

State of Punjab

Vs

Tarlok Singh

Criminal Appeal No. 174 of 1969

(I. D. Dua, V. Bhargava JJ)

13.10.1970

JUDGMENT

BHARGAVA, J. -

1. This appeal by special leave has been filed by the State of Punjab against the acquittal of the respondent Tarlok Singh by the High Court of Punjab and Haryana for an offence punishable under Section 302 of the Indian Penal Code for which he had been convicted by the Court of Sessions. Tarlok Singh was charged with the murder of one Smt. Ishar Kaur.

2. It is necessary to give briefly the facts, as alleged by the prosecution, leading up to this appeal, Fauja Singh was the son of one Lehna Singh. He pre-deceased his father and left behind his widow Ishar Kaur, and two young children Gurbachan Singh and Harnam Kaur. Lehna Singh had a daughter Smt. Paro who has married to Gulab Singh in another village. On the death of Fauja Singh, Lehna Singh asked his daughter Smt. Paro and his son-in-law Gulab Singh to come to his village Alampur to look after the young children of Fauja Singh. When Smt. Paro and Gulab Singh came and started living with Lehna Singh, Lehna Singh gave some land on a 100-year lease to his son-in-law. Tarlok Singh appellant is the son of Smt. Paro and Gulab Singh. As time passed, relations between Tarlok Singh and Gurbachan Singh, who had grown up, became very much strained. These differences arose primarily because of the property of Lehna Singh. Lehna Singh, in his life-time, gifted a part of his property in favour of Gurbachan Singh which was resented by Smt. Paro, who actually brought a suit to challenge the validity of the gift. Lehna Singh also made a will in favour of Gurbachan Singh which was also challenged. At the same time, Lehna Singh sold a part of the land to Gulab Singh and Gurbachan Singh filed a suit for pre-emption of that land and obtained a decree in his favour. After the death of Lehna Singh, Gurbachan Singh applied for mutation of names in respect of the lands left to him by his grand-father, including the land which was under lease with Gulab Singh. His name was mutated in the revenue records and the appeal filed by Gulab Singh was dismissed. This litigation led to ill-feeling between Tarlok Singh and Gurbachan Singh.

3. On the date of the incident, which took place on October 21, 1966, Gurbachan Singh had gone to Jullundur to bring his wife from the house of her parents. Harnam Kaur was at that time staying with her mother, having come there at the request of Gurbachan Singh to keep her company while he was away. On October 21 at about 10 a.m., Tarlok Singh came to the house of Ishar Kaur accompanied by Ram Lal. He was carrying a sword, while Ram Lal had a 'Dang'. This Ram Lal is said to be a friend of Trilok Singh. Trilok Singh asked Ishar Kaur that he was going to irrigate his land from the tubewell of Gurbachan Singh. Ishar Kaur told Tarlok Singh that he had no right to do so and she would not allow him to take water from her tubewell. Tarlok Singh and Ram Lal then told Ishar Kaur that they would irrigate the land in spite of her protest and they would see how any

one could stop them. After giving this challenge, Tarlok Singh and Ram Lal both proceeded towards the tubewell. They were followed by Ishar Kaur and, in turn, Harnam Kaur followed her mother, because she apprehended that her mother might be harmed by Tarlok Singh and Ram Lal. On reaching the tubewell, Tarlok Singh put on the switch and Ishar Kaur promptly switched it off. Ram Lal, who was at some distance in a field, then gave a challenge and told Tarlok Singh he should not be deterred from killing Ishar Kaur as he had Ram Lal's backing who would bear the consequences. Tarlok Singh then dragged Ishar Kaur outside the room of the tubewell, unsheathed his sword and gave her a blow which she tried to parry with her right forearm. Thereafter, he gave another blow on her neck which felled her on the ground. A few more blows were given after Ishar Kaur had fallen down. Tarlok Singh and Ram Lal then ran away carrying their weapons with them. Harnam Kaur then approached her mother and found her lying dead. One Kartar Singh, who happened to be in the neighborhood, also arrived, having seen the actual assault on Ishar Kaur by Tarlok Singh. Leaving Kartar Singh to look after the dead body of her mother, Harnam Kaur proceeded to the village, brought Kartar Singh Lambardar with her, showed him the dead body, and then went with him to the Police Station Tanda where she lodged a report at 3.45 p.m. The case was then investigated and both Tarlok Singh and Ram Lal were prosecuted. Ram Lal was acquitted by the trial Court, while Tarlok Singh was convicted for committing the murder of Ishar Kaur and was sentenced to death. On appeal and, while dealing with the reference for confirmation of the sentence of death, the High Court disagreed with the Court of Sessions and acquitted him. Consequently, the State Government has come up in this appeal to this Court.

