

Before Uma Nath Singh & A.N. Jindal, JJ.

SUCHASINGH AND ANOTHER,—Appellants

versus

STATE OF PUNJAB,—Respondent

CrI. A No. 558/DB of 2004

25th March, 2008

Indian Penal Code, 1860—S. 460—Recovery of Rs. 895 in absence of appellant from his place on being tracked by sniffer dog—Chances of error on part of dog or its master—Possibility of a mis-representation or a wrong inference from behaviour of dog could not be ruled out—Prosecution failing to prove charge u/s 460 IPC against accused beyond reasonable doubt—Appeal allowed, judgment of trial Court set aside while directing release of accused forthwith.

Held, that from incriminating circumstances as laid by the prosecution, and the evidence placed on record in support thereof, the prosecution case with a charge of Section 460 IPC against the accused/appellants would not be proved beyond reasonable doubt. While dealing with prosecution evidence, we could notice inadequacy of materials in the testimonies of witnesses although they are 12 in number.

(Para 11)

Further held, that the recovery of Rs. 895 in the absence of appellant Rajwinder Singh from his place on being tracked by the sniffer dog which, however, could not reach the blood stained sweater of the accused alleged to be lying on the roof of that house, creates a serious doubt about the credibility of dog tracking evidence.

(Para 17)

Further held, that there are chances of error on the part of the dog or its master. Similarly, a possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out.

Further, from the scientific point, there is little knowledge or much uncertainty as to precise faculties which enable police dogs to track and identify criminals. Investigation exercises can afford to make attempts or forays with the help of canine faculties, but the judicial exercise can ill afford them.

(Para 18)

Vandana Malhotra, Advocate *for the appellants.*

Gurveen H. Singh, Addl. A.G Punjab.

UMA NATH SINGH, J.

(1) This criminal appeal arises out of the judgment dated 13th March, 2004, passed by learned Additional Sessions Judge (*Ad hoc*), Patiala in Sessions Case No. 7T/FTC/4-7-03/29-11-03, holding accused/appellants guilty of offence under Section 460 IPC, and sentencing them each to imprisonment for life with a fine of Rs. 500; in default of payment of fine to further undergo rigorous imprisonment for six months.

(2) As per statement of the complainant given to the police, on the date of occurrence on 26th January, 2002, complainant (PW6) had come back home at about 6.00 P.M. from his petrol pump with cash. On the next day morning (9.00 AM on 27th January, 2002), when he went to petrol pump on duty, he saw that the glass of the gate of showroom was lying broken and inside the petrol pump station, were lying employees Ranjit Singh and Surinder Kumar with injuries received from some sharp-edged weapons on their heads. The drawers of the table were broken and the papers were scattered. The telephone wire was found to be cut and the cash amount kept in the drawers was missing. Heads of both the deceased namely Ranjit Singh and Surinder Kumar were badly injured and crushed. The petrol pump had been taken on lease and construction of building was still going. Four to five labourers were employed on daily wages for construction purpose and out of those labourers, the accused two boys used to reside in the Gajewas Colony in front of the petrol pump. They usually used to sit late in the night. From their appearance, they looked to be irresponsible

