

STATE OF PUNJAB

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v.

BITTU & ANR. ETC. ETC.

(Criminal Appeal Nos.548-551 of 2013)

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DECEMBER 16, 2015

[PINAKI CHANDRA GHOSE AND R.K. AGRAWAL, JJ.]

Penal Code, 1860 – ss.120B, 302 and 201 r/w. s.34 – Prosecution under – Of five accused – Conviction by trial court relying on testimony of the eye-witnesses (PWs 5, 6 and 7), the medical evidence and the motive as established by PW7 – High Court acquitted the accused – On appeal, held: The prosecution has failed to prove its case beyond reasonable doubt – the testimonies of PWs 5 and 7 as eye-witnesses are highly doubtful – Though the motive is established by PW7, but the motive alone cannot be sufficient to convict the accused – Even the medical evidence does not support the prosecution version – The accused are entitled to be acquitted.

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Evidence – Motive – Evidentiary value of – Held: Motive alone cannot be sufficient to convict an accused, as it is not substantive evidence and is merely corroborative in nature.

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Dismissing the appeals, the Court

HELD: 1. PW-2 and the complainant PW-6 were eyewitnesses as per the prosecution story. But they failed to support the prosecution case as they turned hostile during the trial. In cross-examination, the complainant did not own up any part of the previous statement which led to the FIR except that part where he had named four of the accused persons to the Police. PW-2 was the real maternal uncle of the deceased and

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A was alleged to have been present as an eye-witness during the incident, as per the FIR. It is unnatural for him not to have come to the rescue of his nephew even when he had identified him as the victim. Thus, the two main eye-witnesses turned hostile and did not support the case of the prosecution. [Para 9] [1126-G; 1127-C-E]

2. The statements of PW-5 lead to an inference that his presence was doubtful. PW-5 was the real maternal uncle of the deceased and on seeing the deceased being thrown by the accused, he did not even bother to check whether the deceased was dead or alive. Also, the fact that he did not meet the police for 3 hours is a strange fact considering that his nephew had died. [Para 10] [1128-A-B]

D 3. Even if the motive is clearly established, PW-7 was admittedly the friend of the deceased. Neither he was named in the FIR nor did he care to warn the deceased or his family members of the conspiracy that he had overheard. This makes his conduct highly unnatural and his presence doubtful at the place of incident. [Para 11] [1128-E-G]

F 4. The prosecution failed to prove its case on one more aspect. The prosecution alleged that the medical evidence corroborates their story. But the testimony of the doctor-PW-1, who did the medical examination of the deceased, does not support this fact. [Para 12] [1128-H; 1129-A]

G 5. All the circumstances lead to the inference that the prosecution has failed to bring home its case. The testimonies of PW-5 and PW-7 are highly doubtful and do not inspire confidence. Though the motive has been H well established by the testimony of PW-7, but it alone

cannot be sufficient to convict the accused as it is not substantive evidence and is merely corroborative in nature. Even the medical evidence fails to support the prosecution version. Thus, the conviction of the accused cannot be sustained. [Para 13] [1129-D-E] A

CRIMINAL APPELLATE JURISDICTION: CRIMINAL APPEAL Nos. 548-551 of 2013 B

From the Judgment and Order dated 11.08.2011 of the High Court of Punjab & Haryana at Chandigarh in D-341, 407, 607 & 772-DB of 2004 C

Jayant K. Sud, Addl. AG, Punjab, Jasleen Chahal, Asstt. AG, Punjab, Huney Khanna, Kuldip Singh for the Appellant.

S. K. Bhattacharya, Niraj Bobby Paonam, Th. I. B. Singh, Satyajeet Kumar, Rajat Sharma, Subhasish Bhowmick for the Respondents. D

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. These appeals by special leave have been directed against the judgment and order dated 11.8.2011 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. D-341, 407, 607 and 772 of 2004 whereby the High Court allowed the criminal appeals filed by the respondents herein and acquitted them from offence punishable under Section 302, 364, 201, 120B of the Indian Penal Code, 1860 [hereinafter referred to as "IPC"]. E F

2. The brief facts necessary to dispose of these appeals are that on 9.10.2002, a police party headed by SHO Jaswinder Singh, along with other police officials, was on patrolling duty in the area of truck union, Bhawanigarh. The complainant Gurdip Singh son of Arjan Singh, resident of Village Kasba Bharawal, Police Station Malerkotla came there and got his statement recorded with the SHO Jaswinder Singh, H

