Supreme Court of India
Gurpreet Singh vs State Of Punjab on 9 November, 2005
Author: B.N.Agrawal
Bench: B.N.Agrawal, A.K.Mathur

CASE NO.:
Appeal (crl.) 711 of 1995

PETITIONER:
Gurpreet Singh

RESPONDENT:
State of Punjab

DATE OF JUDGMENT: 09/11/2005

BENCH:
B.N.AGRAWAL & A.K.MATHUR

JUDGMENT:

J U D G M E N T WITH CRIMINAL APPEAL NO. 710 OF 1995 Mohinder Pal Singh Appellant Versus State of Punjab Respondent B.N.AGRAWAL, J.

The appellants of these two appeals along with accused Bhajan Singh @ Harbhajan Singh and Meharban Singh were made accused in a case under Section 302 of the Indian Penal Code (for short 'IPC') but as accused Meharban Singh died during trial, the remaining three accused persons were tried and by its judgment the trial court acquitted accused Bhajan Singh @ Harbhajan Singh whereas these two appellants were convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/- each, in default to undergo further imprisonment for a period of six months. Against the order of acquittal of accused Harbhajan Singh, no appeal was filed by the State whereas on appeal being filed by the appellants, the High Court confirmed their conviction and sentence. The revision application filed by the private prosecutor for enhancement of sentence has been rejected by the High Court. Prosecution case, in short, was that Kuljit Singh @ Billa was a student of B.A. Part I in Arya College, Ludhiana and he was a witness in a case filed for prosecution of appellant Gurpreet Singh under Section 307 IPC which was pending. On 22nd January, 1990 at about 5.30 p.m., Kuljit Singh along with his brother Harvinder Singh and friends Parminder Singh (PW 2) and Gurvinder Singh (PW 3) was returning to his house after attending classes from Guru Angad Dev College and when they reached near Oriental Public School, the appellants along with accused Meharban Singh, who were present there armed with kirpans, confronted him. Appellant Gurpreet Singh shouted that Kuljit Singh should be done to death and he attacked him with kirpan on his head. Thereafter, appellant Mohinder Pal Singh @ Vicky inflicted kirpan blow in the abdomen of Kuljit Singh. Accused Meharban Singh assaulted him with kirpan on the temporal region whereupon Kuljit Singh fell down. In the meantime, accused Harbhajan Singh who too was armed with kirpan came there and also dealt a kirpan blow on the forehead of Kuljit Singh. All the aforesaid accused persons thereafter inflicted several injuries upon Kuljit Singh even after he fell down. In the process of inflicting injuries, appellant Gurpreet Singh also received injuries at the hands of one of the co- accused. On halla being raised, people of the locality arrived

whereafter the accused persons fled away. Kuljit Singh was taken to Christian Medical Hospital by PW 3 and Harvinder Singh where the doctor declared him dead. Thereupon, Harvinder Singh, who was brother of Kuljit Singh deceased, left for the police station but on the Brown Road, near Christian Medical Hospital, he met Sub Inspector Bakshish Singh (PW 8) who recorded his statement stating therein the aforesaid facts and sent the same to the police station where a case was registered against all the aforesaid four accused persons, including the appellants on the same day at 7.15 p.m. Police after registering the case took up investigation and on completion thereof submitted charge sheet against the accused persons, on receipt whereof, learned magistrate took cognizance and committed all the aforesaid accused persons, including the appellants, to the court of Sessions to face trial. As accused Meharban Singh died during trial, the same proceeded against the remaining three accused persons.

