

THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA S-2175-SB of 2003
Date of Decision: 23.02.2016

Sukhwant Singh and another

....Appellants

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN

Present: Mr. Jasmail Singh Brar, Advocate,
for the appellants.

Mr. Vikram Bishnoi, Assistant A.G., Punjab.

T.P.S. Mann, J.

The appellants, namely, Sukhwant Singh and Pushpinder Singh were tried for committing offences punishable under Sections 323, 323/34 IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act'). Vide judgment and order dated 1.11.2003, learned Special Judge, Muktsar, convicted appellant Pushpinder Singh under Section 323 IPC and appellant-Sukhwant Singh under Section 323 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for 3 months each. They were also convicted under Section 3(1)(x) of the Act, and sentenced to undergo rigorous

imprisonment for one year and to pay a fine of Rs.2,500/- each and, in default of payment of fine, to further undergo rigorous imprisonment for 3 months. Both the substantive sentences were ordered to run concurrently. Half the amount of fine after recovery, was ordered to be paid as compensation to complainant-Chhinder Singh.

Aggrieved of their conviction and sentence, the appellants filed the present appeal in which they are currently on bail.

In nut-shell, the prosecution case is that complainant-Chhinder Singh claimed that he belonged to Mazhbi Sikh Community, which has been declared as a scheduled caste. He was resident of village Sangrana. Accused Sukhwant Singh also belonged to the said village. Both the accused were Jat Sikhs and non-scheduled caste. On 26.9.1999 at about 8.30 a.m., the complainant intended to visit Muktsar. When he reached the bus stand of his village, he met PW2-Balwinder Singh and one Maghar Singh (since deceased) of his village, who were also standing there. Maghar Singh told the complainant that they should walk to village Marhmallu as the bus coming to their village was likely to get late and while walking towards village Marhmallu, they would take lift on some vehicle. When they had covered a distance of half a kilometer from their village and reached near the culvert of canal minor, a jeep stopped

near them. Both the accused were sitting in the jeep. They were armed with guns. They were accompanied by three others, who were armed with Kirpans and wearing blue turbans besides having flowing beards. Immediately after coming out of the jeep, accused Sukhwant Singh passed derogatory remarks in respect of the caste of the complainant. Pushpinder Singh accused then told accused Sukhwant Singh that in case the complainant was not within his control, he be taught a lesson. The complainant told them not to insult his community and utter bad words against him. Sukhwant Singh asked his companions to catch hold of the complainant. Both the accused and their companions then started beating the complainant. Pushpinder Singh accused also slapped him and as a result, his turban was removed. Sukhwant Singh accused also slapped him. Their companions declared that the complainant should be thrown into the jeep and be finished on that day because he was not obeying their command. When they were trying to drag him into the jeep, Maghar Singh and Balwinder Singh rescued him. They had also witnessed the occurrence. The accused then declared that the complainant had been saved on that day because of his companions, but they would kill him in case the complainant opposed them in future. Some persons in a trolley came from behind and then the accused went away

while carrying their respective weapons. The complainant returned to his village, whereas Balwinder Singh left for village Marhmallu in the aforesaid tractor trolley.

It is also the prosecution case that the complainant had given an application in writing about the incident at Police Station Sadar Muktsar and also to the SSP and DGP, Punjab, and was assured of some action against the accused, but due to influence of the accused, the police took no action. On 15.10.1999, the complainant along with Maghar Singh and Balwinder Singh went to Police Station Sadar Muktsar, but they were told that the police had no time to take action on his application. Ultimately, he filed criminal complaint in the Court of the Sub Divisional Judicial Magistrate on 16.10.1999.

After recording the preliminary evidence, learned Judicial Magistrate summoned the two accused. On their appearance, the case was committed to the Court of Session, where they were charged for the aforementioned offences to which they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1-complainant Chhinder Singh and PW2-Balwinder Singh. The prosecution also tendered in evidence Scheduled Caste certificate Ex.PA of the complainant in which his caste "Mazhbi Sikh" stood mentioned. It was also mentioned that the said caste had been declared as a scheduled caste

by the Punjab Government. Maghar Singh could not be examined as he had died in the meantime.

When examined under Section 313 Cr.P.C., both the accused pleaded their innocence and denied the incident. They stated that they had been falsely implicated due to party faction. Sukhwant Singh accused also stated that the complainant had taken illegal possession of 4 kanals of the Panchayat land and was also putting pressure upon him to legalise his possession as he was the village Sarpanch. When he refused to oblige the complainant, the latter filed a false complaint against him. He also stated that even the witnesses cited and produced by the complainant were in illegal possession of the Panchayat land and they were also belonging to the community of the complainant.

In their defence, the accused produced DW1-Harbinder Pal Singh, Panchayat Secretary of village Sangrana, who deposed that on 26.9.1999, a meeting was convened by Gram Sabha of village Sangrana at 8.00 a.m., which was presided over by Sukhwant Singh accused being the village Sarpanch, which continued upto 12 noon. He also deposed that afterwards, he along with Sukhwant Singh accused had supervised the construction work going on in the village school. He remained there with Sukhwant Singh accused till 4.00 p.m. Thus, according to him

Sukhwant Singh accused remained with him in the village on 26.9.1999 from 8.00 a.m. to 4.00 p.m. He produced copy of the proceedings Ex.DB of the Panchayat of the said date.

