

Chanan Singh Son of Kartar Singh

Vs

State of Haryana

Criminal Appeal No. 109 of 1970

(C. A. Vaidilingam, A. N. Ray JJ)

02.04.1971

JUDGMENT

RAY, J. -

1. This is an appeal by special leave from the judgment, dated February 9, 1970, of the High Court of Punjab and Haryana convicting the appellant under Section 302/34 of the Indian Penal Code for the murder of Mohinder Singh and confirming the death sentence imposed upon him by the Sessions Court.
2. The appellant was sentenced by the Sessions Court to death on three counts, namely, under Section 302 of the Indian Penal Code for causing the murder of Mohinder Singh and under Section 302/34 of the Indian Penal Code for causing the murder of Mukhtiar Singh alias Mukha and Lachhman Singh. Kala Singh was sentenced by the Sessions Court to life imprisonment on two counts under Section 302/34 of the Indian Penal Code for the murder of Mukhtiar Singh alias Mukha and Lachhman Singh. Both of them preferred appeals to the High Court. The sentence of death passed by the Sessions Court on Chanan Singh was before the High Court for confirmation.
3. The High Court acquitted Kala Singh and accepted his appeal. This appeal of Chanan Singh was accepted as to the offence for causing the murder of Mukhtiar Singh and Lachhman Singh and he was acquitted of these offences. His conviction was however upheld for the murder of Mohinder Singh. The sentence of death passed upon Chanan Singh was confirmed.
4. The alleged occurrence was on December 9, 1968, between 9 and 9.30 p.m. at the house of Chanan Singh in village Hijraavan Kalan in the district of Hissar in Haryana. Three persons died of gun shot wounds. They were Mohinder Singh, Mukhtiar Singh alias Mukha and Lachhman Singh. The prosecution case rested on the single eye-witness Shangara Singh.
5. Shangara Singh is a resident of village Ali Musa about three miles from Hijraavan. He is a relation of Mohinder Singh deceased. Kala Singh was a partner of Chanan Singh in the cultivation work. Mohinder Singh deceased and his brother Pishora Singh resided at a field known as Dhani at a distance of about one mile from the resident of Chanan Singh. Mukhtiar Singh was the son of Pishora Singh.
6. The prosecution case was that on the date of the incident, Shangara Singh went to Fatehabad to buy a few things. There he met Mohinder Singh, Mukhtiar Singh, Lachhman Singh and Chanan Singh. Mukhtiar Singh purchased some cloth from the shop of one Diwan Chand. Mohinder Singh asked Shangara Singh to come back with them to their village. All the four, Mohinder Singh,

Mukhtiar Singh, Lachhman Singh and Chanan Singh had come on horse back and tied their horses at the house of Harnam Singh. They all went to the house of Harnam Singh. Harnam Singh's daughter Balvinder Kaur handed over a stitched lady's shirt and a salwar to Mohinder Singh. Chanan Singh purchased two bottles of liquor and some cooked potatoes and vegetables. They all thereafter left for Hijraavan. When they were about 5 or 6 killas away from Hijraavan, Dalip Singh met them. Chanan Singh exchanged greetings with Dalip Singh. Lachhman Singh all along carried a gun. Chanan Singh invited all of them to drinks and snacks at his house. They started drinking. They were sitting on cots. A little later Pritam Singh came to ask for some mexican wheat seeds from Chanan Singh. Chanan Singh asked him to come the following day. Pritam Singh went away. Mukhtiar Singh drank two pegs and thereafter lay on the cot and did not drink any more. The other persons finished the two bottles. They all ate some potatoes and tomatoes. At about 9 p.m. Chanan Singh demanded from Mohinder Singh repayment of the loan of Rs. 500. Mohinder Singh said that Chanan Singh had earlier disgraced him in the presence of his brother Pishora Singh. Mohinder Singh stated that he would not take food with Chanan Singh and would leave. Chanan Singh also got up from the cot. Mohinder Singh was wrapping his loi (wrapper) to go away. Chanan Singh at that moment went inside the house and returned with his gun. He immediately fired at Mohinder Singh near his left ear. Mohinder Singh fell down. Chanan Singh again loaded his gun and fired a second shot at Mohinder Singh while he was lying on the ground. Lachhman Singh tried to run away. Kala Singh caught him. Kala Singh was assisted by Chanan Singh in overpowering Lachhman Singh. Both of them carried Lachhman Singh inside the house. Shangara Singh then slipped away. While going away he heard a gun shot when he was near the outer courtyard. Shangara Singh heard another gun shot a little later. Shangara Singh on account of fear ran away to his village. He reached his house at about 11 p.m. He informed his father about the incident. He requested his father to inform Pishora Singh. His father did not do so on account of fear but agreed to go in the morning. On the following morning Shangara Singh's father left for Hijraavan and returned at about 10 a.m. Shangara Singh's father told him that he could not meet Pishora Singh and that Pishora Singh had already gone to lodge the report. Shangara Singh was called by the police and his statement was recorded at about 4 p.m. on December, 1968.

