Appellant :- Mehar Singh

Respondent :- State

Counsel for Appellant :- J.N.Chaturvedi, Onkar Singh

Counsel for Respondent :- A.G.A.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Tej Pratap Tiwari, J.

1. Heard Sri Onkar Singh, learned counsel for the appellant, Sri L.D. Rajbhar, learned A.G.A. for the State and perused the record.

2. Present appeal has been preferred against the judgment and order dated 03.05.1985 passed by Sri S.C. Srivastava, learned Special Additional Sessions Judge, Muzaffar Nagar in Sessions Trial No. 35 of 1984 (State Vs. Mohar Singh, Har Pal, Prem, Tej Pal, Chaupa, Udaibir, Surendra, Virendra, Rishi Pal, Om Singh, Amar Singh, Brij Pal, Desh Pal and Dinesh). By the impugned judgment and order, the learned Court below acquitted nine accused persons namely, Udaibir, Surendra, Virendra, Rishipal, Om Singh, Amar Singh, Brij Pal, Desh Pal and Dinesh and convicted the appellants Mohar Singh, Har Pal Singh, Prem Singh, Tej Pal and Chaupa for offence under Section 148 and Section 302 I.P.C read with Section 149 I.P.C. It has sentenced them to life for offence under Section 302 read with Section 149 I.P.C., and sentenced them for offence under Section 148 I.P.C for one and half year rigorous imprisonment. Both sentences run concurrently. During pendency of this appeal, the appellant Chaupa died. His appeal was declared abated. At present, it has been reported that appellant No. 2 Harpal Singh is also dead. Accordingly, his appeal is also declared abated.

Consequently, the appeal survives on behalf of three appellants, namely appellant No. 1 Mohar Singh, appellant No. 3 Prem Singh and appellant No. 4 Tejpal.

3. The prosecution story emerged on the strength of a Written Report dated 05.02.1983 submitted by Satyapal Singh (P.W-1), brother of the deceased Sukhbir Singh, narrating therein that on 05.02.1983 at about 02:00 p.m. he was harvesting his sugarcane crop when he heard cries for help from his brother, the deceased. On that, he along with Jaipal (P.W-5), Sooraj Mal (P.W-4) Kalu and Banu (not examined at the trial) ran to help. They saw that the deceased had been surrounded by the accused persons namely Mohar Singh, Har Pal, Prem, Tej Pal, Chaupa, Udaibir, Surendra, Virendra, Rishi Pal, Om Singh, Amar Singh, Brij Pal, Desh Pal, Dinesh and Shoba Ram, in the open field of Mahipal. On that, the convicted appellants armed with country made pistol while others armed with '*Ballam*' and speares and opened fire with their firearms. The deceased fell to the ground. The above named witnesses feared for their lives. Therefore, they did not intervene or catch hold of the assailants. Thereafter, it was narrated, there existed an old enmity between the parties and that on 24.01.1983 the accused Shoba Ram had held out threat to the life of the first informant, for which earlier F.I.R had been lodged by the first informant on 24.01.1983. That F.I.R.

is Exhibit Ka-1 at the trial. The Written Report submitted by the first informant Satyapal Singh (P.W-1) is Exhibit Ka-4 at the trial. On such Written Report, F.I.R. was registered at Police Station Jhijhana, Muzaffar Nagar on 05.02.1983 at 05:30 p.m. It is Exhibit Ka-2 at the trial.

4. On such F.I.R being registered, the Investigation Officer Narsingh Pal Singh (P.W-7) prepared Recovery Memos. First, on 05.02.1983, he prepared Recovery Memo of the blood stained clothing and blanket of the deceased. That Recovery Memo is Exhibit Ka-24 at the trial. Second, on 05.02.1983, the said P.W-7 recovered one empty plastic cartridge of 12 bore, one cap/'tikli' from the clothing of the deceased. That Recovery Memo is Exhibit Ka-25 at the trial. Third, on 05.02.1983 itself, the said P.W-7 recovered samples of blood stained and plain earth from the place of occurrence. That Recovery Memo is Exhibit Ka-26 at the trial. Also, on 05.02.1983, the Inquest Report was prepared by the Investigation Officer P.W-7, at 7:45 p.m. The Inquest Report is also Exhibited.

