Supreme Court of India
Sardul Singh vs State Of Haryana on 27 September, 2002
Author: D Raju
Bench: Doraiswamy Raju, Shivaraj V. Patil.

CASE NO.:
Appeal (crl.) 634 of 2001
Appeal (crl.) 1191 of 2001

PETITIONER:
Sardul Singh

RESPONDENT:
State of Haryana

DATE OF JUDGMENT: 27/09/2002

BENCH:
Doraiswamy Raju & Shivaraj V. Patil.

JUDGMENT:

Jagtar Singh Vs.

State of Haryana J U D G M E N T D. RAJU, J.

These two appeals are dealt with together, since they relate to the same occurrence and arise out of a common judgment of the court below. The appellant in Criminal Appeal No.634 of 2001 was accused No.1 and the third accused is appellant in Criminal Appeal No.1191 of 2001. These two along with Harvinder Singh (A2), Tikka Singh (A4) and Jaswant Singh (A5) stood charged before the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, under Sections 302, 148 and 149 of the Indian Penal Code, for having caused the death of Naresh Kumar, brother of PWs-8 and 10, and son of PW-11, at about 8 or 8.30 P.M. on 9.11.1990. Accused Nos.1 and 2 are own brothers and son of one Baldev Singh, accused No.3 is the brother's son of Baldev Singh and cousin of A1 and A2, and while A4 is the friend of Baldev Singh, A5 is the servant of Baldev Singh. After trial, the learned Trial Judge by his Judgment dated 7.10.1995 found A1 (Jagtar Singh) guilty under Section 302, IPC, and acquitted all others holding that the prosecution has not been able to prove the charges against them beyond all reasonable doubt. A1 was consequently sentenced to undergo rigorous imprisonment for life, in addition to payment of fine of Rs.5,000/- and two years R.I. in case of default in payment of the same. A1 filed Criminal Appeal No.532- DB.of 1995 and the State filed Criminal Appeal No.193-DB of 1996 questioning the acquittal of the other accused. The learned Judges of the Division Bench in the High Court, by its judgment dated 8.1.2001, dismissed the appeal filed by A1 and partly allowed the State appeal so far as A3 is concerned and convicted him under Section 302, IPC, read with Section 34, IPC, and sentenced him to imprisonment for life, in addition to the levy of a find of Rs.5,000/- with a default clause. Hence, these appeals.

The case as disclosed from the evidence of Prosecution Witnesses may have to be briefly stated to appreciate respective contention of the parties before us. The complainant party had a sugarcane

crusher in the land adjoining the lands of Baldev Singh. On 8.11.1990, A3 and two others came to the cane crusher where besides PW-8, his father; two brothers (Ramesh and Naresh) were present and abused them. On 9.11.1990, a Panchayat was said to have been convened in the Village Chouwala, which was said to have included also Sumer Chand (PW-3) besides Avtar, Ram Saroup, and one another person. It was stated that since A3 and others admitted their misconduct and it was decided that in case of any misbehaviour at any time thereafter, A3 will pay Rs.10,000/- as fine and if the other party misbehaved, they will pay Rs.3,000/- to the other party, respectively. The admitted case of the prosecution is that everything relating to the said Panchayat and the decision therein was oral and there was nothing in writing. Later in the evening on that day at about 4.30/5.00 P.M., the deceased and PW-8 left for Bilaspur in a Tonga belonging to Sheo Ram, who also drove the Tonga for selling the Gur weighing about one quintal. The same was said to have been sold to PW-6, Ram Lal, for Rs.400/- by the deceased who handed over the same to PW-8 and both were returning by the same Tonga to their Village Chouwala, the deceased and Tongawala seated on the front seat and PW-8 seated on the back, by about 8.00/8.15 P.M. When they were near the lands of Baldev on the link road of Ram Khera to Chouwala, the five accused, armed with lathis, raised lalkara that PW-8 and the deceased should not be allowed to go. A1 was said to have given a lathi blow, which hit the Tonga and PW-8 jumped from the Tonga. In the meantime, A3 was said to have given a lathi blow to the deceased on his head and the Tongawala also seems to have ran away. PW-8 was said to have been watching what has happened from a distance of 25 paces and all the accused gave lathi blows on the deceased and by the time PW-8, who was hiding behind a tree, raised an alarm, all ran away from the spot with their respective weapons. It was also claimed that since each were in the process of assault calling the other by names, he could identify them from their voices, being known persons. Thereafter, PW-8, driving the Tonga brought the deceased, said to be conscious at that time to their house and both narrated the incident to their father as well as the other brother. Thereupon PW-8, PW-11 and PW-3 brought the deceased in the Trolley of PW-3 to Civil Hospital, Jagadhri, and on the way the deceased was said to have become unconscious. Later, it appears that the victim died at the Hospital at about 4.00 A.M. on 10.11.1990. Earlier on the report sent by the Doctor (PW-9) at about 11.15 P.M. about the serious condition of the victim to the Police, the ASI came to the Hospital at about 1.45 A.M and recorded the statement of PW-8 and caused the case to be registered. After receiving the report about the death of the victim, and holding the inquest as well as arranging for the conduct of post mortem and further investigation was set in motion and on completion of the investigation, the Police laid charge only against A3 to A5 for an offence under Section 302 read with Section 34, IPC. It is only after examination of witnesses during trial, an order came to be made under Section 319, Cr.P.C., A1 and A2 were also summoned to face trial and fresh trial was held against all the accused for offences under Sections 302, 148 and 149, IPC, resulting in the convictions, as noticed supra.