Defence of the accused persons was that they were innocent and were falsely implicated in the case in hand. Specific defence of the appellants was that when they were going to the shop of appellant Gurpreet Singh and arrived at Jail Road at the time of the present occurrence, Kuljit Singh and his brother Upkar Singh were coming from the opposite direction along with one unknown person and out of them, Kuljit Singh asked his companions to kill appellant Gurpreet Singh whereupon, he was chased and surrounded by Kuljit Singh and others and out of them, Upkar Singh stabbed Gurpreet Singh with his knife. In the meantime, upon halla being raised by appellant Gurpreet Singh, villagers arrived there who assaulted Kuljit Singh and stating the aforesaid facts, a complaint was filed by appellant Gurpreet Singh on 3rd February, 1990 as Gurpreet Singh was hospitalized.

During the course of trial, the prosecution examined eight witnesses in all, out of whom, Dr. I.P.Singh Chhabra (PW 1) was the doctor who conducted postmortem examination on dead body of the deceased. Parminder Singh (PW 2) and Gurvinder Singh (PW 3) claimed to be eyewitnesses to the occurrence. Head Constable Balbir Singh (PW 4) and Constables Manjit Singh (PW 5), Gurcharan Singh (PW 6) and Lakhbir Singh (PW 7) were the formal witnesses whereas SI Bakshish Singh (PW 8) was the Investigating Officer. Informant Harvinder Singh could not be examined as he died before the trial commenced. The defence in support of its case examined three witnesses, namely, Dr. Subodh Radian (DW 1), who is said to have examined injuries of appellant- Gurpreet Singh, and Tarsem Singh (DW 2) and E.Rai Singh (DW 3) were formal witnesses. Upon the conclusion of trial, accused Harbhajan Singh was acquitted whereas the appellants were convicted and their appeal before the High Court having failed, as stated above, the present appeals by special leave. In the present case, presence of the appellants at the time and place of occurrence has not been denied rather admitted. Appellant Gurpreet Singh is said to have been examined by doctor [DW 1] who stated that he found following injury on his person:-

"Penetrating wound on the back of the chest left 8th interracostal space, 5 c.m. from midline, 1-5 c.m. x 0.5 c.m, depth not ascertained along with left haeopheumethroex."

From the dimension of injury, it would appear that the same was superficial one inasmuch as, according to the doctor, even its depth could not be ascertained. The complaint petition was filed by appellant Gurpreet Singh on 3rd February, 1990, i.e., after eleven days of the date of the incident and the reason for delay disclosed was that the said appellant was discharged from hospital on 3rd

of February, 1990. The doctor (DW 1) stated that appellant Gurpeet Singh remained conscious throughout, but, even then, no explanation is forthcoming why complaint was not filed either by this appellant himself or any of his relations for a period of eleven days after the occurrence. It appears that injury was superficial and complaint was filed after an inordinate delay of eleven days in order to make out a defence in the present case.

Doctor [PW 1], who held postmortem examination on the dead body of Kuljit Singh, found following injuries:-

1. Curved incised wound 5" x 1" x bone deep on the left side of forehead, extending from bridge of the nose to left ear. Underneath bone was cut i.e. frontal and nasal bone.

2. Incised wound 2" x =" x bone deep on forehead on right side.

3. Incised wound 3" x =" x bone deep underneath bone was cut on right cheek extending from lateral angle of eye towards ear downward.

4. Lacerated wound on parieto occipital on right side 4" x =" x scalp deep.

5. Incised wound 2 >" " x =" x bone deep on upper lip, cut and cut through and through and underneath teeth fractured i.e. both incisors and canine.

6. Abraded contusion 2" x =" on the top of right shoulder.

7. Abraded contusion on the top of left shoulder 4" x 2".

8. Incised would 1= x =" x bone deep on the right thumb on palmer aspect. Underneath bone was fractured.

9. Incised wound 4" x >" on the left parietal bone, bone deep underneath bone was fractured.

10. Four incised wounds >" x ?" elliptical shape on the back, left side 5" below the tip of scapula. Both margins incised.

11. Abraded contusion 3" x <" on left supra scapular region.

12. Incised wound >" x ?" elliptical shape, both margins incised on right memory area lateral to nipple. On exploration underneath muscle and bone were cut. The lung is cut size >" x ?" thoraxic cavity was ful of blood i.e. about one ltr of blood.