5. The next day, Dr. B.K. Mishra, Medical Officer, District Hospital, Muzaffar Nagar (P.W-6) conducted the autopsy examination on the dead body of the deceased, at about 07:00 p.m. In that, he noted the following ante mortem injuries:

“1. Firearms wound of entrance 1.5 cm. x 1.8 cm. x whole abdomen deep on the front of abdomen right side upper part 0.5 Cm. from umbilicus at 10.30’ O clock position, margins inverted. No scorching, tattooing or blackening around wound. A plastic disk type lying embedded in skin and muscles at the wound. This article sealed. This corresponds injury no.2. Shape of wound oval slightly.

2. Firearm wound exit 2.8 Cm. x 3 Cm. x whole abdomen deep on the back slightly to right of mid line 5 Cm. upper most part of gluteal cleft. No scorching, tattooing or blackening. Margins averted. Shape of this wound is also slightly oval. It is corresponding to injury no.1.

3. Multiple firearm wounds of entrance (about 112 in number) spread in an area of 47 Cm. x 19 Cm. from abdomen lower part to infra claviolar region right side part of chest, mostly in right half of the body, but some in left half of front of body. The size varying from ½ Cm. x ½ Cm. x skin (superficial) deep to ½ Cm. x 1 Cm. x cavity deep (both chest and abdomen). No scorching, tattooing or blackening present around wound. Margins are inverted shape circular to oval.”

6. Also, three wounds were discovered on the body of the deceased. The death was opined to have been caused a day earlier. The Autopsy Report is Exhibit Ka-5 at the trial. Upon completion of investigation, the accused persons were charge-sheeted. Upon the case being committed for trial to the Court of Session, the following charges came to be levelled against the accused persons.

“Firstly, that you alongwith another on 5.2.83 at about 2 P.M. in the outskirts of vill. Purmafi, P.S. Jhinhana, district Muzaffarnagar with the common object of killing Sukhbir s/o Umrav Sing of vill. Pelkha formed an unlawful assembly and committed rioting while you Mohar Singh, Har Pal, Prem, Tej Pal and Chauka were armed with country made pistols and the rest of you were armed with spears and thereby committed an offence punishable under Section 148 of the I.P.C. and within the cognizance of this court and

Secondly, that on the aforesaid date, time and place in prosecution of the common object of the aforesaid unlawful assembly some of you intentionally killed the aforesaid Sukhbir by firing shots from country made pistols on him and you are thereby punishable for the offence mentioned in Section 302 read with Section 149 of the I.P.C. committed within the cognizance of this Court.”

7. At the trial, besides relying on the above documentary evidence, the prosecution relied on the oral evidence led through seven witnesses. In that, the first informant Satyapal was examined as PW-1. He proved the occurrence as also the F.I.R lodged by him.

In that, he narrated, at about 02:00 p.m. on 05.02.1983, he along with Sooraj Mal (P.W.-4), Jaypal (P.W-5) as also Kalu and Banu (not examined at the trial) were harvesting their sugarcane crop when they heard cries for help of the deceased-Sukhbir, who was present on his agricultural field lying north-east to their own agricultural field. They ran 15 to 20 paces. From there they saw, the deceased surrounded by all the accused persons. The convicted accused were armed with firearms and others were armed with '*Ballam*' and spears.

8. Without making any other narration and without describing which appellant was armed with which weapon, it was generally stated by the said witness that all the accused persons armed with firearms, fired at the deceased. It caused bullet injury to the deceased. He fell to the ground. Thereafter, the accused persons ran north, abusing and threatening the witnesses. Thereafter Satyapal returned to his village and prepared the Written Report.

9. As to the background and motive for the incident, the witness testified that the father of the appellant, Mohar Singh, had been murdered before this occurrence. His son, Sobha Ram (brother of Mohar Singh), had filed an FIR naming the informant and the deceased, Sukhbir, as the accused. The witness also

confirmed, both parties had previously been challaned under Section 107/117 of the Cr.P.C.