Shri Sushil Kumar, learned Senior Advocate, and Shri K.B. Sinha, learned Senior Advocate, appeared for the appellants in Criminal Appeal No.634 of 2001 and Criminal Appeal No.1191 of 2001 respectively, whereas Shri J.P. Dhanda, learned counsel, was heard for the respondent-State.

It was strenuously contended for the appellant in Criminal Appeal No.634 of 2001 that the courts below including the High Court having not accepted the claim of prosecution of the recoveries made and disbelieved the version of the father (PW-11) on the alleged oral dying declaration of the

deceased, there was hardly any justification for the High Court to reverse the verdict of acquittal recorded by the learned Trial Judge in respect of the said appellant. The further contention on behalf of this appellant was that the evidence of PW-8, the brother, who claims to have accompanied the deceased in the Tonga when the incident occurred, could not, with so many glaring infirmities affecting its credibility, be the basis of conviction and that too by reversing an acquittal in favour of this appellant. Inviting our attention to the relevant portions of the judgment of the High Court, wherein consideration has been made of the case pertaining to this appellant and the other appellant before this Court, it is also contended that the manner of consideration could hardly be said to be an objective one, sufficient and justifying to set aside the findings of the Trial Court acquitting this appellant. To appreciate this part of grievance, it is useful to advert to the very relevant portion of the judgment of the High Court, which reads as hereunder: -

"Coming to the rest of the case, it is the consistent contention of the Krishan Gopal right from the first information report that Jagtar Singh had attempted to give a blow on his person but it hit the Tonga and because of that Tonga driver ran away to a distance. This facilitated the blow given by Sardul Singh on the head of the deceased. Identity of Sardul Singh is mentioned in the first information report as well as in the statement of Krishan Gopal on oath. We find that the statement of Krishan Gopal is consistent and inspire confidence in its truthfulness so far as the role of these two persons is concerned, i.e., Jagtar Singh and Sardul Singh. Sardul Singh had also gone to the crusher of the complainant on the previous day and that too under the influence of liquor and had threatened. He had to make a clean breast of his fault before the Panchayat. He has a clear motive to avenge his prestige, which was in his mind because the complainant reported to the Panchayat. So when evidence comes against Sardul Singh accused and he did not even bring an inkling in the defence to say that he never confessed before the Panchayat nor did he go to the crusher of the complainant and did not misbehave. It cannot be imagined that the prosecution evidence to that extent is doubtful and rather it stands established. The parties were known to each other intimately. It is immaterial that the occurrence took place around 8.30 P.M. and it was dark but still there was nothing to prevent the complainant side from identifying the assailants. The assailants had come near the Tonga and the assault was from very close range. Therefore, there could not be any mistake about it. Similarly, recording of the First Information Report in such a case also could not be said to be delayed when the statement is recorded at 2.30 A.M. and the first information report was recorded at 2.55 A.M. The complainant has explained that he had taken the deceased at home first of all. There appears to be nothing to be manipulated in the investigation. The explanation mentioned by the complainant is sufficient to dispel the impression that anything was required to be manipulated. There is nothing sufficient to suggest that the accused were involved at the instance of Sumer Chand due to election rivalry.