13. Incised wound >" x ?" on epigestrium, elliptical wound with both margins incised and on exploration there was wound on liver >" x ?" peritonial cavity contained blood about one litre.

14. Incised wound >" x ?" on the left side of the chest 3" below and medial to nipple and on exploration on left lung there was wound >" x ?" . Forensic cavity contained about one ltr. Blood and elliptical in share and both margins incised.

15. Incised wound >" x ?" on the left side of the chest elliptical in shape 6" below and lateral to nipple. On exploration the left lung was injured in the area in >" x ?".

16. Incised wound >" x ?" elliptical in shape and both margins were incised and on the left side of abdomen just lateral to umbilicus omentum was oozing out.

17. Incised wound >" x ?" elliptical in shape. Both margins were incised on the left side of abdomen 1" above injury No.

16. Omentum was oozing out of the wound. On exploration peritoneum cavity contains blood. Small intestine was injured at two places. Size was >" x ?".

18. Abraded contusion 3" x =" on the right knee joint.

19. Abraded contusion 3" x =" on left leg lower third on lateral aspect. The stomach contained about 80 cc of semi digested food. Bladder was healthy and empty. Large intestine were healthy and contained gases and foecal matter. Heart described and empty. All other organs were described. Spleen and kidneys were healthy. Organs of generation were healthy. All other organs which have not been described were healthy.

The doctor stated that the deceased died as a result of cumulative effect of injuries on the lungs and liver and the same were sufficient to cause death in the ordinary course of nature. According to him, injury Nos. 4,6, 7, 11, 18 and 19 could have been inflicted by blunt weapon whereas other thirteen injuries by incised weapon like kirpan. So far as injury Nos. 4,6,7,11,18 and 19 are concerned, PW 3 stated during the course of cross-examination that even after the deceased fell down, he was assaulted by the accused persons and in order to protect himself, he was tossing and rolling on the ground. As such, the aforesaid injuries he might have received during the course of tossing and rolling on the ground. The other injuries were undisputedly caused by kirpan. Thus, the medical evidence supports the prosecution case that the deceased was assaulted by the accused persons with kirpan.

The two eyewitnesses, namely, Parminder Singh (PW 2) and Gurvinder Singh (PW 3) have consistently supported the prosecution case in their statements made before the police as well as in Court. The ground of attack to their evidence is that neither in the mortuary register nor in the daily diary [Ex. DC] their names were disclosed. In this connection, reference has been made to Section 154 of the Code of Criminal Procedure (for short 'the Code') which lays down that every information relating to the commission of a cognizable offence shall be reduced into writing by the police officer incharge of the police station and thereafter substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Under Rule 24.1 of the Punjab Police Rules, Volume III, 1959 Edition, framed by the State Government, it has been

prescribed that substance of the report shall be entered in the Daily Diary. The relevant part of the Rule reads as under: "Every information covered by Section 154, Criminal Procedure Code, must be reduced to writing as provided in that section and substance thereof must be entered in the police station daily diary, which is the book provided for the purpose. It is only information which raises a reasonable suspicion of the commission of a cognizable offence within the jurisdiction of the police officer to whom it is given which compels action under section 157, Criminal Procedure Code."

In the present case, as required under the aforesaid Rules, substance of information received under Section 154 Cr.P.C. has been entered in the daily diary which has been marked as Ex.DC wherein names of all the four accused and that of the deceased have been mentioned but so far as names of witnesses are concerned, the same have not been disclosed. It may be stated that under Section 154 of the Code as well as Rule 24.1 of the Rules referred to above, what is required to be mentioned in the daily diary is substance of the information received and the same cannot be said to be repository of everything. Factum of murder of Kuljit Singh by the four accused persons, including the appellants, has been specifically entered. If the names of the witnesses have not been mentioned, it cannot be said that substance of information received was not entered and there was violation of the provisions of Section 154 read with Rule 24.1 of the Rules . Mere non-disclosure of the names of witnesses in the daily diary as well as mortuary register, ipso facto, cannot affect the prosecution case more so, when their names have been disclosed in the first information report itself and there is no other circumstance to otherwise create doubt regarding veracity of the prosecution case. This being the position, we do not find any ground to disbelieve the evidence of PWs 2 and 3.

