

Antu S/o Munshi

Vs

The State of Haryana

Criminal Appeal No. 81 of 1970

(S. M. Sikri, I. D. Dua V. Bhargava, J. M. Shelat, C. A. Vaidialingam JJ)

18.12.1970

JUDGMENT

BHARGAVA, J. -

1. The appellant has come up in this appeal by special leave against the judgment of the High Court of Punjab and Haryana upholding his conviction by the Sessions Judge of Karnal, with some Modifications in the offences and the sentenced. The Sessions Judge had convicted Antu appellant under Section 302, 307, read with Section 149 and 148 of the Indian Penal Code and had sentenced him to death, six years' rigorous imprisonment and a fine of Rs. 50/, and two years' rigorous imprisonment respectively for the three offences. The High Court affirmed the convictions under Section 302 and the sentence of death. The conviction under Section 307, read with Section 149 was altered to one under Section 307, read with Section 34, I. P. C., but the sentence was maintained. The conviction for the offence under Section 148 was set aside.

2. The prosecution case was that there were disputes going on about land in Killas Nos. 10 and 11 or rectangle No. 15 in the revenue estate of village Mangna, which formed part of Shamilat land belonging to the Panchayat. On one side were deceased Bakshish Singh, his brothers Labh Singh and Jagtar Singh, who claimed that they had obtained joint possession of this land with one Manna Singh who had obtained a lease of this land from the Panchayat, after the Collector has handed over possession of the land to be Panchayat, having acquired it under the Punjab Utilisation of Lands Act, 1949. Bakshish Singh and Jagtra Singh has constructed a 'dera' in this land. The other party disputing the right to this land was that of the accused. The principal person fighting in the dispute was Labh Singh who has filed a civil suit with regard to this land against a number of persons who were co-accused of the appellant in the Trial Court. Proceedings under Section 107 of the Code of Criminal Procedure were also pending against both these parties. In this situation, on July 17, 1967, a party of 16 persons, including the appellant, came to this land at about 9 a.m. They were carrying various arms. The appellant was himself armed with a gun. There were others also who were carrying guns. These persons came to the land from three different directions. A group of five came from the eastern side. Another group of five came from the southern side. The appellant was in this group. A third group of six came from the northern side. Having thus surrounded the Dera from various sides, they raised a shout that the Dera should be burnt and its inmates killed. Bakshish Singh, who was looking after his cattle grazing in a filed a short distance away, rushed to the Dera and so did his brother Ajaib Singh who was ploughing his filed a little further away. Labh Singh and Jagtar Singh were inside the Dera and came out. On the challenge made by his companions, Antu appellant fired the first shot which hit Bakshish Singh on the left side of the chest as a result of which he fell down on the ground and died. Tek Chand, one of the companions of the appellant, then fired his gun at Labh Singh who was hit in the back of the right shoulder. Labh Singh was then

given further blows by other companions of the appellant with the weapons which they were carrying. The first persons to arrive there to witness the incident was one Darshan Singh who happened to be going to a village Pehowa and he saw injuries being inflicted on Lach Singh. Thereafter, Pal, Lachhman, Ram Sarup, Phula, Raunqi and Gian Singh amongst the part of the accused set fire to the hedge of the Dera on its eastern side, whereas Santa Singh, Banta Singh, Jit Singh, Spattar and Ramji Lal similarly set the hedge on fire on the southern side. While this fire was being started by their companions, Antu, Tek Chand, Ramesh Kumar, Sulakhan Singh and Dhara from amongst the assailants ran away. According to the prosecution, at this stage, Labh Singh and Lathi respectively and wielded them so as to cause injuries to Santa Singh, Banta Singh, Jit Singh, Ramji Lal and Spattar. Thereafter, all the assailants ran away and the fire was put out. A report was lodged at the Police Station Pehowa and, after the usual investigations, fourteen persons were sent up for trial. The Sessions Judge convicted all the 14 persons for various offences which do not require mention in dealing with the case of this appellant alone. The High Court, on appeal, acquitted 11 of them and upheld the conviction of only 3, viz., Antu appellant, Tek Chand and Ramesh Kumar. Bakshish Singh had died as a result of the short fired at him by Antu, so that Antu's conviction was upheld for the offence of murder under Section 302, I. P. C. in respect of Bakshish Singh. Tek Chand and Ramesh Kumar were convicted for the same murder under Section 302, read with Section 34, I. P. C. The conviction under Section 307, read with Section 34, I. P. C., was recorded in respect of Antu for the injuries inflicted on Labh Singh. Tek Chand was convicted under Section 307, I. P. C. simpliciter for the injuries caused to Labh Singh, while Ramesh Kumar for the same injuries was convicted under Section 307, read with Section 34, I. P. C. Antu alone has appealed and, in this appeal, therefore, we are concerned with his case only.