7. The defence of Chanan Singh was that in the evening on December 9, 1968, when he was standing in front of his house Mukhtiar Singh and Mohinder Singh came on horse back. They exchanged greetings. They asked Chanan Singh for drink. Chanan Singh asked them to get down. The horses were tied in the yard. They started having drinks. Chanan Singh then asked his wife for some cooked vegetables. When Chanan Singh's wife came out with the vegetables, Lachhman Singh cracked a joke. Chanan Singh objected. He asked Mohinder Singh as to why he had brought such a bad man and then pointed to Lachhman Singh. Mohinder Singh asked Chanan Singh to keep quiet and said that he would deal with Lachhman Singh. Mukhtiar Singh and Mohinder Singh caught hold of Lachhman Singh and beat him with shoes. Lachhman Singh was turned out. After a while Lachhman Singh came back armed with a gun. He fired a shot at Mukhtiar. He fell down. Chanan Singh ran inside the house. In the meantime Mohinder Singh had got up. Lachhman Singh shot at Mohinder Singh. Chanan Singh came armed with a gun. Chanan Singh found Lachhman Singh had followed him and had gone inside the house. Chanan Singh fired one shot in the air and threw the empty where Mohinder Singh was lying. Chanan Singh again loaded his gun. Chanan Singh felt that Lachhman Singh was grappling with his wife. Chanan Singh went inside the house and found that Lachhman Singh was dragging his wife by her arm and stating that she was the root cause of the trouble and that he would take her. Chanan Singh abused Lachhman Singh and asked him to release his wife. Lachhman Singh then opened the barrel of his gun, threw the empty and was reloading the gun when Chanan Singh fired at his to save himself and his wife. Lachhman Singh fell down in the

room where he was struggling with his wife. He was that Mukhtiar Singh and Mohinder Singh had died. Chanan Singh was afraid that the house of Lachhman Singh was so near that his brothers might come and kill him. Chanan Singh and his wife rode on horse back to the place where Kala Singh was present and then the three of them went to village Sangha. Chanan Singh surrendered after two days.

8. The High Court found that Shangara Singh was with Chanan Singh, Mohinder Singh, Mukhtiar Singh and Lachhman Singh at Fatehabad. Three reasons were given for that finding. The first was that Diwan Chand a shop owner in Fatehabad proved the signature of Mukhtiar Singh in an account book at the time Mukhtiar Singh purchased materials worth about Rs. 200/-. Diwan Chand's evidence was also accepted that he saw Shangara Singh along with Chanan Singh, Mohinder Singh, Lachhman Singh and Mukhtiar Singh. The second reason was that Dalip Singh met all the five at about 7 p.m. on the day of the occurrence when Dalip Singh was going to Fatehabad from his own village Hijraavan. The third reason was that Pritam Singh who had gone to the house of Chanan Singh to get some Mexican wheat seeds said that Chanan Singh, Kala Singh, Mukhtiar Singh, Mohinder Singh were all having liquor at the house of Chanan Singh at about 8 p.m. The High Court therefore held that Shangara Singh was present with all the four at Chanan Singh's house party.

9. The High Court next held that Shangara Singh was a reliable witness. The reason given by the High Court was that Shangara Singh found that everybody was drunk and his instinct would be to try and establish that he was not in the party and he ran away from Chanan Singh's house without informing anybody to save himself and there was nothing unnatural in doing so.

10. The High Court next dealt with the question as to whether Shangara Singh's evidence was truthful. The High Court gave one reason for finding Shangara Singh to be a truthful witness. The reason was that if Shangara Singh wanted to implicate the accused he could have easily deposed as to how Mukhtiar Singh received the injuries and how Lachhman Singh was killed but he never said either of these two things.

11. On these grounds the High Court found Chanan Singh to be guilty of the murder of Mohinder Singh. As to the murder of Mukhtiar Singh and Lachhman Singh the High Court said that the evidence was of circumstantial nature and all were drunk and therefore the High Court did not really know what had happened.

12. The entire prosecution case rests on the slender thread of the testimony of Shangara Singh. He said that he saw Chanan Singh fire a shot at Mohinder Singh which hit him near the ear. When Mohinder Singh fell down Chanan Singh again loaded his gun and fired a shot at Mohinder Singh when he was lying on the ground. Shangara Singh further said that Lachhman Singh then wanted to run away. Kala Singh caught Lachhman Singh. Chanan Singh assisted Kala Singh in overpowering Lachhman Singh. Both of them carried Lachhman Singh inside the house. At that time Shangara Singh slipped away.