10. The second witness of fact, Sooraj Mal (P.W.-4), also testified that he, along with Satya Pal (P.W.-1), Jay Pal (P.W.-5), Kalu and Banu (not examined at the trial), were in their agricultural field harvesting sugarcane. They heard cry for help (by Sukhbir), in the direction of the agricultural field of Mahipal. The witness ran in that direction. They saw all the accused persons had encircled the deceased. The acquitted accused were armed with *Ballam* and spears, while the convicted accused were armed with country-made pistols. Without proving any further detail and without specifying which convicted accused caused the occurrence, he generally stated that all the accused armed with firearms opened fire at the deceased. He died instantly. Thereafter, the accused fled toward the hill, threatening the witnesses.

11. Similarly, Jay Pal (P.W.-5) stated, he and the other witnesses were in their agricultural field harvesting sugarcane when they heard a cry for help and ran towards it. They heard the deceased say, he had been assaulted. The witnesses responded and saw nine accused persons. Some armed with '*Ballam*' and spears, while the six convicted accused and Shoba Ram were armed with country-made firearms. Similar to the

account offered by Satya Pal (P.W.-1) and Sooraj Mal (P.W.-4), Jay Pal did not assign specific role to any of the convicted accused or Shoba Ram and generally stated that all of them fired at the deceased. At the same time, during his examination-in-chief, he maintained, he could not recall how many shots were fired. He also departed from the other eye-witnesses account by stating that after being shot, the deceased tried to move back before falling and suffering death. He also mentioned that the accused ran toward the hill.

12. Beyond the eyewitness testimony of P.W.-1, P.W.-4, and P.W.-5, the prosecution also brought other witnesses to support its case. Head Constable Sahdev Sharma (P.W.-2) proved the preparation of check FIR and the relevant GD entries. Next, Constable Krishna Pal (P.W.-3) proved the transportation of the dead body of the deceased to the mortuary. The medical evidence was presented by Dr. B.K. Mishra (P.W.-6), who proved the ante-mortem injuries, sustained by the deceased. Last, the prosecution evidence concluded with the testimony of Investigation Officer Nar Singh Pal Singh (P.W.-7), who proved the steps of investigation and submission of the charge-sheet.

13. Thereafter, the statements of the accused were recorded under Section 313 of the Cr.P.C. Some of the appellants set up plea of *alibi* and supported it by

examining Tribhuvan Das Tapal, Pooran Singh, Raj Kumar, and Bhup Singh as D.W.-1, D.W.-2, D.W.-3 and D.W.-4, respectively.

14. Based on this evidence, the learned trial court has convicted the present appellants, along with Harpal Singh and Chaupa, for offences under Section 302 read with Section 149 and Section 148 of the I.P.C. They were sentenced as previously mentioned. On the same evidence, the learned trial court has acquitted nine other accused persons, as noted above.

15. Submission of learned counsel for the appellants is, the prosecution case is not supported by credible ocular evidence. He contended, the three eyewitnesses, namely, Satya Pal Singh (P.W.-1), Sooraj Mal (P.W.-4) and Jay Pal (P.W.-5) were not present at the place of occurrence and did not witness the occurrence. He further suggested, due to prior family enmity, the appellant-Mohar Singh along with his family members and relatives were falsely implicated.

16. The defence pointed out and the learned trial court itself did not fully believe the prosecution case, as it acquitted nine other individuals based on the same evidence. Second, the eyewitness account is not reliable. Against role of causing fire-arm injury assigned to five accused persons, the deceased suffered only two firearm injuries, one with an entry and exit wound and

another with an entry wound. Learned counsel stated, the appellants could not have been convicted based on the generic statement that all of them fired at the deceased. None of the witnesses, despite claiming to be present and seeing the occurrence from a close distance, could identify which assailant shot the deceased or which shot was fired at him first. The defence argued, the claim that all the appellants were armed with firearms and they fired at the deceased, was false, as there were only two firearm injuries and there is no evidence of any other firearms being used. Further, no recovery of firearms was made to corroborate the eyewitness testimony.

17. Third, both firearm injuries were shot from a very short distance, as stated by Dr. B.K. Mishra during his cross-examination. This contradicts the eyewitnesses claim that the shooting occurred from a distance of 5-6 feet. The defence emphasized this inconsistency to prove the witnesses' testimony were false.