The learned Trial Judge has mentioned that the stick Ex.P1 was so soft that it did not cause the injuries found on the person of the deceased. Dr. M.R. Passi PW.9 has only suggested that it is less likely that injuries on the head of the deceased could be caused by stick Ex.P1. It could not be taken to mean that the blows from the stick made of popular tree branch could not cause injuries on the person of the deceased. The other point taken by the learned Trial Judge was that the blood group on the stick was not proved to be matching with the blood of the deceased. We do not find that these are sufficient grounds to disbelieve the over whelming evidence with regard to the participation of

Sardul Singh in the occurrence and giving injuries to the deceased. So in the given circumstances, we are fully convinced that Sardul Singh could not have been exonerated of his guilt. He is thus liable for the offence under Section 302 read with Section 34 of the Indian Penal Code."

Strong exception is also taken to some of the observations and conclusions therein on the ground that they do not find any support from the materials on record and that on the other hand on vital aspects unwarranted inferences have been drawn in utter disregard of categorical and specific findings stated to have been otherwise recorded by the learned Trial Judge.

On behalf of the appellant in Criminal Appeal No.1191 of 2001, it was forcefully contended, in addition to adopting the submissions made on behalf of the other appellant, that there are no legally acceptable materials to prove the alleged guilt of this appellant and they were involved and implicated falsely due to some election rivalry at the instance of PW-3 who contested unsuccessfully against the father of this appellant for the office of Sarpanch. According to the learned senior counsel, it was a case of blind murder and except the fact that the son of PW-11 died, there was nothing credible on evidence to connect the appellant with the incident. The non- examination of the Tonga driver and the other independent, alleged panchyatdars have been strongly criticised stating that the same was meant to shield the falsity of the prosecution case and avoid the real truth also coming to light. Some of the conclusions of the courts below, according to the learned counsel, if pursued to its logical end would necessarily lead to the innocence of this appellant also. It was alternatively contended that even on the facts, as claimed to have been proved, the offence under Section 302 read with Section 34 IPC could not be said to have been established, and if at all, it could be only for an offence under Section 323 IPC that this appellant could be convicted.

We have carefully considered the submissions made on behalf of the appellants, in the light of the evidence on record and the findings recorded by the courts below, though at variance on some aspects and by way of affirmation on several other aspects. The case against both the appellants mainly rests upon the evidence of PW-8, no doubt the brother of the victim, the only ocular witness who claims to have accompanied the deceased and was on and near the site of occurrence. No one else has claimed to have witnessed the occurrence. The only other person, who could have spoken as to what had happened on the spot, was the Tonga driver, and his non- examination was said to be a vitiating factor and really an attempt to withhold best evidence, by the prosecution. The A.P.P. for the State, on 17.1.94 has given up Ram Saroup, Shiv Ram and Avtar Singh, cited as PWs for the reason that they have been won over and PW Premchand as unnecessary. PW-12, the Inspector/SHO of Jagadhri Police Station, who was examined on 7.7.94, though claimed to have recorded a statement of Sheoram, nothing substantial has been made out, to adversely affect the version of Prosecution Witnesses, from the mere non-examination of this person, who drove the Tonga, since he also ran away from the spot. The lapse of I.O. in not getting the Tonga inspected or seized cannot be such as to affect the credibility of the prosecution case, since the fact about the travel in the Tonga stood otherwise established sufficiently. Further, from the non- examination of the other so-called panchayatdars who could have spoken only about the holding of the alleged Panchyat and the decision taken which factor, if at all, could become also relevant to prove only any immediate provocation for the assault, cannot be a justification to totally reject the prosecution case. Having regard to the fact that the father of A1 and A2 is the Sarpanch and influential, the

apprehension of the prosecution that those witnesses were won over cannot be outright brushed aside as a mere pretence for something else.