persons. The complainant was observing their activities with suspicion for the past 2/4 days that they might cause some loss to him. He was thus confident that they alone have committed the offence for they had not turned up for work on that day and prior to that, they used to reach at 8/8.15 AM on the work. He prayed for action against them namely Sucha Singh and Rajwinder Singh. The statement was read out to the complainant and having found it to be correct, he signed it. The statement of complainant Amar Nath, which was reduced to writing as per Ex. PJ by Inspector Sewa Singh (PW12), was sent to Police Station for recording a formal F.I.R. Accordingly, F.I.R. (Ex. PW12/B) was recorded and a case was registered. During the course of investigation, the Investigating Officer, i.e., Inspector Sewa Singh called a photographer for taking photographs of place of occurrence and the dead bodies. He also prepared Inquest Reports of the dead bodies *vide* PW11/A in respect of deceased Ranjit Singh and PW11/B in the case of Surinder Kumar. He also recorded the statement of Jaswinder Singh and Jasbir Singh under Section 161 Cr.P.C. A Finger Print Expert was called and a Dog Squad was summoned from Sangrur. Constable Mukhtiar Singh (PW9) was incharge of the dog squad. *Vide* written requests (Ex. PW10/A and Ex. PW10/B), postmortems of the dead bodies were conducted. Head Constable Babu Ram had accompanied the dead bodies. The Investigating Officer lifted and collected incriminating materials like blood fat tissues along with pieces of skull, from the scene of occurrence and put them into a plastic jar and made them into a parcel. After putting his seal with impression 'SS', the parcel jar (MO/1) was taken into possession *vide* memo (Ex. PK). Broken pieces of glass, stained with blood, were lifted from the scene of occurrence and sealed into a separate plastic jar. The Investigating Officer put his seal impression 'SS' and took it into possession *vide* memo (Ex. PL). Yet another incriminating material one broken table with drawer, was also taken into possession *vide* memo (Ex. PM). One blood stained chappal was lifted from the scene of occurrence; put into a parcel, and taken into possession *vide* memo (Ex. PN). One pair of chappal and shoe were also taken into possession *vide* memo (Ex. PO). Two blood stained pillows were put into a parcel *vide* (Ex. MOI), and taken into possession *vide* memo (Ex. PP). All the memos were attested by SI Wirsia Singh (PW7) and Amar Nath (AW6). A rough site plan of place of occurrence

was prepared *vide* memo (Ex. PW12/C). A Dog Squad called to track down the accused under supervision of Constable Mukhtiar Singh (PW9), led police party to the house of accused Rajwinder Singh. The dog reached a place near bathroom where some concretes were lying and started barking. The police recovered an amount of Rs. 895 from that place and took it into possession *vide* recovery memo (Ex. PW12/D). The Investigating Officer constituted a separate police team and started search of the accused. When he reached the area within revenue limits of Talwandi Malik, both the accused were noticed coming to their houses. Amar Nath (PW6) identified them as Sucha Singh and Rajwinder Singh and they were taken in custody. Incriminating articles relating to the deceased, which were handed over by doctor after postmortem, *vide* memo (Ex. PW11/C), were deposited as case property with MHC on 28th January, 2002. On 28th January, 2002, Inspector Sewa Singh (PW-12) was away on duty to High Court. Hence, SI Wasa Singh (PW-7) interrogated accused Rajwinder Singh who suffered a disclosure statement (Ex. PF) regarding concealment of his sweater stained with blood which, as per prosecution, he was wearing at the time of occurrence. The statement was thumb marked by him and attested by ASI Gurmail Singh (PW-4) and one Kulwinder Singh. Rajwinder Singh led the police party to a place exclusively within his knowledge wherefrom his blood stained sweater was recovered. It was put into a parcel, sealed and seized *vide* Ex.PF/1. The recovery memo was attested by the aforesaid witnesses.

(3) PW-7 also interrogated accused Sucha Singh. He also suffered a disclosure statement Ex. PG, saying that he had kept concealed one chappal and Rs. 3700 under same fuel wood lying in his court yard. The statement was thumb marked by him and attested by the aforesaid witnesses: ASI Gurmail Singh and one Kulwinder Singh. The said articles of which the chappal was stained with blood were recovered on pointing out by accused Sucha Singh. They were sealed with seal impression of PW-7 as 'VS' and taken into possession.

(4) PW-7 also prepared rough site plans of the places of recoveries (Ex. PF/2 and Ex. PG/2) in respect of accused Rajwinder Singh and Sucha Singh respectively. He also recorded the statements of witnesses and on reaching the Police Station, deposited the case

property with MHC. On 29th January, 2002, PW12 resumed investigation and interrogated accused Rajwinder Singh in presence of Borain Mal (not examined). He suffered a disclosure statement (Ex. PR) about concealment of a broken handle of a hand-pump. Accused Sucha Singh on interrogation gave a disclosure statement Ex. PS about concealment of one Datt (iron sickle). Rajwinder Singh led police party to the place of concealment of weapon and on his pointing out, the weapon of offence i.e. Handle of pump, which was blood stained, was recovered. Its sketch was prepared *vide* Ex. PR/1. The article was sealed with seal impression 'SS' and taken into possession *vide* memo Ex. PR/2. Likewise, accused Sucha Singh also led police party to the place of concealment of weapon and on his pointing out an iron datt stained with blood was recovered. Its sketch was prepared as Ex. PW12/J and taken into possession *vide* recovery memo (Ex. PS/2). PW12 prepared site plans of places of recoveries. On completion of investigation, the I.O. submitted report under Section 173 Cr.P.C.