A to the following effect: That on the preceding night at about
2:00 a.m., when he was performing his duty at the Dera Kar
Sewa, Balad Crossing, Bhawanigarh, he saw the accused
persons Bittu, Neetu, Tony, Jagdeep @ Michu and Ashok
B Kumar @ Rocky (deceased), who were known to him, coming
towards the Dera from Bhawanigarh side. In the meantime,
Harkesh Kumar (PW-2) who was a resident of Bhawanigarh
also came there. Bittu, Neetu, Tony and Michu threw Ashok
Kumar (the deceased) on the floor and placed a big stone on
his chest. They forcibly closed his nose and mouth after which
C Ashok Kumar became unconscious. Thereafter, the accused
persons dragged him towards the main road, where his clothes
were removed and they stuffed his mouth with soil. The
complainant and Harkesh Kumar asked the accused persons
D not to do so. Shortly after that, accused Jaswant Singh also
came there on a Maruti Car bearing No.PB-34/1110. He along
with other accused, loaded the body of Ashok Kumar in the
car on the pretext that they were going to admit him in the Civil
Hospital, Bhawanigarh. They threatened the complainant and
E Harkesh Kumar with dire consequences, if they disclosed the
incident to anybody. In the next morning, the complainant and
Harkesh Kumar came to know that the dead body of Ashok
Kumar and his clothes were lying on the road near the Dera of
Baba Sham Giri. Upon this statement of the complainant, a
F formal FIR was recorded.

3. After investigation the Police filed its report and the
prosecution presented the challan against the accused persons
in the Court of Additional Chief Judicial Magistrate, Sangrur,
on 2.1.2003. Thereafter, the case was committed to the Court
G of Sessions Judge, Sangrur. After considering the material on
record and hearing the prosecution and defence, charges
under Sections 120-B, 364, 302 and 201 of the Indian Penal
Code were framed, read over and explained to the accused
H persons who pleaded not guilty and claimed for trial.

4. The Trial Court by its judgment and order dated 19.3.2004, convicted the accused/respondents and sentenced them as follows: Bittu, Neetu, Tony and Jagdeep Singh were convicted under Section 302 IPC and sentenced to undergo life imprisonment and pay a fine of Rs.10,000/- each, in default whereof they were directed to undergo further R.I. for one year each. They were further sentenced to undergo R.I. for 10 years and R.I. for 5 years under Sections 364 and 120-B of the IPC, respectively, and pay a fine of Rs.2,000/- and Rs.1,000/- each, with default clauses. They were further sentenced to undergo R.I. for 3 years under Section 201 IPC and to pay a fine of Rs.1,000/- each, in default whereof each of them were to undergo R.I. for 3 months. Accused Jaswant Singh was sentenced to undergo R.I. for 3 years under Section 120-B of IPC and to pay a fine of Rs. 1,000/- in default whereof he was to undergo further R.I. for 3 months.

5. Aggrieved by the judgment and order dated 19.3.2004 passed by the Trial Court, the accused persons challenged their conviction by filing criminal appeals before the High Court of Punjab and Haryana at Chandigarh, being Criminal Appeal Nos. D-341, D-407, D-607 and D-341 of 2004. The High Court by the impugned judgment and order allowed the appeals on the ground that the prosecution failed to prove the chain of circumstances enough to connect all the accused with the alleged offence and, consequently the respondents were set at liberty. The State of Punjab is, thus, before us in appeal against the acquittal of the accused persons, who are respondents in the present appeals.

6. Mr. Jayant K. Sud, learned Additional Advocate General appearing for the State of Punjab, has inter alia submitted that the judgment of the Trial Court is well reasoned and well considered. He has submitted last seen theory, motive, recovery and corroboration by medical evidences as the grounds for

A proving the guilt of the accused. He assailed the reasoning given by the High Court in coming to a wrong conclusion i.e. the innocence of the accused. The Learned counsel appearing for the accused-respondents has vehemently rebutted the grounds argued by the learned Additional Advocate General.

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7. The Trial Court convicted the accused respondents on the basis of the prosecution story relying upon the following circumstantial evidences:-

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i. Testimony of eyewitnesses Narain Dass (PW-5), Gurdeep Singh (PW-6) and Kashmir Chand (PW-7), is natural and there is no enmity between them and the accused persons.

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ii. The medical evidence corroborates the statements of Narain Dass (PW-5) and Kashmir Chand (PW-7).

iii. Motive has been proved by the testimony of Kashmir Chand (PW-7).

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8. The High Court pointed out serious lacunae in the above said evidences which were considered by the trial court in convicting the accused and hence the conviction order was set aside as the necessary benefit of doubt was given to the accused.

