

SUPREME COURT OF INDIA

Gurbakhsh Singh

Vs.

State of Punjab

Crl.A.No.120 of 1954

(S. R. Das, N. H. Bhagwati And T. L. Venkatarama Ayyar, JJ.)

16.02.1955

JUDGEMENT

S. R. DAS, J. :-

1. Gurbakhsh Singh along with his brother Labh Singh, his son Piara Singh and his brother's son Jawahri was sent up for trial under S. 302 read with S. 34, Penal Code, for having murdered one Mohinder Singh and also under S. 307 read with S. 34, Penal Code, for having inflicted gun-shot injuries on one Thakar Singh (P. W. 17).

The Additional Sessions Judge acquitted Labh Singh, Piara Singh and Jawahri of both the charges but convicted Gurbakhsh Singh under both S. 302 and S.307 and sentenced him under the former Section to death and under the latter Section to 5 years' rigorous imprisonment.

The High Court having dismissed his appeal and accepted the reference the present appeal has been brought by special leave of this Court by Gurbakhsh Singh against his conviction and sentences.

2. The prosecution case is that on 27th or 28th October 1953 there was an altercation between Sundar Singh, brother of Suja Singh and their employee Mohinder Singh on the one hand and Gurbakhsh Singh and Gurdip Singh on the other over 'changars' raised by Gurbakhsh Singh, who was then in a drunken state, in front of Suja Singh's house.

Gurbakhsh Singh is said to have left the place after threatening Sunder Singh and Mohinder Singh with dire consequences.

The prosecution story then goes on to say that on 12-11-1953 at about sunset Gurbakhsh Singh armed with a gun and Labh Singh, Piara Singh and Jawahri armed with spears came in front of Suja Singh's house and raised a 'lalkara' and abused Suja Singh and his brother Sunder Singh. Mohinder Singh the employee, came out of Suja Singh's house followed by Suja Singh, Sunder Singh and the latter's wife Musammat Gurdial Kuer.

Gurbakhsh Singh fired at once and hit Mohinder Singh in the chest and the abdomen. Mohinder Singh fell down and died on the spot. Hearing the report one Thakar Singh, a neighbour, came and implored Gurbakhsh Singh not to fire but Gurbakhsh Singh fired again and injured the right arm of Thakar Singh. Thakar Singh thereupon rushed into the house of Suja Singh and the front door of that house was closed from inside. The first information report was lodged at the police station at 10

p.m. on the same day by Suja Singh.

3. The incident was witnessed by Suja Singh (P. W. 15), Sunder Singh (P. W. 16), Thakar Singh (P. W. 17) and Joginder Singh (P. W. 18) all of whom were examined before the Additional Sessions Judge. Musammat Gurdial Kuer (P. W. 19) and Jarnail Singh (P. W. 20) who were also said to be eyewitnesses were tendered for cross-examination but were not cross-examined by the defence counsel.

The Additional Sessions Judge did not think it likely that Gurbakhsh Singh who alone had a grouse against Sunder Singh and Mohinder Singh on account of the previous altercation would bring along with him his brother Labh Singh who was 70 years of age and his son and nephew who were of the age of 16 years and 14 years respectively to assist him in spite of the fact that he was himself armed with a gun and he accordingly acquitted those three accused.

The learned Additional Sessions Judge, however, believed the evidence of the eyewitnesses so far as such evidence related to Gurbakhsh Singh and on their evidence convicted and sentenced him as mentioned above. On appeal, the High Court agreed with the findings of the Additional Sessions Judge and continued the conviction and sentences passed on Gurbakhsh Singh and dismissed his appeal.

4. Learned Advocate appearing in support of the present appeal has urged that the eyewitnesses who were disbelieved by both the Courts below as regards the other three accused should not have been believed for the purpose of convicting the remaining accused Gurbakhsh Singh.

As pointed out by the High Court, the house of Labh Singh, Piara Singh and Jawahri is separated from the house of Suja Singh by only forty 'karams'. It is quite likely that after hearing the report of the first shot Labh Singh, Piara Singh and Jawahri had come out of their house and were seen by the eyewitnesses who might well have thought that these three accused persons were the associates of Gurbakhsh Singh and had accompanied him from the beginning. The High Court did not, therefore, consider that these witnesses deliberately and knowingly made any false statement only to implicate those three accused persons.

Learned counsel also suggested that as all the eye-witnesses were examined under S. 164, Criminal P. C., they must be regarded as unreliable and their evidence should not be acted upon without corroboration by other unimpeachable evidence. It is further submitted that persons who could have deposed in favour of the accused had been arrested and were bound down under S. 107, Criminal P.C. and had been terrorised. Likewise, it is suggested that witnesses examined by the police were not called in Court. The ballistic expert was not called and witnesses who were admittedly present on the spot were not examined in Court.

Many of these criticisms do not appear to have been advanced before the High Court and further these criticisms only have a bearing on the question of appreciation of evidence and in the present appeal, which is by special leave, this Court cannot, consistently with its practice, convert itself into a third Court of facts. After hearing learned Advocate for the appellant at considerable length we do not think any ground has been made out which will induce us to interfere with the concurrent findings of fact arrived at by the Courts below. The result, therefore, is that this appeal must be dismissed.

Appeal dismissed.

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