(5) The accused were charge-sheeted under Section 460 IPC to which they pleaded not guilty and claimed trial.

(6) The Trial Court believing in circumstances like : recoveries of incriminating articles from the places tracked by Dog Squad, and disclosed by the appellants; and that the accused were noticed together before their arrest, recorded findings of conviction and sentence against them.

(7) We have heard learned counsel for the parties and perused the record.

(8) Learned counsel for the appellants submitted that the learned trial court committed serious error in law in placing heavy reliance on recovery of a small amount of Rs. 895 from the residence of appellant Rajwinder Singh on being tracked by police dog. Learned counsel also submitted that both the appellants were boys of tender age and they were arrested on the day following the night of offence when they were walking together on a road in the same town. They were not vagabonds and were residing with their families in their houses. Constable Mukhtiar Singh (PW9), Incharge of dog squad, stated that he had not prepared

any report about dog tracking nor had he attested recovery memos. This has also come in his evidence that the dog was given the smell of foot prints near the petrol pump and not inside the station where dead bodies were lying and the offence was committed. Admittedly, both the appellants were engaged as daily wagers for construction work of petrol pump, therefore, presence of their foot prints on that place was very natural. According to learned counsel, the police implicated the appellants in this case only on suspicion, which howsoever be strong would not take the place of proof.

(9) Learned counsel for the appellants also submitted that there was no motive for committing the offence. The alleged recoveries of weapons from the appellants being just a broken handle of a pump and an iron sickle, by the Investigating Officer, are not believable as the said recoveries were not signed nor thumb marked by the appellants. Learned counsel also submitted that the tracker dog, which if could track down a small amount of Rs. 895 from the place of Rajwinder Singh in his absence could as well have traced out his blood stained sweater alleged to be lying on the roof of that house.

(10) On the other hand, learned counsel for the State submitted that undoubtedly no specified amount was mentioned in the FIR but certainly this was mentioned that some money had been taken away from broken drawers of the petrol pump. More than two persons were engaged as daily wagers for construction work of the petrol pump but the tracker dog only tracked down the residence of appellant Rajwinder Singh. Both the appellants did not come for work on the next day and they were arrested while walking together on a road. This also compounded the element of suspicion about their involvements. The disclosure statements, as regards recovery of weapons of offence, were not thumb marked or signed by the appellants but certainly other incriminating materials like blood stained sweater and chappel were recovered as per procedure prescribed under the law. Gurmail Singh (PW4) and other police officers have supported the recoveries of weapons. Learned State counsel submitted that the weapons of offence were found to be stained with human blood *vide* examination report of FSL. Motive for commission of offence was obvious, taking away

of money from the petrol pump. An amount of Rs. 895 was recovered from the place of Rajwinder Singh on being sniffed by the tracker dog.

(11) We have carefully considered the rival submissions and examined the evidence. We are of the view that, from incriminating circumstances as laid by the prosecution, and the evidence placed on record in support thereof, the prosecution case with a charge of Section 460 IPC against the accused/appellants would not be proved beyond reasonable doubt. While dealing with prosecution evidence, we could notice inadequacy of materials in the testimonies of witnesses although they are 12 in number. They are: Dr. Parshant Gautam (PW1), Parkash Singh, Patwari (PW2), Makhan Singh (PW3), ASI Gurmail Singh (PW4), Kulwant Singh (PW5), Amar Nath (PW6), Wirsia Singh (PW7), HC Udham Singh (PW8), Constable Mukhtiar Singh (PW9), HC Babu Singh (PW10), Jasbir Singh (PW11) and Inspector Sewa Singh (PW12).

