

Mohan Singh

Vs

State of Punjab

Criminal Appeal No. 107 of 1970

(S. M. Sikri, I. D. Dua, V. Bhargava JJ)

04.12.1970

JUDGMENT

SIKRI, J. -

1. In this appeal special leave was granted only on the question of sentence as far as the appellant, Mohan Singh, is concerned. The facts relevant for determining this question are as follows.
2. Six accused, Karnail Singh, Mohan Singh, Sarup Singh, Mangal Singh, Chanan Singh and Avtar Singh, were tried on charges under Sections 302, 302/149, 324/140, Indian Penal Code. The case of the prosecution was that on June 7, 1968, at 9.30 a.m. in village Chutala, one Gian Singh was murdered. Among the accused, it was alleged, Avtar Singh was armed with a gun, Karnail Singh, Chanan Singh and Mangal Singh were armed with Kirpans, Mohan Singh was armed with a spear and Sarup Singh was armed with a Gandasi. The deceased accompanied by Gurpal Singh and his father, Pritam Singh, and their brother-in-law, Ajit Singh, left their house for Taran Taran. When they reached near the Haveli of the accused Mangal Singh, all he accused came out of the Haveli. Avtar Singh fired two shots from his gun as a result of which Gurpal Singh and his companions ran away. The accused, however, encircled Gian Singh, deceased, and thereupon Karnail Singh gave a Kirpan blow on Gian Singh's forehead, Mohan Singh gave a spear blow on his back and Sarup Singh gave a Gandasi blow on high right shoulder near he neck. Gian Singh fell down, but Karnail Singh and Chanan Singh gave Kirpan blows on his neck on the front side. Mohan Singh gave Kirpan blows on his hands. Karnail Singh, Chanan Singh, Sarup Singh and Mohan Singh then started dragging Gian Singh towards the Haveli, and when Gurpal Singh went to intervene he was given a Kirpan blow which he tried to ward off with the result that his right hand was injured. Gian Singh was then dragged inside the Haveli of Mangal Singh, accused.
3. Gian Singh had as many as 22 injuries but only one incised punctured wound on the left front chest wall which could be ascribed to a spear blow.
4. The learned Sessions Judge acquitted Avtar Singh but convicted the rest of the accused, including the appellant, under various sections. On the question of sentence the learned Sessions Judge observed :

"The Murder in this case, as is obvious from the discussion made above, is not only premeditated, determined and calculated but has been brutal too. The other side was not armed nor did it act aggressively or commit any assault on any of the accused persons. In these circumstances at least the persons who are directly responsible for the crime should be sentenced to normal penalty, i.e., death. For the persons who are

victoriously liable in view of Section 149, Indian Penal Code, and who though have participated in the assault but have either chose safer parts of the body which are not vital like hand or may not have caused a fatal blow, to may mind lesser penalty of imprisonment for life. 'would meet the ends of justice. Accused Karnail Singh and Mohan Singh are, therefore, sentenced to death under Section 302 of the Indian Penal Code Accused Mangal Singh, Sarup Singh and Chanan Singh are sentenced to rigorous imprisonment for life under Section 302 of the Indian Penal Code, read with Section 149 of that Code."

5. The convicted accused filed an appeal before the High Court and the murder reference was herd along with the appeal. The High Court held that Karnail Singh May not have taken part in the incident and acquitted Karnail Singh. It also acquitted Sarup Singh. The High Court felt doubt whether he was really present at the time of the incident. The conviction of Mangal Singh, Chanan Singh and Mohan Singh was maintained. As only three accused persons were held to have taken part in the assault they were convicted under Sections 302/34, I.P.C. As regards Mohan Singh the High Court observed :

"Mohan Singh is alleged to have been armed with a spear and it is Mohan Singh who is alleged to have given a spear blow on the back of the deceased as well as a spear blow in his chest. It was a merciless murder and consequently we consider that the sentence of death passed on Mohan Singh should be confirmed and we order accordingly."

6. The learned counsel points out that the High court did not consider the point that the medical evidence showed that there was only one injury which could be ascribed to Mohan Singh, and if that is so, then it cannot be said that Mohan Singh inflicted the fatal blow. He further contends that according to the prosecution case it was Karnail Singh who opened the attack and gave a blow on Gian Singh's forehead, and if the spear blow on his back ascribed to Mohan Singh is not established, the second person to attack was Sarup Singh who gave a Gandasi blow and then Karnail Singh and Chanan Singh gave Kirpan blows on his neck and it was after that Mohan Singh gave a spear blow in his chest. In these circumstance, he says, it cannot be definitely held that the appellatant gave the fatal blow. He says that the persons who really gave the fatal blows have either been acquitted or sentenced to imprisonment for life.

7. It seems to us that on the facts of this case the sentence of imprisonment for life would be more appropriate because it cannot be said definitely that the appellatant was directly responsible for causing the death of Gian Singh, This is the test which the learned Sessions Judge applied and if this is applied correctly to all the accused there is no reason why the appellatant should not have the benefit of this test. We do not say that this is the appropriate test in all cases.

8. In the result the appeal is allowed and the sentence of the appellatant altered to one for imprisonment for life.

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