4. The main argument advanced by learned counsel for the appellant is that the trial Court, in this case, recorded the conviction of Tarlok Singh for the murder of Ishar Kaur on the basis of the evidence of witness Harnam Kaur and Kartar Singh, while the High Court has acquitted Tarlok Singh without giving sufficient reasons for disbelieving the evidence of these two witnesses. It was urged that an appellate Court should not lightly disagree with the assessment of the evidence of witnesses believed by the trial Court which always has the benefit of watching the demeanour of witnesses during their examination in the trial. It is true that the High Court has not discussed in detail the evidence of these two witnesses; but the reasons, which led the High Court to disagree with the trial Court, are contained in the judgment. One principal reason was that both Harnam Kaur and Kartar Singh were disbelieved in so far as they charged Ram Lal with complicity in this crime. On this aspect, the submission of learned counsel was that there is no rule that witnesses cannot be partially believed and partially disbelieved. For this proposition, he referred us to a decision of this Court in which it was indicated that as a rule, witnesses can be classified into three classes, wholly reliable, wholly unreliable, and partially reliable. It was held that, where the evidence consists of witnesses who are partially reliable and not wholly unreliable, the Court should examine their evidence carefully to see whether their evidence is corroborated, whether, intrinsically, that evidence is reliable, and whether it would still justify recording a conviction. Relying on this principle, learned counsel urged that the evidence of Harnam Kaur and Kartar Singh should not have been rejected by the High Court on the ground that they had been disbelieved in respect of Ram Lal's participation in the offence. The argument carries little force, because the High Court has not rejected their evidence against Tarlok Singh appellant merely on this ground. The High Court has pointed out a number of other circumstances which led it to hold that the evidence of these two witnesses could not be relied upon even against Tarlok Singh.

5. First, the High Court noticed the suspicion created by the circumstance that the copy of the First Information Report purported to have been lodged at 3.45 p.m. did not reach the Magistrate at Dasuya till 8 a.m. the next day, even though it was sent through a special messenger. The distance between the scene of occurrence and Dasuya was only 15 to 16 miles. The inference sought to be

drawn is that, in fact, the report was not lodged at 3.45 p.m., but at a much later hour, after the police had arrived at the scene of occurrence and there were consultations to decide what version should be put forward and who should be implicated for the murder. The prosecution, in fact, made an attempt to explain this delay. Such delay, thus, casts doubt on the prosecution version that the report was lodged at 3.45 p.m. without lapse of unnecessary time.

6. Then, the High Court proceeded to examine the prosecution version of the incident on that date to see how far it was probable and believable. According to Gurbachan Singh, Tarlok Singh had the right to irrigate his fields from his tubewell. If this was so, there could be no occasion for Tarlok Singh and Ram Lal to come to the house of Ishar Kaur and talk to her about irrigating Tarlok Singh's field from that tubewell. It is highly improbable that, even if they did come to Ishar Kaur's house, they would have openly brought a sword and a 'dang' with them displaying them in order to frighten Ishar Kaur. If they were really carrying a sword and a dang, it is not likely that Ishar Kaur would have followed them to the tubewell without seeking assistance from others. She would have certainly been put on guard and would not have gone all alone behind them. Harnam Kaur, who followed Ishar Kaur, says that she did apprehend harm to her mother and that was why she followed her. Again it seems unlikely that Harnam Kaur would follow her mother without trying to get other persons to accompany her and without trying to dissuade her mother from going when she had already seen that the appellant and Ram Lal were both armed with dangerous weapons.

7. The High Court, further, noticed that Gurbachan Singh in one of his statements said that Ram Lal must have been connected with this crime and indeed, without his participation, it could not have been perpetrated. Such a statement made by Gurbachan Singh is indicative of the fact that, up to that stage, the prosecution case had still not been fully developed and it must have been subsequently that it was decided that the version put forward by Harnam Kaur should be such as to directly implicate Ram Lal also. Kartar Singh apparently has no enmity with Tarlok Singh appellant, but he was on bad terms with Ram Lal and it seems to be quite possible that Kartar Singh agreed to be a witness only after a version was worked out implicating Ram Lal in this offence. Kartar Singh's version of how he happened to be in that neighborhood to see this incident is also not at all satisfactory. He claimed that he was going to see his rice field, but had to admit that he had no rice field in this village at all. His rice fields were in a different village. Thereupon, he came forward with the plea that he had taken a field of one Ram Singh on 'batai' in which he had sown paddy crop. In the Court of the Committing Magistrate, he admitted that Ram Singh had given a statement in proceedings relating to correction of revenue records that he was not Ram Singh's tenant. In the Court of Sessions, however, he pleaded forgetfulness regarding this statement made by him in the Committing Court, because he realised that it made his presence at the scene of occurrence improbable. Even Ram Singh's field was said to be at a distance of more than 500 yards from the place of occurrence. It seems to be too much of a coincidence that Kartar Singh should have arrived at the scene of occurrence just in time to notice the incident and should put forward the excuse that he was going to a field which was very far away and it was not even his own field. These are the circumstances which have to be kept in view when judging the evidence of Harnam Kaur and Kartar Singh, in addition to the fact that their evidence was disbelieved by the Trial Court in respect of Ram Lal. Because such circumstances exist, it is not possible for us to hold that the High Court committed such an error in acquitting Tarlok Singh as would justify our interference under Article 136 of the Constitution, so as to convert an order of acquittal into an order of conviction. The appeal, therefore, fails and is dismissed.

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