(12) Dr. Parshant Gautam (PW1) was posted as Medical Officer at Civil Hospital, Samana, on 27th January, 2002. He conducted postmortem examination on the dead bodies of both the deceased, namely, Ranjit Singh, son of Kulwant Singh, and Surinder Kumar. The injuries as noticed on the body of deceased Ranjit Singh, are depicted as under in his testimony :

- “1. Incised wound 5 cm × 3 cm over left ear with avulsion of ear.
2. Incised wound 25 cm × 3 cm over left frontal region, temporal region, parietal region extending to occipital region, breadth in last 10 cm × 5 cm.
3. Lacerated wound 5 cm × 4 cm on left frontal region above left eye brow.”

(13) Injury No. 2 was found underlying frontal bone, which was fractured. Segment of frontal bone was missing. Temporal bone was also found to be fractured. The doctor also noticed fracture of left parietal bone. Corresponding bones below above regions were also missing. Underlying the muscle, incised dura loss was present. Lacerated brain tissue was protruding from wound. Intra cerebral haemorrhage

was present. Injury No. 3 was underlying frontal bone, which was also fractured. Frontal lobe was lacerated on left side. All these injuries were ante mortem in nature and in the opinion of doctor, cause of death was due to head injury. Injury Nos. 2 and 3 were found sufficient in normal course to cause death. According to this witness (PW1), the probable time that had elapsed between injuries and death was immediate and between death and postmortem was within 24 hours.

(14) The same day at 3.45 PM, PW1 also conducted the postmortem examination on the dead body of deceased Surinder Kumar. He was said to be 20 years of age. Rigor mortis was present. Bleeding from mouth and nose was noticed. He found the following injuries :

- “1. Incised wound 3× 2 cm over left eye brow.
2. Incised wound 10× 3 cm over frontal region of face, 2 cm above nose.
3. Diffused swelling over left side of face was present.
4. Diffused swelling over right side of face was present.
5. Incised wound 5× 2 cm over left temporal region superficial.

Injury No. 2 fracture of underlying frontal bone was present.

Injury No. 2 fracture of underlying bone was present along with protrusion of underlying brain.”

(15) Injury Nos. 3 and 4 underlying maxillary bone had multiple fractures with aeration of underlying brain with extensive dural and subdural cerebral haemorrhage. In the opinion of doctor, cause of death was due to head injury, which was sufficient to cause death in the ordinary course of nature. All the injuries were ante mortem in nature. The probable time that had elapsed between injuries and death was immediate and between death and postmortem was within 24 hours. He proved the carbon copies of the postmortem reports. Parkash Singh, Patwari, (PW2), prepared a scaled map (Ex.PE) on 8th March, 2002, on being pointed out by Amar Nath (PW6). In his cross-examination,

he mentioned that he did not notice stands for filling petrol diesel in the vehicles. He also did not remember the place where the blood was lying. Makhan Singh (PW3) was running a Photo Studio on 27th January, 2002. He had taken photographs (Ex.P1 to Ex.P16) and prepared their negatives (Ex.P17 to Ex.P32). He had handed over the photographs to police. ASI Gurmail Singh (PW4) was posted as Incharge of Police Post, Gajewas, on 28th January, 2002. In his presence, SI Wirsa Singh interrogated appellant Rajwinder Singh, who suffered a disclosure statement regarding concealment of a sweater stained with blood under branches of a kikkar tree on the roof of his house. His disclosure statement (Ex.PF) was recorded, attested by this witness and one Kulwinder Singh, and thumb marked by him. Similarly, appellant Sucha Singh also suffered a disclosure statement regarding concealment of Rs. 3700 in cash and one chappal said to be smeared with blood. He had exclusive knowledge about the place of concealment of articles. His disclosure statement (Ex.PG) was recorded. That was thumb marked by him and attested by the aforesaid witnesses. Both the appellants led the police party to specific places exclusively within their knowledge and incriminating articles were recovered. In his cross-examination, he could not give details of denomination of currency notes. Constable Kulwant Singh (PW5) tendered his evidence on affidavit (Ex.HP). He carried the incriminating articles to the FSL, Chandigarh, on 20th February, 2002, but the same were not accepted due to some defects. Again on 22nd February, 2002, he delivered the articles at FSL, Chandigarh. Amar Nath (PW6) is the author of FIR and in his cross-examination, he mentioned that petrol pump remained open till 8-9 PM. In his examination-in-chief, he mentioned that on 26th January, 2002 at about 6.00 PM, he went to his house after collecting the cash as usual from petrol pump. SI Wirsa Singh (PW7), on 27th January, 2002, was posted at Police Station, Samana. He being accompanied by other police officials went to petrol pump, the scene of occurrence. He corroborated recovery of Rs. 895 from a bag in the house of appellant Rajwinder Singh. In his presence, appellants were arrested on 27th January, 2002 from drain bridge in the area of Village Talwandi Malik. He also supported disclosure statement made by both the accused/appellants and recovery of a blood stained sweater from appellant Rajwinder Singh and Rs. 3700 from a place as pointed out by appellant