18. Last, it has been submitted, even if the witnesses were present in their nearby agricultural fields, the occurrence would have been over by the time they arrived. The prosecution admitted that the witnesses responded to the deceased's cries for help. Given the short range from which the shots were fired and the distance between the fields and the place of

occurrence, the witnesses had no opportunity to see the incident. The presence of standing sugarcane crops would have naturally obstructed a person's line of sight, further undermining the reliability of the eyewitness accounts.

19. Thus, it has been submitted, sufficient reasonable doubts exist as may not allow the order of conviction to be sustained.

20. On the other hand, learned A.G.A. would submit that the presence of Satya Pal Singh (P.W.-1), Sooraj Mal (P.W.-4) and Jai Pal (P.W.-5) cannot be doubted. Despite elaborate cross-examination of these witnesses, the defence could not prove that these witnesses were not present on their agricultural field. It also could not be established through their cross-examination that these witnesses were not speaking the truth when they said that they responded to the cries for help from the deceased. The witnesses narrated, they ran to the place of occurrence and saw how the incident was caused. As for the lack of recoveries, it was stressed, any deficiency in the investigation should not benefit the defence. Further, it has been submitted, since all the appellants had acted in concert-engaging in violence as part of an unlawful assembly armed with deadly weapons, the exact action of each participant may not be relevant to uphold their

conviction. To the extent that the presence of each appellant is established, it is sufficient proof of their involvement. As to the medical evidence not corroborating the eyewitness account, it was stressed- to the extent the eyewitness evidence is credible and reliable, any discrepancy on that count may not make any material difference.

21. Having heard learned counsel for the parties and having perused the record, in the first place, we may note, during his cross-examination, Satya Pal Singh (P.W.-1) admitted, he was accused in another murder case in the year 1977, involving a third party. He also admitted the existence of prior animosity between the parties, which led to suspicion being cast on the deceased in the murder of the father of the appellant Mohar Singh. As to the place of occurrence, it also came out during his cross-examination, his agricultural field was not adjoining the agricultural field of Mahipal (not examined at the trial) where the occurrence took place. As to his own agricultural field, he stated, it was to the south-west of the place of occurrence. There were standing crops of sugarcane and wheat to the south of the agricultural field of Mahipal. He further stated, 10-12 days prior to the occurrence, he had made a complaint to the Police against the accused Shoba Ram (since deceased) of threatening him. At the same time, he admitted, the said dispute had been

resolved through a '*Panchayat*'. It may be noted, although charge-sheeted, Shoba Ram was killed before the trial could commence. On the date of judgment in this case, the said witness, Satya Pal Singh, was facing trial in the murder of Sobha Ram. He also admitted the existence of another case between the parties. Looked in that light, considering the pre-existing and continued bad relations between the parties, and his close relationship with the deceased (brother), we may examine the prosecution evidence, carefully.

22. As to the occurrence, the deceased was fired at once. No firearm injury was caused to the deceased after he fell. In all, 6-7 shots are described to have been fired during the occurrence. However, first, only two fire arm injuries (entry wound) were suffered by the deceased. No other injury was caused to the deceased. Second, both fire arm injuries do appear to have been caused from very close range inasmuch as one empty and one cap of cartridge used to cause the occurrence were recovered from the person of the deceased. Third, that nature of occurrence, may have been caused in a short span of time. Fourth, the witness was not with the deceased at the time of the occurrence. Rather, he ran to the place of the occurrence upon hearing his cry for help. Fifth, he never reached the place of occurrence, but saw it from a distance. It is equally true, he could not establish who

caused the two fire arm injuries to the deceased. Nine accused persons similarly named and charged with aid of Section 149 I.P.C., have been acquitted by the learned court below. Thus, their presence as claimed by Satyapal Singh (P.W.-1) has been disbelieved. To that extent, he was treated to be unreliable. He being the brother of the deceased, neither he tried to save the deceased nor the assailants tried to name him. They left him untouched knowing he would lead evidence against them.

23. Then, Sooraj Mal (P.W.-4) admitted during his cross-examination that he had gone to the agricultural field for the first time to harvest his crop and had not gone there earlier. He also offered a different account as to the presence of other witnesses, narrating that he and Jay Pal (P.W.-5) had gone to their agricultural field first and Satya Pal (P.W.-1), Kalu and Banu (not examined at the trial) reached there later. Also, during his cross-examination, he stated, 5-6 shots were fired at the occurrence, but he did not specify which of the accused fired the shot that caused the injury to the deceased. Clearly, he is a chance witness. His proven may remain doubtful. To the extent, he has offered a different account as to presence of other witnesses and the occurrence, his version may remain in a shadow of doubt.

