

Gurdip Singh

Vs

The State of Punjab

Criminal Appeal No. 62 of 1970

(CJI J. C. Shah, S. K. Hegde, A. N. Grover, G. K. Mitter, A. N. Ray, A. N. Reddy, S. M. Sikri, V. Bhargava, I. D. Dua, J. M. Shelat, C. A. Vaidialingam, P. Jagmohan Reddy JJ)

02.02.1971

JUDGMENT

GROVER, J. -

1. The appellant, Gurdip Singh, was convicted under Section 302, Indian Penal Code, and sentenced to death by the Sessions Judge, Amritsar, for the murder of his father Murta Singh. He appealed to the High Court had a reference was also made for the confirmation of his death sentence under Section 374(4) of the Criminal Procedure Code. The appeal was dismissed by the High Court and the sentence was confirmed. He has appealed to this Court by Special leave.

2. The case of the prosecution was that Murta Singh deceased had married Dalip Kaur. The appellant was born of that union and he had two other brothers. Dalip Kaur died and Murta Singh married her sister Basant Kaur. She gave birth to Sohan Singh. Sohan Singh and Basant Kaur were living with Murta Singh. Gurdip Singh and his brothers were living separately. It appears that Murta Singh had effected a partition of land about 10 to 12 years ago and had given 3 killas to each son for cultivation. These lands were irrigated from a common jhallar. On March 20, 1969, Sohan Singh was irrigating his fields from the jhallar in the morning. At about noon time the appellant came there and asked Sohan Singh to allow him to take water from the jhallar for the irrigation of his own fields. Sohan Singh declined to do so and said that the appellant could take his turn in the evening. There was some exchange of hot words and abuses between the two step-brothers. Murta Singh deceased was present and it is alleged that he took the side of Sohan Singh. Thereafter the appellant went to the village. At about 3 p.m. the appellant, who is a Home Guard Volunteer, returned with his 303 rifle which had been issued to him by the Government. He shouted that he would kill his father. Sohan Singh and Mula Singh the real brother of Murta Singh who also happened to have come there raised an alarm which attracted Harbans Singh. The appellant at first fired on shot from his rifle which hit his father on the right knee. He then fired a second shot and hit his father in the biceps of the left arm. Murta Singh fell down and the appellant started chasing Sohan Singh but on alarm being raised by Mula Singh and Harbans Singh he did not do him any harm. He returned to the village with his rifle. Murta was put on a cot and taken towards the hospital. He, however, died on the way.

3. Sohan Singh and Mula Singh appeared as prosecution witnesses and deposed to the appellant having fired the shots by which his father was hit and which led to his death. According to the learned Sessions Judge and the High Court Mula Singh who was the brother of the deceased tried to show a soft corner for the appellant because he stated at the trial that the deceased was a Nihang Sikh who carried a barchha and that he had advanced threateningly towards the appellant

immediately before he fired the shot. No barchha was found at the spot and the appellant had not stated with statement under Section 342, Criminal Procedure Code, that he apprehended any harm at the hands of his father. At any rate the Sessions Judge and the High Court relied on the evidence of these two witnesses as also the fact that the appellant had surrendered his rifle and ammunition to his Company Commander a day after the occurrence and had made a extra-judicial confession to Lachhman Singh, P.W. One empty shell had been found at the spot and according to the evidence of the Forensic Expert that shell had been fired from the rifle which had been surrendered by the appellant.

4. Special leave to appeal was granted on the question of the nature of offence and the sentence only. The sole argument which has been addressed on behalf of the appellant is based on the statement of Mula Singh P.W. 3 the brother of the deceased. In cross-examination he stated as follows :

"Murta Singh was a Nehang. I am also a Nehang. Murta Singh used to keep a barchhi with him. Murta Singh with a barchha in his hand proceeded towards the accused and the accused advanced towards him with a rifle in his hand. Murta Singh told the accused while advancing that he would deal with him. The accused thereafter fired the shots at Murta Singh when the accused had fired the shots which struck Murta Singh then Sohan Singh was near the jhallar."

5. The statement of this witness had been got recorded by the police under Section 164, Criminal Procedure Code. In the judgment of the High Court it is stated that it was only at the trial that Mula Singh made the above statement and that he never mentioned anything about the incident of barchhi at any prior stage. It is difficult to discover how the High Court made the observation that the aforesaid statement was made by Mula Singh only at the trial before the Sessions Judge. It was open to the counsel for the prosecution to ask for permission to cross-examine Mula Singh and confront him with his previous statements made under Section 164, Criminal Procedure Code, and to the police. Even if Mula Singh tried to help the appellant it is difficult to believe that he made out a completely false story. It looks more probable that some kind of provocation of the nature deposed to by Mula Singh was offered by Murta Singh to the appellant before he fired the shots. It is also difficult to believe that a son would kill his father simply because he sided with his step-brother in the matter of taking of water from the jhallar particularly when the father had been fair to all the sons and had given equal areas of land to them.

6. According to the medical evidence the injuries which had been inflicted on the deceased by means of the rifle shots were sufficient to cause death in the ordinary course of nature. The offence committed by the appellant was clearly one under Section 302, Indian Penal Code. The evidence which has been believed fully established that the appellant was responsible for firing those shots. But we do not consider that in view of the circumstances adverted to by us it was a case for inflicting the sentence of death.

7. The appeal is allowed only to the extent that instead of the sentence of death the appellant shall undergo imprisonment for life. In all other respects the appeal is dismissed.

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