

Bakhshish Singh

Vs

State of Punjab

Criminal Appeal No. 108 of 1970

(S. K. Hegde, A. N. Grover JJ)

29.01.1971

JUDGMENT

HEGDE, J. -

1. The appellant with his father Tara Singh and brother Ram Singh were tried before the Sessions Judge, Amritsar, for the murder of Mangal Singh, one of the sons of Tara Singh, on or about the June 13, 1968, in village Sohian Kalan. Tara Singh was acquitted by the Trial Court, but Ram Singh and the appellant were convicted under Section 302, I.P.C. and sentenced to death by that Court. In appeal the High Court of Punjab and Haryana gave the benefit of doubt to Ram Singh and acquitted him, but the appellant's conviction and the sentence imposed on him were confirmed. Hence this appeal by special leave.

2. Tara Singh had five sons namely - Ram Singh, Bakhshish Singh (the appellant), Harbans Singh, Nahad Singh and Mangal Singh (the deceased). It appears that the deceased left his native place and went to Shillong about 12 or 13 years prior to the occurrence and remained in Shillong till about a month prior to the occurrence, when he returned to his native place. After he came back from Shillong he was insisting that he should be given his share in the ancestral property. This was opposed by Tara Singh and Ram Singh. About four days prior to June 12, 1968, the appellant who was serving in the Border Security Force returned to his native place on leave. It is said that on June 12, 1968, there was a quarrel between the deceased on one side and Tara Singh, Ram Singh and Bakhshish Singh on the other. That quarrel was in connection with the deceased's demand for his share in the family properties. The prosecution case is that P.W.s 2 and 3 who came to the house of Tara Singh on hearing the quarrel pacified the parties. The further case of the prosecution is that the deceased was not seen on or after June 12, 1968. On June 14, 1968, P.W. 2 who is a Lamberdar, reported the disappearance of the deceased to the police. Further he told the police that he suspected some foul play. On the basis of that information the police started investigation. The appellant, Ram Singh and Tara Singh were arrested on June 16, 1968. It is said that on the basis of the information given by the appellant, when he was questioned by the police on the date of his arrest, the head and the two legs of the deceased were recovered from a river at some distance from the house of Tara Singh. When the police went to that place they also saw broken teeth and some other parts of a human body on the bank of the river.

3. The prosecution tried to establish the case against the accused on the basis of circumstantial evidence. The circumstances put forward against the accused are -

(a) motive;

(b) quarrel on June 12, 1968;

(c) the accused persons carrying some person on a cot at about 11 or 11-30 on one night about the time of occurrence and when questioned by P. W.s 6 and 7 giving out a story that the deceased was suffering from cholera and they were taking him for treatment;

(d) signs of blood found in the yard of Tara Singh which had been covered by cow-dung;

(e) some human hair sticking to a cot placed in the house of Tara Singh as well as some marks of struggle at that place; and

(f) discovery of some parts of the body of the deceased as well as a scythe on the information given by the appellant when he was in police custody.

4. P.W. 5 was examined to speak to an extra-judicial confession said to have been made by all the accused. His evidence has been disbelieved both by the Trial Court as well as by the High Court. The Trial Court has disbelieved the evidence of P. W.s 6 and 7 who spoke to the fact that they saw the accused carrying someone in a cot on a night at about 11-30 p.m. The High Court also has not accepted that evidence.

5. The discovery of a scythe on the information said to have been given by the appellant on June 21, 1968, does not have much significance as that scythe was not found to be blood-stained.

6. So far as the discovery of blood-stains as well as the human hair by the investigating officer are concerned, they were noticed in the house occupied by Tara Singh. At this stage it may be noted that Tara Singh, Ram Singh and the appellant were living in different houses though all of them are situate in a common compound. Hence the circumstances above referred to cannot militate against the appellant.

7. So far as the motive is concerned, first of all it appears to be a weak one. It is unlikely that the father and brothers would have murdered Mangal Singh for merely claiming his share in the family properties. The fact that the deceased had left the house about 12 or 13 years before the occurrence could not have in the ordinary course induced them to deny him his share. There was no particular motive for the appellant to kill his brother. At this stage we may also mention that P.W. 5 in his evidence before the Committing Magistrate deposed that during the quarrel on June 12, 1968, Mangal Singh had threatened to abduct the daughter of Ram Singh, if his share was not given to him. In the Trial Court, P.W. 5 denied having made that statement. From the evidence of P.W. 5, before the Committing Magistrate, it appears that Ram Singh should have had greater reason than the appellant to murder the deceased.

8. Therefore the only incriminating evidence against the appellant is his pointing the place where the dead body of the deceased had been thrown. This, in our opinion, is not a conclusive circumstance though undoubtedly it raises a strong suspicion against the appellant. Even if he was not a party to the murder, the appellant could have come to know the place where the dead body of the deceased had been thrown. Further, as mentioned earlier, at the bank of the river where the dead body was thrown into the river, there were broken teeth and parts of the human body lying. Hence anyone who saw those parts could have inferred that the dead body must have been thrown into the river near about that place.

9. The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well-settled. In a case resting on circumstantial evidence, the circumstance put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

10. Even if we accept the entirety of the evidence accepted by the Trial Court as well as by the High Court, we do not think that the guilt of the accused is satisfactorily established.

11. In the result we allow this appeal and set aside the convictions, of the appellant. He shall be set at liberty forthwith.

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