There cannot be a prosecution case with a cast iron perfection in all respects and it is obligatory for the courts to analyse, sift and assess the evidence on record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution. What is to be insisted upon is not implicit proof. It has often been said that evidence of interested witnesses should be scrutinized more carefully to find out whether it has a ring of truth and if found acceptable and seem to inspire confidence, too, in the mind of the court, the same cannot be discarded totally merely on account of certain variations or infirmities pointed or even additions and embellishments noticed, unless they are of such nature as to undermine the substratum of the evidence and found to be tainted to the core. Courts have a duty to undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to the broad and reasonable probabilities of the case also in their attempt to find out proof beyond reasonable doubt. This Court in Ugar Ahir & Others vs. The State of Bihar (AIR 1965 SC 277) has observed, as to what should be the approach of a Court in such circumstances, as follows:

"6. The maxim falsus in uno, falsus in omnibus (false in one thing, false in every thing) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the court to scrutinize the evidence carefully and, in terms of the felicitous metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest. That is what the courts have done in this case. In effect, the courts disbelieved practically the whole version given by the witnesses in regard to the pursuit, the assault on the deceased with lathis, the accused going on a bicycle, and the deceased wresting the bhala from one of the appellants and attacking with the same two of the appellants, the case that the accused attacked the witnesses, and the assertion of the witnesses of their being disinterested spectators. If all this was disbelieved, what else remained? To reverse the metaphor, the courts removed the grain and accepted the chaff and convicted the appellants.

We, therefore, set aside the conviction of the appellants and the sentence passed on them."

Coming to the facts of the case on hand, if the evidence of PW-8 is found to inspire confidence and considered to be truthful and acceptable, it would be the direct ocular evidence for the occurrence sufficient to indict the appellants. It is the quality of the evidence and not merely the quantity that really matters. So far as the evidence of PW-8 is concerned, the Trial Court, which had the opportunity to observe the general tenor of the evidence given by the various witnesses, was of the view that he was an eyewitness to the occurrence and it was possible for him to identify A1. As for the others and particularly A3, the trial court proceeded to acquit merely because PW-8 could not identify the remaining accused due to darkness except by their voices and that Ex.P-1 was not shown sufficiently to be the same Danda which was used by A3 to inflict injuries and the theory of Panchyat

was not a sufficient motive to commit such a heinous crime. It may be noticed at this stage that 'motive', which is not always capable of precise proof, if proved, may only lend additional support to strengthen the probability of commission of the offence by the person accused but the absence of proof does not ipso facto warrant an acquittal. The Trial Court further came to the conclusion that A1 was one of the members of the assailants and the statement of PW-8 cannot be believed to say that he had recognised the other persons in the dark or from their voices. It would be appropriate, at this point, to carefully see whether this manner reading of the evidence by the Trial Court was accurate or the correct reading of the evidence. PW-8 spoke not only about the involvement of A3 in the altercation resulting in Panchayat but also about his noticing five persons inclusive of A1 and A3, armed with lathis as they reached near the fields of Baldev Singh. The relevant portion as to the actual occurrence as per the statement on record in chief reads thus:

"All of them said that I and Naresh should not be allowed to go. Then Jagtar gave a lathi blow, which hit the Tonga. Then I jumped from the Tonga. In the meantime, Sardul accused gave lathi blow to Naresh, which hit him on his head. I was at a distance of 10-15 paces and I saw that all the accused gave lathi blows to my brother Naresh."

During the course of cross-examination PW-8 stated, in respect of this aspect, as follows:

"It was dark night on the night of occurrence but I had seen the faces of all the accused while sitting in the Tonga. It is correct that I had said in my statement in the court previously that I was at a distance of 25 paces from the accused and that I had identified them from their voices, as they were calling each other by name, as I knew them earlier."