Sucha Singh. The appellants also suffered disclosure statements regarding weapons of offence and the same were recovered. He investigated the case on one date, i.e., 28th December, 2001, when Inspector Sewa Singh was away from Police Station. In his cross-examination, he could not mention as to how much money was lying in drawers. HC Udhm Singh (PW8) tendered his evidence on affidavit (Ex.PT), and proved it. On 27th January, 2002, the case property was deposited with him by Inspector Sewa Singh. Constable Mukhtiar Singh (PW9) was posted at Sangrur with Dog Squad. In his cross-examination, he stated that he did not prepare any report regarding dog squad reaching the spot and tracking proceedings conducted by him. In his statement to the police, he did not mention his qualification and training as to whether he had cleared the course in National Institute of Training of Dogs. Except entry in DDR, no other report regarding movements of dog was prepared by him. In his cross-examination, he also mentioned that the dog was given smell of foot prints near the petrol pump. He could not mention the numbers of currency notes in his statement. No Panch or Sarpanch of the village came to the spot at the time of dog tracking. HC Babu Ram (PW10) was posted at PS Sadar, Samana on 27th January, 2002. He carried the dead bodies for postmortem examination. Jasbir Singh (PW11) stated that deceased Ranjit Singh was his brother. He and Jaswinder Singh, husband of his sister, went to petrol pump and identified the dead bodies of his brother Ranjit Singh and deceased Surinder Kumar. The police prepared inquests of the dead bodies as Ex.PW11/A and Ex.PW11/B in his presence, which he signed. In his cross-examination, he mentioned that some unidentified persons caused the death of the deceased. Inspector Sewa Singh (PW12) was posted as SHO, PS Samana, on 27th January, 2002. he conducted the investigation. He proved the recoveries effected during investigations as also the rough site plan etc. prepared by him. In his cross-examination, he stated that he did not demand any cash book or ledger from complainant Amar Nath (PW6) to ascertain as to whether any cash as alleged was lying on that day. He also mentioned that an amount of Rs. 895 was recovered prior to arrest of accused/appellant Rajwinder Singh and not pursuant to any statement made by him. He admitted that the police did not join any person from adjoining houses during recovery of currency notes. He further stated that on 27th January, 2002, when he arrested the

accused/appellants from Talwanti Malik, he interrogated them for about 3 hours, but they did not make any disclosure statement at that time. On one date, i.e., 28th January, 2002, SI Wirsra Singh recorded disclosure statements of the accused, but they did not disclose about the weapons of offence.

(16) In their statements under Section 313 Cr. P.C., the accused/appellants denied incriminating evidence adduced against them and pleaded innocence and false implication, being members of labour class.

(17) Thus, from careful reading of aforesaid evidence, it appears that the recovery of Rs. 895 in the absence of appellant Rajwinder Singh from his place on being tracked by the sniffer dog which, however, could not reach the blood stained sweater of the accused alleged to be lying on the roof of that house, creates a serious doubt about the credibility of dog tracking evidence. Hon'ble the Apex Court in the judgment reported as **Abdul Razak Murtaza Dafadar versus State of Maharashtra (1)**, and in a recent judgment passed in Criminal Appeal No. 687 of 2007, decided on 13th March, 2008 (**Dinesh Borthakur versus State of Assam**) has summarized the law on the evidence of dog tracking to the effect that since a dog cannot go into the box and give evidence on oath and consequently submit himself to cross examination, the dog's human companion must go to the box and report the dog's evidence and this is clearly hearsay, and secondly, there is a feeling that in Criminal Cases the life and liberty of a human being should not be dependent on canine inference.