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9. We have perused the oral and documentary evidences on record. We shall now examine each and every contention in light of the arguments adduced before us in the Court. Harkesh Kumar (PW-2) and the complainant Gurdip Singh

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(PW-6) were eyewitnesses as per the prosecution story. But they failed to support the prosecution case as they turned hostile during the trial. Gurdip Singh had made a statement to the police regarding the FIR on the basis of which the case was registered. But when he appeared before the Court as PW-6,

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he testified that he heard some commotion at around 2:00

a.m. on the date of incident and when he came down to the main road he found a crowd of about 14-15 persons. He also stated that he saw a person lying unconscious and did not know who that person was. He saw 4-5 persons putting the body of that person in the car and taking him towards Bhawanigarh. He denied of having been acquainted to the accused and also stated that he could not say whether the accused appearing in the court were the same persons he saw that night. In cross-examination, he did not own up any part of the previous statement which led to the FIR except that part where he had named Bittu, Neetu, Jagdeep and Tony as the accused persons to the Police. Harkesh Kumar (PW-2) failed to support the prosecution case and was declared hostile. He was admittedly, the real maternal uncle of the deceased and was alleged to have been present as an eyewitness during the incident, as per the FIR. It is unnatural for him not to have come to the rescue of his nephew even when he had identified him as the victim. Thus, the two main eyewitnesses turned hostile and did not support the case of the prosecution.

10. The next aspect for consideration before us is the statement of Narain Dass (PW-5). He stated in his testimony that he, along with one Sita Ram, had come to Shiv Mandir, Bhawanigarh, for paying obeisance at around 6:00 a.m. and had witnessed the silver coloured Maruti car bearing No. PB-34-1110 outside that Mandir. The said car was being driven by Neetu and all the five accused persons were present in the car and they stopped the car and threw the dead body of the deceased near a truck which was parked there. They also threw the clothes of the deceased. He admitted that the deceased was his real nephew (bhanja). He also stated that after chasing the accused when he failed to get hold of them, he went back home. He did not meet the police from 6:00 a.m. to 9:00 a.m. that day. He also stated that at 6:00 a.m. on that morning, there

- A may be some darkness. His statements thus lead to an inference that his presence was doubtful. PW-5 was the real maternal uncle of the deceased and he did not even bother to check whether the deceased was dead or alive. Also, the fact that he did not meet the police for 3 hours is a strange fact
- B considering that his nephew had died. The High Court has discussed in great volume the discrepancies in the evidence of PW-5 and the time gap between his seeing the accused and his meeting the police, as per his allegation. It makes the statement of PW-5 highly doubtful.

- C 11. The next incriminating fact is the motive behind the crime as has been established by the testimony of Kashmir Chand (PW-7). He stated that on 8.10.2002 at about 8:00 p.m. he had gone to see Ram Leela in Grain Market, Bhawanigarh
- D and had seen the five accused persons conspiring with one another about finishing Ashok Kumar, because he was not agreeing to remove his fruit Rehri from the front of the meat shop of Bittu and Nitu. He also stated that he saw the accused beating and sitting upon the deceased at about 2:30 a.m. at
- E night. Even if the motive is clearly established, the fact that PW-7 was admittedly the friend of the deceased, he ought to have warned the deceased about such plans of the accused. PW-7 stated that he had gone to see Ram Leela and came back after 15-20 minutes to his house, had his meals and later
- F left the house at around 2:00 a.m. Neither he was named in the FIR nor did he care to warn the deceased or his family members of the conspiracy that he had overheard. This makes his conduct highly unnatural and his presence doubtful at the place of incident. Thus, his statement merely establishes the
- G motive of the accused.

- H 12. The prosecution failed to prove its case on one more aspect. The prosecution alleged that the medical evidence corroborates their story. But the testimony of Dr. Sanjeev Jindal (PW-1), who did the medical examination of the deceased,

does not support this fact. He stated that the internal injuries of the deceased were such that they may have been caused by a heavy stone kept on the chest, but he did not clearly establish the same, in his opinion. He merely said that the possibility cannot be ruled out. Also, if the incident occurred in the manner stated in the FIR, sufficient quantity of soil should have been found in the mouth of the deceased but PW-1 has categorically stated in his testimony that no soil was found in the mouth of the deceased. He had merely found some dust sticking to the face of the deceased which could be caused by merely throwing the dead body on the ground or even on a metalled road which is dust free.

13. All the above circumstances lead to the inference that the prosecution has failed to bring home its case. It appears that the testimonies of Narain Dass (PW-5) and Kashmir Chand (PW-7) are highly doubtful and do not inspire confidence. Though the motive has been well established by the testimony of PW-7, but it alone cannot be sufficient to convict the accused as it is not substantive evidence and is merely corroborative in nature. Even the medical evidence fails to support the prosecution version. Thus, the conviction of the accused cannot be sustained.

14. In the light of the above discussion, we find no grounds to interfere with the judgment passed by the High Court. The appeals are, accordingly, dismissed.