Mr. Sushil Kumar, learned Senior Counsel appearing on behalf of the appellant Gurpreet Singh submitted that there was inordinate delay in sending copy of the first information report to the learned magistrate as the case was registered on 22nd January, 1990 at 7.15 p.m. but first information report reached the concerned magistrate on that night at 0002 hours. In this regard, reference may be made to the evidence of constable Lakhbir Singh (PW 7) who stated that the special report of the present case was made over to him at 8.00 p.m. for being delivered to the concerned magistrate and other officers. He further stated that first of all, he delivered copy of the report at the City Control Room, the Superintendent of Police (City), Deputy Superintendent of Police (City), Deputy Superintendent of Police (Detective), Senior Superintendent of Police, Ludhiana, District Control Room and lastly to the concerned magistrate. As before delivering the report to the magistrate, he had delivered its copy at six other places, therefore, the report could be delivered to the concerned magistrate at 0002 hours during night which shows that this witness has taken four hours time in delivering report to the magistrate. In the present case, we do not find that there was any delay at all in making over the report to concerned magistrate rather the same was very promptly sent and delivered to the learned magistrate. That apart, it is well settled that even if there is any delay in sending the special report to a magistrate that alone cannot affect the prosecution case if the same is otherwise found to be trustworthy.

Learned Senior Counsel next submitted that in any view of the matter, conviction of the appellants under Section 302 IPC simpliciter is unwarranted as there is no evidence to show that any of the two appellants inflicted fatal injury. It has been further submitted that their conviction cannot be altered, by this Court, to under Section 302 read with Section 34 IPC for sharing the common

intention as no charge was framed under Section 302 read with Section 34 IPC but the charge was framed under Section 302 IPC simpliciter. It has been further submitted that at the highest, the appellants can be convicted by this Court under Section 326 IPC for causing grievous injury to the deceased by dangerous weapons. Reliance in this connection was placed upon a three Judges' Bench decision of this Court in the case of Shamnsaheb M.Multtani v. State of Karnataka (2001) 2 Supreme Court Cases 577. In that case, charge was framed under Section 302 IPC and the accused persons were acquitted by the trial court. When the matter was taken in appeal by the State, High Court reversed the order of acquittal but convicted accused under Section 304-B IPC which was challenged before this Court. After taking into consideration the provisions of Section 464 of the Code of Criminal Procedure, this Court laid down that a conviction would be valid even if there is omission or irregularity in the framing of charge provided the same did not occasion a failure of justice. In the said case, Court came to the conclusion that by non-framing of the charge under Section 304-B IPC, there was failure of justice and the accused was prejudiced thereby in view of the fact that under Section 113-B of the Evidence Act, there was a statutory presumption against the accused which he was entitled to rebut and no such opportunity of rebuttal was afforded to him in the absence of charge. This being the position, this Court set aside the conviction under Section 304-B IPC, remitted the matter to the trial court, directing it to proceed from the stage of defence evidence. Therefore, the said decision is quite distinguishable and has no application to the present case.