The accused also produced DW2-Sudagar Singh, who corroborated the testimony of DW1-Harbinder Pal Singh and stated that he had attended the meeting of the village Gram Sabha along with Sukhwant Singh accused on 26.9.1999 from 8.00 a.m. to 12.00 noon. He was also signatory to the resolution Ex.DB.

DW3-Hari Singh, Lambardar of the village, deposed that Sukhwant Singh accused, who owned 40 acres of land on the road going from village Marhmallu to village Sangrana, bore good moral character. He also deposed that no such occurrence, as alleged by the complainant, had taken place on 26.9.1999.

After hearing learned counsel for the parties and on going through the evidence brought on record, the trial Court believed the prosecution version and convicted and sentenced the two appellants, as mentioned above.

Having heard learned counsel for the parties and on scanning the evidence with their able assistance, this Court finds that though the occurrence had taken place on 26.9.1999, but the complaint came to be filed by the complainant in the Court of the Sub Divisional Judicial Magistrate only on 16.10.1999. Both PW1-Chhinder Singh

and PW2-Balwinder Singh, tried to explain the delay in the filing of the complaint by stating that they had gone to the Police Station to lodge a report by submitting an application, but their application was not entertained by the police and no report was lodged against the appellants, at their instance. PW1-Chhinder Singh further deposed that he had met the Moharrir Head Constable, who was present in the Police Station and moved an application for taking action against the appellants. However, neither any official of the Police Station has been examined by the prosecution nor the application purported to have been submitted by the complainant in the Police Station has been proved. It appears that the delay in filing the complaint had been used by the complainant party to concoct a false version against the appellants.

The testimonies of PW1-Chhinder Singh and PW2-Balwinder Singh, suffer from material contradictions, inter-se, and also with the version as contained in the complaint.

To begin with, the case of PW1-Chhinder Singh in the complaint was that Sukhwant Singh appellant was the one who uttered the offending words to him. On the other hand, PW1-Chhinder Singh, deposed during his examination-in-chief that after seeing him Sukhwant Singh appellant came out of the jeep. He simply told him that he

used to take fodder from his fields, but voted for the Congress Party. However, he told Sukhwant Singh not to use bad language. Further, it was Pushpinder Singh appellant, who used derogatory words in the first instance and declared that a lesson be taught to the complainant. However, in the complaint, it was mentioned that both the appellants had uttered the derogatory words and when the complainant had told them not to insult his community, then Sukhwant Singh also told his companions to catch hold of the complainant and it was only thereafter that the appellants and their three companions started beating the complainant. PW1-Chhinder Singh further deposed that after Pushpinder Singh appellant used derogatory words and threatened to teach him a lesson, it was only he, who had given a slap on his cheek in the first instance and, thereafter, both the appellants slapped him and as a result his turban got removed. In the complaint, it was mentioned that the companions of the appellants declared that the complainant be thrown into the jeep and be finished. However, in his deposition as PW1, complainant Chhinder Singh stated that only Sukhwant Singh appellant while addressing him in an abusive manner declared that he be put into the jeep and be finished. The complainant went on to add that after declaration by their companions, when the appellants and their companions were going to drag him

into the jeep, he was rescued by Balwinder Singh and Maghar Singh. However, before the trial Court, he stated that immediately after Sukhwant Singh appellant had threatened to drag him into the jeep, he was rescued by his companions.

In the complaint, it was mentioned that the appellants told their companions to identify the complainant so that if he gave any application against them, they could be sent for finishing him. He also testified that it was one of the three companions of the appellant, who declared that the complainant be identified so that if he submitted any application against the appellants, he could be killed.

PW2-Balwinder Singh also supported the complainant's version that it was Sukhwant Singh-appellant, who uttered abusive words towards the complainant. However, he did not attribute extending of threats to Pushpinder Singh appellant. He only stated that he and Maghar Singh asked Sukhwant Singh appellant not to harm the complainant, but Sukhwant Singh appellant again declared that the complainant be thrown into the jeep.

The aforesaid contradictions in the testimonies of PW1-Chhinder Singh and PW2-Balwinder Singh, go to the

root of the case and when accepted, shake the credibility of the prosecution witnesses.

It was the prosecution case that while the occurrence was going on, a tractor trolley had reached the site, which was occupied by a number of persons. They were eye witnesses of the occurrence. However, they have neither been cited as witnesses nor examined by the prosecution. Thus, there is no independent corroboration to the testimonies of PW1-Chhinder Singh and PW2-Balwinder Singh.

Further, the case of the complainant was that he had received injuries on his knees, abdomen, chest and face. He was dragged upto 4-5 karams. Despite the same, there is no medical evidence to corroborate the factum of injuries on person of the complainant. The explanation of the complainant that two days after the occurrence, he had gone to the hospital and met the senior Doctors and showed his injuries to the Doctors, but neither he was admitted nor subjected to medico legal examination, is not worthy of acceptance.

Apparently, there is a party faction in the village of complainant-Chhinder Singh on the one hand and Sukhwant Singh appellant, on the other. While the former owed allegiance to the Congress Party, the latter belonged to

Akali Party. Possibility of false version being projected on account of factionalism in the village cannot be ruled out.

In view of the above, it cannot be said that the prosecution has been able to establish its case against the appellants beyond reasonable doubt.

Resultantly, the appeal is accepted, impugned judgment of conviction and sentence is set aside and the appellants are acquitted of the charges against them.

(T.P.S. Mann)
Judge

23.02.2016
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