

Mukhtiar Singh Alias Mukha

Vs

The State of Punjab

Criminal Appeal No. 171 of 1970

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

13.04.1971

JUDGMENT

RAY, J. -

1. This is an appeal by special leave from the judgment dated May 26, 1970 of the High Court of Punjab and Haryana convicting the appellant under Section 302 of the Indian Penal Code on two counts and under Section 307 of the Indian Penal Code and confirming the sentence of death passed on the appellant by the Sessions Court.
2. There were seven accused. All of them were tried for the murderous assault on Charan Singh. The Sessions Court acquitted five accused and one of the accused had died previous thereto. The Sessions Court convicted the appellant.
3. It is not necessary to refer to the facts of the prosecution case because counsel for the appellant raised only two contentions. First, that the cartridges which were recovered from the spot were not fired from the rifle which was recovered from the possession of the appellant. Secondly, that the number of magazine in the report of the forensic expert was not to be found in the rifle recovered from the possession of the appellant.
4. The recovery of rifle from the possession of the appellant was spoken to by Gurdial Singh, PW 6. He went to the police station for securing his gun licence. In his presence the Assistant Sub-Inspector interrogated the appellant. The appellant then disclosed that he had kept concealed a rifle nude or a heap lying in his house. The protection witness stated that the appellant was taken to the village Ranivilla. The rifle was recovered from under the heap at the appellant's house. Five live cartridges were also recovered along with the rifle.
5. The other material evidence was that of Kartar Singh, PW 7. He said that two empty cartridges, one live cartridge and one missed cartridge were taken into possession from the roof of the house of accused Baghail Singh. On the Baisakhi day April 13, 1969 Mangal Singh deceased, his brother Buta Singh deceased, his son Charan Singh, his wife Basant Kaur and others were present at his house. Some of those present there returned from Chola Sahib where they had gone to see the Baisakhi fair. In the twilight they heard some shouts and abuses. Mangal Singh's son saw the appellant armed with a rifle, and the other accused armed with a weapon and arms. Accused Hardial Singh and Baghail Singh were standing on the roof of verandah which adjoined the house of Mangal Singh. Finding that the other accused could not enter the house of Mangal Singh as the door was chided, accused Baghail Singh and Harbans Singh shouted to the other accused to come to the roof. The appellant and Mota Singh went to the roof of Baghail Singh. Charan Singh, Mangal

Singh, Mohinder Singh, Buta Singh and Gurdial Singh requested the appellant not be aggressive. The appellant fired which hit Charan Singh. The appellant fired again and hit Buta Singh. The appellant fired yet another shot that hit Mangal Singh. Buta Singh and Mangal Singh died and Charan Singh was badly injured. The Sub-Inspector of Police who prepared the inquest report took into possession bloodstained earth from the spot and from the roof of Baghail Singh's house he picked up two empty-cartridges, one missed cartridge and one live cartridge.

6. The cartridges were sent to the Forensic Science Laboratory. There is the evidence of Dr. J. K. Sinha and his report is marked Ex. P.21. He said that two sealed parcels were received in the laboratory on May 12, 1969. One of the sealed parcels contained one 303 bore rifle marked 'A' by him. That is the rifle received from the appellant. The second sealed parcel contained two 303 fired crime cartridge cases and one 303 missed cartridge, His evidence was that the two fired crime cartridges had been fired through the 303 rifle. His opinion about the missed cartridge was that the firing impression of the 303 rifle marked 'A' He examined the two fired test cartridges. He also examined the test cartridges under a comparison microscope for individual characteristic markings present on them. He compared the same with individual characteristic markings present on the fired or crime cartridges. On comparison he found that he firing pin marks present on the test cartridges tallied with the firing pin marks present on the crime cartridges in their individual characteristics. Dr. Sinha said that the fired cartridges were fired through the rifle marked 'A' and could not have been fired from any other rifle even of the same make and bore because every firing pin has its own individuality. He took photomicrograph which showed some of the similar individual characteristics.

7. The rifle was under a sealed cover. It was opened in this court. The magazine chamber was found to have the same number as in the report Ex. P.10. The submission on behalf of the appellant that there was difference between the number of the rifle in the magazine chamber and in the report was therefore not acceptable.

8. The entire evidence was rightly believed by the High Court. The High Court correctly confirmed the capital sentence. The appeal fails and is dismissed.

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