3. The first aspect of which we have take notice, is that, in this case, the prosecution examined only three eye-witnesses. Labh Singh, Ajaib Singh and Jagtar Singh, with Darshan Singh providing corroboration for part of their versions. The High Court, in dealing with the evidence of these witnesses, pointed out why it was not possible to rely on their evidence at all. The features occurring in their evidence emphasised by the High Court are several. Sixteen assailants are supposed to have come, while only five of them are alleged to have used their weapons of whom two fired guns and the remaining inflicted one of two injuries each. This was considered very improbable. At the same time, according to these witnesses, the three persons Ajaib Singh, Labh Singh and Jagtar Singh were able to inflict as many as 57 blunt weapon injuries and five of the assailants, Santa Singh, Banta Singh, Jit Singh, Spattar and Ramji Lal. This according to the High Court was too much to believe. The High Court further proceeded to hold :

"If the party of the appellants consisted of 16 persons, armed as aforesaid, they would have made mincemeat of the three eye-witnesses, before any of the latter could cause even a scratch to the former. Again, there is no reason why eleven of the appellants should have become suddenly scarce when their party was very effectively armed and had not only caused serious injuries to one of their adversaries but had actually killed another and thus had the upper hand. And then out of Santa Singh, Banta Singh and Jit Singh appellants and Spattar and Ramji Lal, one was armed with a gun and the other four with Barchhas, none of which weapon was so much as moved when these five persons were being mercilessly beaten by the three eye-witnesses."

The High Court commented that these improbabilities in the prosecution story related to its material aspects and could not be lightly ignored, especially when it was admitted on all hands that between the three eye-witnesses and the party of the appellants there was not love lost on account of the land dispute.

4. After expressing these views, the High Court proceeded to examine the prosecution case by formulating three questions as follows -

(1) Was the party of the appellants responsible for causing the death of Bakshish Singh and injuries of Labh Singh (P. W. 1)?

(2) If the answer to question No. 1 be in the affirmative, was that party the aggressor?

(3) If question No. 2 is also answered in the affirmative, which of the appellants were members of that party and what offences are brought home to them?

On the first question, the High Court appears to have been right in recording in finding that the death of Bakshish Singh and injuries to Labh Singh were caused in an incident which did take place on July 17, 1967 near the Dera of Bakshish Singh, and is also holding that these injuries must have caused by members of a party belonging to the group of the appellant.

5. On the second question, the High Court held that the party of the accused was the aggressor solely on the ground that the Dera and the land in dispute were in the possession of Bakshish Singh, so that the party of the accused must have come to disturb their possession or to oust them from possession and must, therefore, be the aggressors. In arriving at this finding, the High Court did not properly assess the material that was placed before it on the question of possession. The case for the prosecution itself was that Manna Singh got this land from the Panchayat in June or July, 1966 and Bakshish Singh and Labh Singh came into the picture in January 1967 when Manna Singh and joined them as partners in this land. On the other hand, the revenue records showed that, during the period of the Kharif crop in the last half of the year 1967, the land was actually in possession of the party of the accused. They had sown the crop and they had reaped the crop. The High Court and the Sessions Judge both ignored these entries on the ground that, in the revenue records, their possession was shown as forcible possession and not under any legal right. It seems to us that the absence of a legal right was immaterial. Even if they were in possession without any legal right, they need not have come to disturb the possession and act as aggressors of others who were merely asserting their right to the land. There was further document showing that in June, 1967, a report was lodged by one member of the accused party alleging that Labh Singh and others had come and forcibly tried to dispossess them from this land, which also indicates that the land was in possession of the accused party until that time. Labh Singh was confronted with a statement made by him before the police in which he has admitted that Rabi crop growing in the first half of 1967 had been reaped by the accused party, even though Labh Singh came forward in this case with the story that he and Bakshish Singh actually obtained rights to this land from Manna Singh in January, 1967, and had constructed the Dera even earlier in December, 1966. If Labh Singh and Bakshish Singh had been in possession from December 1966, there could have been no question of the crop of Rabi 1967 being sown and reaped by the accused party which fact is established from the revenue records as well as from the admission made by Labh Singh before the Police. It is true that, subsequently, in the Kharif 1967, i.e. in the second half of the year 1967, the possession that is recorded is that of Labh Singh; but that is immaterial. Obviously, he came in possession when, after this incident, the accused party were confirmed in jail. Labh Singh admitted that he had filed a suit in respect of this land which was pending when this incident took place. Clearly, the suit must have been for possession of this land, so that the claim that they were already in possession at the time of the incident cannot be held to be established. It appears to us that, from some time in the year 1966, disputes began between the two parties as to who should possess this land. The accused party was already in possession and took the crop from the land undisputedly in Kharif 1966. In Rabi 1966,