13. Two questions arise, first, whether Shangara Singh actually was Chanan Singh fire twice at Mohinder Singh secondly, whether Shangara Singh told the truth. Shangara Singh's conduct after the occurrence appears to be abnormal. It was said on behalf of the prosecution that he ran away out of fear. There is not evidence whatever to suggest that Shangara Singh was struck by terror or fear. No one pursued or chased Shangara Singh. There was no threat to him. It would be strange to expect so many persons to stand silent and watch Chanan Singh fire at Mohinder Singh and none

would offer any resistance. Shangara Singh's slipping away unnoticed by the others particularly after the alleged shooting Chanan Singh would be utterly unbelievable. It appears unreal. The second surprising and significant feature in the evidence of Shangara Singh is that at that hour of the night he went through the fields to his house. If Shangara Singh's evidence were at all true that he saw Mohinder Singh being shot twice by Chanan Singh and he also saw Chanan Singh and Kala Singh dragging Lachhman Singh inside the house, he would go at once to Lachhman Singh's house which was 25 karams, i.e. 75 feet away from the house of Chanan Singh. It would be normal and natural for Shangara Singh to run to Lachhman Singh's house immediately and inform the members of the house and get others to try to save the life of Lachhman Singh. The third reason why Shangara Singh's evidence is not believable is that if he saw Chanan Singh fire twice at Mohinder Singh, Shangara Singh would normally go to Pishora Singh, brother of Mohinder Singh and tell him that Mohinder Singh had been shot by Chanan Singh. The fourth reason for not accepting Shangara Singh as a truthful witness is that his alleged statement to his father Suba Singh at about 11 at night that Chanan Singh had shot Mohinder Singh does not get any support from conduct. Neither Shangara Singh nor his father went to the police station. The first thing that would occur to Shangara Singh would be to go to the police station. He did not do that. His father also followed suit. The reason given by Shangara Singh was that his father did not move out of fear of the accused. The aspect of fear is without any foundation and is not supported by any evidence of act or conduct. These features indicate the infirmities as to truthful evidence of Shangara Singh.

14. A curious feature of the prosecution case is that Pritam Singh came to Chanan Singh for Mexican wheat seeds at about 9 p.m. Pritam Singh was asked by Chanan Singh to come next morning. Pritam Singh went the next morning and found three dead bodies. Pritam Singh then went to the police station and lodged the first information report. The presence of Pritam Singh both at night and in the morning appears to be sudden at the critical hours to fit in with the prosecution case.

15. The High Court did not at all take into consideration the vital discrepancy between the medical evidence and the oral evidence of Shangara Singh. Shangara Singh said that he saw Chanan Singh fire twice at Mohinder Singh. The doctor's evidence was that there were two injuries on Mohinder Singh and these were caused by one shot. Injury No. 1 was described by the doctor as the wound of exit. Injury No. 2 was described as an inlet wound. The pellets entered the body enmasse as would appear from injury No. 2. The medical evidence was also that for causing injury No. 2 the shot must have been fired from a close range say within 3 feet. In re-examination the doctor said that in his view there was no possibility that injury No. 1 might be the exit of another shot with which the head was blown off. The doctor was then asked two further questions in re-examination. These are as follows :

"Q. Could injury No. 1 be not the result of a distinct gun shot if it was given first in order and then immediately the second shot was fired as a result of both the gun shots the entire skull, brain, etc., was blows off ? It may be further explained that the first shot had hit on the left side and second on the right side ?

Ans. I do not agree because there were no signs of any separate wound of entrance or exit for another shot.

Q. If the first shot had hit the victim one inch or more above the left ear and had hit the portion which was blown off either as a result of blow or the other blow, what traces you would have found to state the inlet or exit of the other shot especially when the firing was from close range ?

Ans. If this had happened there must have been found blackening or reddening or skin colour changing on the adjoining skin just above the ear, in an area of about one inch around but if the other shot had hit on the top of the skull and had effected the area which was blown off, then there could be two or more fires."

16. The purpose of re-examination is explaining any part of the cross-examination which is capable of being construed unfavourably to the party for who he has given evidence in chief. Re-examination cannot be allowed for new matters except with leave of the Court. The medical evidence both in examination-in-chief and cross-examination was that there was one shot. There was nothing to be clarified. There was no scope for re-examination. The second which again were not split up but were compressed into one question. It is not permissible to put two or three questions into one question. The answer in re-examination that if certain things happened then there could be two or more fires far less from giving an answer obscured the matter more.

17. A death sentence can rest on evidence beyond any reasonable doubt. In the present case, there are not only doubts but also inherent improbabilities and infirmities in the evidence of Shangara Singh to hold that he saw Chanan Singh fire at Mohinder Singh. The conviction cannot be sustained. The appeal is accepted. The judgment of the High Court is set aside. The accused is set at liberty.

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