24. Insofar as Jay Pal (P.W.-5) is concerned, he too offered a slightly different account. In his examination-in-chief, he narrated, he heard the cries of the deceased after the deceased had been shot at indicating he would have reached after the occurrence had been caused. During his cross-examination, he further stated, he heard the noise of firearm shots from a distance of 60-65 yards, which would be close to 200 feet. He maintained the occurrence took only a few seconds and that no firearm injury was inflicted on the deceased after he fell to the ground. He also tried to maintain that 5-8 firearm shots were fired. When questioned about visibility, he specifically stated, the place of occurrence was not visible from his field where he was harvesting his crop. Clearly, he reached later i.e. after the occurrence had been caused. Then, he covered 200 yards to reach the place of occurrence, after it had been caused.

25. It must be recognized that there were six assailants, each assigned the exact same role by the prosecution, both at the time the FIR was lodged and as maintained at the trial. One of them was killed before the trial could commence. Out of five convicted accused, three survive. No specific role has been assigned to either appellant, of causing the occurrence inasmuch as no eye witness disclosed, which accused fired at the deceased first and who fired later. Also, it

was not proved, whose shot hit the deceased and whose did not.

26. Thus, even if the witnesses, namely, Satya Pal Singh (P.W.-1), Sooraj Mal (P.W.-4) and Jay Pal (P.W.-5), were present at around 2:00 P.M. on 05.02.1983, on the agricultural field of Satya Pal Singh, they may not have seen the occurrence from the agricultural field of Satya Pal Singh (P.W.-1) located away from the place of occurrence and also for reason of standing crops obstructing their view.

27. Then, each witness maintained, he responded to the cry for help made by the deceased and ran to his aid. In that Jai Pal (P.W.-5) narrated, he reached the place of occurrence after the deceased (then injured) cried for help claiming he had been shot at. Therefore, it is wholly doubtful if the occurrence may have been caused, as may have allowed the witnesses enough time to run near the place of occurrence, and witness the same.

28. Here, we have noted, during the cross-examination of all the eyewitnesses, it did come out, they were present on another agricultural field, located at some distance from the place of occurrence, which was the agricultural field of Mahipal. He is not an eyewitness to the occurrence. Clearly, he was not present at that time. The eyewitnesses have also not

stated, they saw the occurrence from that agricultural field. On the contrary, they narrated that they covered some distance through fields with standing crops of sugarcane and wheat, to reach the spot about 200 feet from the place of occurrence. From there, they saw what they narrated (as noted above).

29. Overlooking minor discrepancies, only one witness, Jay Pal (P.W.-5) gave a detailed description of the occurrence. In that, he gave account of the time taken to cause the occurrence. He stated, the entire occurrence was over in a short time a few seconds. Considering the two firearm injuries suffered by the deceased, this narration is does bring out the manner how the occurrence may have been caused. The witness also stated, he heard the cries for help from the deceased that he had been shot. However, the witnesses were on and then agricultural field and had no opportunity to view the occurrence from there. Further, given that the event itself was brief and may have been over in a very short time, the witnesses may not have had enough time to witness what they claim to have seen. In face of that manner of the occurrence caused in a very short while, it is doubtful, if any of the witness saw the occurrence. Consistent to that eye witness account there is no narration, which accused caused the fire arm injuries to the deceased. In absence of any other injury and/or recovery of

empty/cartridge/bullet etc and in face of nine accused persons acquitted on the same evidence, reasonable doubt exists in the prosecution version of the occurrence.