there are conflicting versions. At one stage, Labh Singh admitted that crop was also reaped by the party of the accused, while at another stage, he claimed that he had come into possession from December, 1966 and had already constructed his Dera. The record of the Patwari, however, shows that the accused party continued to be in possession, even though, according to the record, they had no legal right to it and the possession was forcible. Then, there is the fact that Labh Singh had already instituted a suit for this land. That suit could only have been instituted after he was admitted as a partner by Manna Singh in January, 1967. It was pending at the date of the incident. On all these facts, it is impossible to uphold the finding of the High Court that, on the date of the incident, Labh Singh and Bakshish Singh were in possession of this land. The High Court at one stage added that Labh Singh and his brother were admittedly in actual possession of at least five Marlas of land of Killa No. 11, the area having been covered by their Dera. We examined the record and we find no such admission of possession of Labh Singh and his brothers on the part of any of the accused. The High Court seems to have been misled in thinking that their fact was admitted. It does appear that Labh Singh and his brothers, after the incident in June, 1967, may have constructed some Dera, but all the time, dispute as to possession of the land was going on. Labh Singh and his brother were at least as much aggressive, if not more aggressive, in the matter of taking possession of the land than the members of the accused party. From the mere fact of possession, therefore, no possible inference could have been drawn that, at the time of the incident, the accused party must have been the aggressors and not Labh Singh and others.

6. On this question of finding out which of the party was the aggressor, the High Court did not rely on the oral evidence of the witnesses. As a matter of fact, if the High Court had taken care to examine and implications of its own criticism of that evidence, it would have come to the conclusion that there was no material at all on which it could be held that the accused party must have been the aggressors. As we have mentioned earlier, only seven injuries were received by Bakshish Singh and Labh Singh on the prosecution side, while as many as 57 injuries were received by five members of the accused party. Two of these received very severe beating. One of these two actually died a few days later as a result of the injuries. These injuries could not have been received by the accused party if the incident had taken place in the manners described by the prosecution witnesses. The High Court relied mainly on the evidence of Labh Singh to accept the prosecution version of the manner in which the incident took place. According to Labh Singh, Bakshish Singh was hit with a gun shot in the very beginning, whereupon he fell down and died. Labh Singh received a gun shot injury and five other injuries. It was after all these injuries had been inflicted that some of the assailants ran away leaving five behind. These five persons were setting fire to the hedge and, at this stage, they were beaten by the three prosecution witnesses, Labh Singh, Ajaib Singh and Jagtar Singh. If this version be correct, none of the three prosecution witnesses received a single scratch at this later stage, while they succeeded in inflicting 57 injuries on five assailants who had come well-armed. As remarked by the High Court, there is no reason why the 11 companions of those 5 persons should have run away when they were larger in number, better armed, and had the upper hand, leaving 5 to be badly injured by just 3 of the persons whom they had come to assault. In the circumstances, we can see no jurisdiction for the inference drawn by the High Court that Antu appellant must have been fired the first shot and Labh Singh must have been injured in the very beginning as a result of aggression on the part of the accused party. It is much more likely that some members of the accused party, particularly the five, who received numerous injuries, were attacked and they used their weapons to inflict a small number of seven injuries to save themselves. It is true that one or two guns were used on the side of the accused but that circumstances by itself cannot make them aggressors and guilty of the offence of murder or attempted murder. On these facts, no finding can be recorded that the appellant Antu has been proved to be guilty of the offence of

murdering Bakshinsh Singh beyond reasonable doubt.

7. The appeal is allowed and his conviction and sentences are set aside. He shall be released forthwith unless required in connection with some other charge.

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