On behalf of the State, reference was made to a decision of this Court in the case of State of A.P. v. Thakkidiram Reddy and others, (1998) 6 Supreme Court Cases 554, in which case charge was framed under Section 302 IPC simpliciter but eleven accused persons were convicted under Section 302/149 IPC by the trial court. When the matter was taken to the High Court, conviction of one accused under Section 302/149 IPC was maintained but of all other ten accused persons reversed and they were acquitted of the charge. Against the order of acquittal of the ten accused persons, State of Andhra Pradesh filed an appeal before this Court whereas the accused whose conviction was upheld by the High Court also preferred an appeal. This Court, following the decision of Constitution Bench in the case of Willie (William) Slaney vs. State of M.P., AIR 1956 Supreme Court 116, upheld the order of conviction but reversed the acquittal of five accused persons out of ten and restored their conviction under Section 302/149 IPC recorded by the trial court. After taking into consideration the provisions of Section 464 and 465 of the Code, it was laid down that unless it could be shown from the evidence of witnesses as well as a statement of the accused under Section 313 of the Code that there was a failure of justice and thereby accused was prejudiced, the appellate court would not be justified in refusing to convict the accused for the offence under Section 302/149 IPC merely because charge was framed under Section 302 IPC simpliciter and not under Section 302/149 IPC. The court thus observed in paras 10-11 which read thus:- "10. Sub-Section (1) of Section 464 of the Code of Criminal Procedure, 1973 ('Code' for short) expressly provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact (emphasis supplied) been occasioned thereby. Sub- section (2) of the said section lays down the procedure that the Court of appeal, confirmation or revision has to follow in case it is of the opinion that a failure of justice has in fact been occasioned. The other section relevant for our purposes is Section 465 of the Code; and it lays

down that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the proceedings, unless in the opinion of that Court, a failure of justice has in fact been occasioned. It further provides, inter alia, that in determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

11. This Court in Willie (William) Slaney v. The State of M. P., elaborately discussed the applicability of Sections 535 and 537 of the Code of Criminal Procedure, 1898, which correspond respectively to Sections 464 and 465 of the Code, and held that in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. Viewed in the context of the above observations of this Court we are unable to hold that the accused persons were in any way prejudiced due to the errors and omissions in the charges pointed out by Mr. Arunachalam. Apart from the fact that this point was not agitated in either of the Courts below, from the fact that the material prosecution witnesses (who narrated the entire incident) were cross examined at length from all possible angles and the suggestions that were put forward to the eye witnesses we are fully satisfied that the accused persons were not in any way prejudiced in their defence. While on this point we may also mention that in their examination under Section 313 of the Code, the accused persons were specifically told of their having committed offences (besides others) under Sections 148 and 302/149 IPC. For all these reasons we reject the threshold contention of Mr. Arunachalam.

Further, it has been reiterated by this Court in the case of Ramji Singh and another v. State of Bihar (2001) 9 Supreme Court Cases 528 wherein also charge was framed under Section 302 simpliciter but conviction was under Section 302 read with Section 34 IPC and it was laid down that conviction under Section 302 read with Section 34 IPC was warranted as the accused person shared the common intention to cause death of the victim and no prejudice was caused to them because of non-framing of charge under Section 302 read with Section 34 IPC.

In the present case, it cannot be said that the accused persons were prejudiced merely because charge was framed under Section 302 IPC simpliciter and no charge was framed under Section 302 read with Section 34 IPC. From the evidence of two eyewitnesses, namely, PWs 2 and 3 it would appear that the accused persons shared the common intention to cause death of the victim. They were cross-examined at length from all possible angles and from the suggestions that were put forth to the eyewitnesses, we are fully satisfied that the accused persons were not in any manner prejudiced in their defence. That apart, in their examination under Section 313 of the Code, the appellants were specifically told that they along with other accused persons armed with kirpan came to the place of occurrence and assaulted the deceased whereafter they fled away which shows that appellants shared the common intention to cause death of the deceased.