(18) Besides, there are chances of error on the part of the dog or its master. Similarly, a possibility of a misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. Further, from the scientific point, there is little knowledge or much uncertainty as to precise faculties which enable police dogs to track and identify criminals. Investigation exercises can afford to make attempts or forays with the help of canine faculties, but the judicial exercise can ill afford them.

(1) AIR 1970 SC 283

(19) Moreover, in the instant case, Constable Mukhtiar Singh (PW9) accompanying the Police Tracker dog stated in evidence that he had not prepared any report regarding movements of the dog. He also did not prepare any report as to how the tracker dog had reached the spot. He did not mention in his testimony his qualifications and training as to whether he has cleared a course of National Institute of Training of Dogs. He clearly testified that the dog was given the smell of foot prints near the petrol pump and not inside the station. He did not mention the number of currency notes of Rs. 895 recovered from the place of appellant Rajwinder Singh in his absence. Besides, as the accused were engaged as daily wagers for the construction works of the petrol pump building, they must be doing labour works and their foot prints would be certainly available on the spot. As per evidence of Constable Mukhtiar Singh (PW9), the sniffer dog was given the smell of foot prints near the petrol pump and not inside the petrol pump station. We also find considerable weight in the submission of learned counsel for the appellants that if the sniffer dog could trace out incriminating amount by sniffing the place of recovery of amount of Rs. 895 then it could as well have gone to the roof and found out the blood stained sweater alleged to be worn by appellant Rajwinder Singh during occurrence. Besides, in the FIR and in the examination-in-chief, the complainant admitted that he had collected the entire amount from the petrol pump at 6 O'clock in the evening, and in his cross-examination, that the petrol pump remained open only up to 9 PM. The petrol pump is stated to be situated in a village area on a link road. In this background, it would be doubtful that the petrol pump could have earned an amount of Rs. 895 as recovered from the place of appellant Rajwinder Singh in his absence, and Rs. 3700 which was seized from the possession of appellant Sucha Singh, within three hours. Further, in the FIR, no specific amount was mentioned nor was it verified from the metre of petrol pump as how much petrol was sold after 6 O'clock in the evening. Besides, the IO Sewa Singh (PW12) admitted that he did not seize any register or ledger book to find out the amount lying in drawers of petrol pump. In the absence of answers to the aforesaid queries, it would be misreading of evidence of link the recovered amount to the act of looting of money from the petrol pump. In addition to that, the disclosure statements, alleged to be made by both the

accused, and the recovery memos were not signed or thumb marked by the accused persons, therefore, these documents carry no evidentiary value in the eyes of law under Section 27 of the Evidence Act. Regarding recoveries of blood stained chappal and sweater alleged to be belonging to the accused/appellants, as the sweater could not be tracked and sniffed by the police dog and only one chappal, out of a pair, was found to be stained with human blood, that alone would not act as an incriminating material strong enough to sustain the findings of guilt against the accused. Moreover, both the accused did not leave the town and abscond, and they were arrested when they were just walking on a road in normal condition while going home.

(20) In view of the aforesaid analysis of the evidence, we are not inclined to uphold the impugned judgment. It is, thus, set aside and resultantly, the criminal appeal is allowed. The accused/appellants, who are in jail, are directed to be released forthwith, if not wanted in any other case.

R.N.R.

Before Harbans Lal, J.

GURDEEPSINGH ALIAS DEEP,—Appellant

versus

STATE OF PUNJAB,—Respondent

CrI. A. No. 2351/SB of 2004 &

CrI. A. No. 189/SB of 2005

8th April, 2008

Evidence Act, 1872-S. 114(g)—Narcotic Drugs and Psychotropic Substances Act, 1985—S. 15—Conviction of appellants u/s 15 of 1985 Act—Neither any specific question was framed nor it was put to accused that they were in conscious possession of poppy husk bags—Prosecution giving up independent witness to examine on pretext of his having been won over by accused—In absence of his examination, an adverse inference has to be drawn—Accused also depriving of their valuable right to cross-examine this