30. As narrated by Jay Pal, the witnesses may have heard the gunshot and cries for help, to which they responded. Unfortunately, since they were located on a agricultural field, it took time to reach the place of occurrence. By that time, two firearm injuries had already been inflicted on the deceased (which noise they heard), and the assailants would have fled. It is corroborated by the non-disclosure of the assailants, who caused these two fire arm injuries. Further, the 14 assailants took time to assault the deceased only with fire arms and fled through a sugarcane field, without being threatened by the witnesses, they also did not attempt to cause any harm to these witnesses, especially Satya Pal Singh (P.W.-1) against whom they had equal motive to kill. Thus, despite outnumbering the witnesses by about 3:1 and being fully armed, they fled leaving all evidence against them. That too creates a doubt if the witnesses actually were present as they claim and if they saw the occurrence.

31. Yet, all three witnesses tried to maintain that they saw the actual occurrence, where 15 people had encircled the deceased and six of them shot at him.

Perhaps because of this vital time gap between the occurrence and the time when the witnesses reached, none of the witnesses disclosed or stated to the court which of the accused fired the two fire arm shots at the deceased. Had they reached the place of occurrence and/or seen the occurrence, they would have clearly described that fact.

32. All the witnesses maintained that the assailants ran through the agricultural fields (that had standing crops of sugarcane), towards the hill. Thus, it is doubtful if the witnesses had any opportunity to see the occurrence or the assailants. By their own admission, the witnesses took time to reach the place of the occurrence. By that time, the assailants had already fled, through agricultural fields with tall standing crops.

33. Further doubt about the occurrence arises as there are only two firearm injuries, as noted above. During his cross-examination, Dr. B.K. Mishra (P.W.-6) did not specify the exact distance from which the shots were fired but he did state that such injuries could have been caused from a very short distance, as close as one inch. This is corroborated by the recovery of numerous pellets found on the body of the deceased; a piece of wadding recovered from one of the injuries and a cartridge cap/'tikki' recovered from the clothing of the deceased. It is difficult to imagine how such wadding

and cartridge cap could have been recovered from the wound or clothing of the deceased unless the firearm was used from a very close distance, as may be consistent to the cross-examination statement of Dr. B.K. Mishra. No forensic examination report exists to corroborate the prosecution story.

34. To summarize, doubt has arisen regarding the presence of all the accused and their involvement, especially when the deceased suffered only two firearm injuries-both caused from very close distance. The prosecution case is weakened as none of the eyewitnesses could state which of the accused fired the two shots. When this doubt is considered in light of the own prosecution evidence regarding the witnesses location, it appears even more unlikely if they had enough time to reach the crime scene. Their plain sight was obstructed by distance and tall standing crops on the agricultural fields lying in between. In fact, Jay Pal (P.W.-5) seems to have stated, the witnesses reacted not to cries for help but to the sound of the firearms being fired. Since the occurrence took place in the agricultural field of a third party (not examined at the trial) and it was over in a matter of seconds, it creates further doubt if the witnesses saw what they narrated. Therefore, the witnesses' presence is only partially accepted, to the extent that they may have been present on their own agricultural fields before the

incident occurred and may have reached the occurrence after it was over.

35. A reasonable doubt exists, if they were present near the place of occurrence, when it was caused, as none of the witnesses could state which accused fired first or which accused caused the injury. They also could not specify the sequence in which six people fired. To that extent, the medical evidence supports the defence case, as both firearm injuries appear to have been caused from a very close distance, while the eyewitnesses narrated that the firearm injuries were caused from a distance of 8 to 10 feet. For all the reasons noted above, we are of the view that the appellant is entitled to a benefit of doubt.

36. Consequently, this appeal succeeds and is **allowed**. The judgment and order of conviction dated 03.05.1985 passed by S.C. Srivastava, Special Addl. Sessions Judge, Muzaffarnagar, in Sessions Trial No.35 of 1984 (State Vs. Mohar Singh and others), under Sections 148 and 302 read with Section 149 I.P.C., is hereby **set aside**. Appellants are on bail. They need not surrender, in case they are not wanted in any other case. Their bail bonds and sureties are discharged. However, the appellants are directed to furnish bail bonds in compliance of Section 437-A Cr.P.C. to the

satisfaction of the Court concerned within two months from today.

37. A copy of this judgment alongwith the trial court record be transmitted to the Court concerned for necessary compliance. Compliance report be submitted to this Court, at the earliest. Office is directed to keep the compliance report on record.

Order Date:- 19.08.2025
NSC/Anurag

(Tej Pratap Tiwari, J.) (S.D. Singh, J.)