Learned Senior Counsel appearing on behalf of the appellant in this regard has further relied upon decision of this Court in the case of Atmaram Zingaraji v. State of Maharashtra 1997 Criminal Lal Journal 4406 wherein charge was framed under Section 302/149 IPC against nine accused persons who were acquitted by the trial court and when State of Maharashtra preferred an appeal, the High Court upheld acquittal of eight accused persons but reversed the acquittal of ninth accused and convicted him under Section 302 IPC simpliciter. Against the order of conviction, the accused moved this Court and his conviction under Section 302 IPC simpliciter was set aside on the ground that there was no evidence to show that he inflicted the fatal injury and he could not be convicted under Section 302/149 IPC as the other eight accused persons were acquitted and their acquittal attained finality. This Court, however, convicted the accused under Section 326 IPC for causing grievous injury by him to the deceased. Likewise, in the case of Roopa Ram v. State of Rajasthan 1999 Criminal Law Journal 2901 three accused persons were charged under Section 302 and out of them two were acquitted by the trial court and one person was convicted under Section 302 IPC and his conviction was upheld by the High Court. When the matter was brought to this Court, it was found that the injury inflicted by the appellant before this Court could not be said to be fatal as such his conviction under Section 302 IPC simpliciter was unwarranted and the same was set aside specially in view of the fact that he could not have been convicted under Section 302 read with Section 34 IPC as other two accused persons had been already acquitted by the trial court itself and their acquittal attained finality. In these circumstances, this Court convicted the accused under Section 326 of the IPC for causing grievous injury to the deceased. In our view, the aforesaid two cases have no application to the facts of the present case. In view of the facts set forth above, we are of the opinion that prosecution has succeeded in proving its case beyond reasonable doubt and conviction of the appellants under Section 302 IPC is liable to be altered to one under Section 302 read with Section 34 IPC as fatal injury could not be attributed to him. Shri Prabha Shanker Misra, learned Senior Counsel appearing in support of Criminal Appeal No. 710 of 1995 apart from challenging conviction of appellant Mohinder Pal Singh on merits, which we have already dealt with, submitted that on the date of the alleged occurrence, he was a juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986 (hereinafter referred to as 'the Act') as on that date he had not attained the age of 16 years. It appears that this point was not raised either before the trial court or the High Court . But it is well settled that in such an eventuality, this Court should first consider the legality or otherwise of conviction of the accused and in case the conviction is upheld, a report should be called for from the trial court on the point as to whether the accused was juvenile on the date of occurrence and upon receipt of the report, if it is found that the accused was juvenile on such date and continues to be so, he shall be sent to juvenile home. But in case it finds that on the date of the occurrence, he was juvenile but on the date this Court is passing final order upon the report received from the trial court, he no longer continues to be juvenile, the sentence imposed against him would be liable to be set aside. Reference in this connection may be made to decision of this Court in the case of Bhoop Ram v. State of U.P. (1989) 3 Supreme Court Cases 1 in which case at the time of grant of special leave to appeal, report was called for from the trial court as to whether the accused was juvenile or not which reported that the accused was not a juvenile on the date of the occurrence but this Court, differing with the report of trial court, came to the conclusion that accused was juvenile on the date the offence was committed and as he was no longer a juvenile on the day of judgment of this Court, sentence awarded against him was set aside, though conviction was upheld. In the present case, we have already upheld conviction of appellant - Mohinder Pal

Singh as well but it would be just and expedient to call for a report from the trial court in relation to his age on the date of the occurrence.

Accordingly, Criminal Appeal No. 711 of 1995 filed by appellant - Gurpreet Singh fails and the same is dismissed. Bail bonds of this appellant, who is on bail, are cancelled and he is directed to be taken into custody forthwith to serve out the remaining period of sentence for which a compliance report must be sent to this Court within one month from the date of receipt of copy of this order. In Criminal Appeal No. 710 of 1995 filed by appellant Mohinder Pal Singh, call for a report from the trial court as to whether on the date of occurrence this appellant was juvenile within the meaning of Section 2(h) of the Juvenile Justice Act, 1986? The trial court shall give opportunity to both the parties to adduce evidence on this point. Let the entire original records of the trial court be returned to it. Report as well as records must be sent to this Court within a period of three months from the receipt of this order. Upon receipt of report from the trial court, final order shall be passed in this appeal.