Therefore, it could be seen that the lathi blow said to have been given by A-3 also was before he ran to some distance and watched all the accused (referring to all of them generally) as they gave lathi blows and this identification claimed from their voices was really with reference to the general accusation against all in the later portion and not to be connected with reference to the blow said to have been given also by A3 on the head of the deceased, stated in positive and unmistakable words. There could be no differential treatment or approach in this regard between A1 and A3 in respect of their role and both are found identified and fixed directly with reference to a positive and overt act.

So far as the High Court is concerned, it rightly took notice of the fact that PW-8 has mentioned the identity of A3 in the FIR as well as in court and that the evidence in this regard was consistent and inspired confidence of acceptance. Merely because the High Court proceeded to refer to some other material also, incorrect or irrelevant, it does not vitiate the positive finding otherwise justifiably recorded in the same manner and by adopting the same standard or process of reasoning as in respect of A1. The reasons assigned in the penultimate paragraph of the judgment of the High Court are relevant and vital, though wholly lost sight of by the Trial Court, and this omission not only necessitated but justified the approach and the conclusion arrived at by the High Court in respect of the guilt of A3. When the Trial Court was found to have wrongly read and thereby mis-appreciated the evidence and arrived at grossly unjust conclusions, the High Court was entitled to interfere in the appeal, to set right the manifest injustice resulting from the decision of the Trial Court and that is really what seem to have been done by the High Court in this case. Consequently, there is no scope

for interfering with the finding recorded that A3 was also present on the spot and participated in the assault on the deceased on the fateful day along with A1. The medical opinion about the number and nature of injuries would lend further credence and corroboration to such participation by both A1 and A3. The High Court cannot be said to have committed any error or exceeded the parameters laid down for interfering with the verdict of acquittal recorded by the trial court in respect of A-3, having regard to the manifestly erroneous evaluation of the evidence in this regard by the trial court, resulting in grave injustice.

The next important question is as to what would be the nature of offence really committed, on the facts proved by the prosecution. The sticks said to have been used and recovered are of 'Popular tree', the wood of which was considered to be soft and light and stated to be usually used for manufacturing match sticks. While testifying on oath before Court, PW-8 has only stated that he and the deceased 'should not be allowed to go' and not allowed to go alive or must be finished. This factor taken together with the nature of sticks used and the admitted rivalry on account of some elections would indicate that the accused meant at best, to give a sound thrashing to the victim. Since it was during night-time, some of the blows might have also landed on the vital portion of the head, even in the absence of any deliberate intention to kill and, therefore, be possibly inferred from the facts proved. The intention to cause death or cause such bodily injury as was likely to cause death in the normal or ordinary course cannot be readily imputed to the accused. Taken individually or even jointly together, if at all the common intention could have been merely to commit an assault and inflict some injuries but not to cause such injuries as would or is likely to cause or result in death. Therefore, A1 and A3 could not be condemned to have committed the murder, though that seems to have been the unintended ultimate result. On the facts proved, the accused could only be safely convicted under Section 325 IPC and not under Section 302 IPC. The plea that it would attract only punishment under Section 323 cannot be countenanced having regard to the grievous nature of the injuries sustained by the victim. These appeals, therefore, merit acceptance only in part, not for any clean acquittal, but for acquittal in respect of the offence under Section 302 IPC and instead, conviction of both the appellants under Section 325 IPC read with Section 34 IPC.

Keeping in view the overall circumstances of the case, the age and lapse of time etc., a sentence of two years RI with a fine of Rs.10,000/- each would be reasonable and sufficiently meet the ends of justice. Accordingly, the appellants (A1 and A3) shall stand convicted under Section 325 IPC read with Section 34 IPC and sentenced to undergo two years rigorous imprisonment and further pay a fine of Rs.10,000/- each, in default whereof to undergo rigorous imprisonment for one year more. A1 shall undergo the remaining period of sentence if any and A3 shall be taken into custody to undergo the sentence imposed. The appeals shall stand partly allowed on the above terms.