

Asa Singh and Others

Vs

State of Punjab

Criminal Appeal No. 42 of 1969

(J. M. Shelat, H. R. Khanna JJ)

31.01.1972

JUDGMENT

KHANNA, J. -

1. This is an appeal by special leave by Asa Singh (48), Sewa Singh (45), Darshan Singh (32), Iqbal Singh (30) and Mohar Singh (65) against the judgment of the Punjab and Haryana High Court affirming on appeal the decision of the Sessions Judge, Jullaundur, whereby Mohar Singh appellant was convicted under Section 324, I.P.C. and was sentenced to undergo rigorous imprisonment for a period of one year, while each of the remaining four accused appellants was convicted under Section 302, I.P.C. and was sentenced to undergo imprisonment for life. Asa Singh, Sewa Singh and Darshan Singh appellants are brothers being sons of Milkha Singh, while Iqbal Singh appellant is the son of Kehar Singh appellant.

2. There was also a charge against the five appellants under Sections 148 and 302, read with Section 149, I.P.C., but the learned Sessions Judge held that the charge in this respect had not been substantiated. The occurrence in the opinion of the Sessions Judge was not premeditated and appeared to have developed suddenly. He accordingly concluded that each of the appellants was liable only for his own acts.

3. The case relates to the murder of three persons Hardev Singh (45), Sarwan Singh (36) and Gurmit Singh (32) in village Karian at about 7.30 p.m. on July 16, 1965. Sarwan Singh and Gurmit Singh deceased were brothers, while Hardev Singh deceased was their uncle.

4. The prosecution case is that on the day of occurrence at about 7.15 p.m. Surjeet Singh (P.W. 6), who is a cousin of Sarwan Singh and Gurmit Singh deceased and nephew of Hardev Singh deceased, was present in his house in the abode of village Karian along with Hardev Singh, Sarwan Singh and Gurmit Singh. Surinder Singh (P.W. 5) then passed in front of the house. Shortly thereafter Surinder Singh P.W. 5 came back and told Hardev Singh and others that the accused had restrained him from passing in front of the house of Darshan Singh accused. Surinder Singh asked Hardev Singh and others to help him in securing a safe passage. Hardev Singh and others then told Surinder Singh, P.W. 5 that the accused were from their brotherhood and they would help Surinder Singh in going from that side. Hardev Singh, Sarwan Singh and Gurmit Singh deceased accompanied by P.Ws. Surinder Singh and Surjeet Singh went towards the house of Darshan Singh. They found the five accused present there. Asa Singh, Darshan Singh and Iqbal Singh were armed with spears, while Sewa Singh and Kehar Singh had kirpans. On hearing Surinder Singh and his companions, Darshan Singh exhorted the co-accused to ensure that Surinder Singh, P.W. 5 was not permitted to escape. On hearing the shout of Darshan Singh, Swaran Singh (P.W. 3), whose house is

at a distance of about six or seven karams from the house of Darshan Singh, I came out of his house. The shout of Darshan Singh also attracted Sohan Singh (P.W. 4) and Jagat Singh (P.W.) who were passing that way. Darshan Singh then gave a spear blow in the abdomen of Hardev Singh. Sewa Singh gave a kirpan blow on the head of Hardev Singh who thereupon fell down on the ground. While Hardev Singh was lying on the ground, he was given blows by Asa Singh and Kehar Singh. Asa Singh then gave a spear blow on the chest of Sarwan Singh deceased. Sarwan Singh was also given below on his thigh by Iqbal Singh with his spear and on his right ankle by Kehar Singh with his kirpan. Gurmit Singh then came forward to rescue Sarwan Singh but he was given a blow in his chest by Iqbal Singh with his spear. Sewa Singh gave a kirpan blow on the left knee of Gurmit Singh as a result of which the latter fell down. Surjeet Singh, Sohan Singh and Jagat Singh raised alarm. The accused then carried Sarwan Singh, who had been fatally injured, inside Darshan Singh's house and bolted the door from inside. During the course of occurrence, some injuries were also received by Asa Singh accused. Hardev Singh and Gurmit Singh were then carried by Surjeet Singh, P.W. 6 and others towards their house. Hardev Singh died soon after the occurrence. Gurmit Singh was taken in a bullock cart towards the hospital at Nawanshehar at a distance of about two miles from the place of occurrence. Gurmit Singh, however, succumbed to the injuries before the cart could reach Nawanshehar. Gurmit Singh's dead body was consequently sent back to his village. Surjeet Singh P.W. 6 then went to police station Rahon at a distance of five miles from the place of occurrence and lodged report P.O. (sic) at 10 p.m.

5. The motive from the assault, according to the prosecution case, was that Darshan Singh, Asa Singh and Sewa Singh accused were cultivating the land of Girdhara Singh for about five years. During the rabi crop before the present occurrence, the said land was cultivated by Dalip Singh. Darshan Singh and his brothers then presented an application that the land be shown in their cultivating possession in Khasra Girdhawari. Girdhara Singh executed an agreement to sell eight kilas out of that land to Gurmit Singh deceased. There were some security proceedings in that connection and Suchet Singh, father of Surinder Singh, P.W. 5, appeared as a witness against Asa Singh and other accused in those proceedings.

6. A. S. I. Gurbachan Singh (P.W. 19) after recording the first information report went to the place of occurrence. The Assistant Sub-Inspector first visited the house of Darshan Singh accused and found the dead body of Sarwan Singh lying there. Asa Singh was then holding a blood-stained spear P-1. The Assistant Sub-Inspector put Asa Singh under arrest and took into possession the blood-stained spear. The Assistant Sub-Inspector also had a look at the dead bodies of Gurmit Singh and Hardev Singh. Inquest reports relating to the three dead bodies were then prepared by the Assistant Sub-Inspector and the bodies were sent for post-mortem examination. On inspection of the spot the Assistant Sub-Inspector found trail of blood from the place of occurrence to the spot where the dead body of Sarwan Singh was lying inside the house of Darshan Singh. Kehar Singh accused was also arrested on that night by the Assistant Sub-Inspector from his house. Kirpan P-4 was recovered from the house of Kehar Singh, Darshan Singh and Sewa Singh accused were arrested on July 19 and July 21, 1965. Spear P-2 was recovered in pursuance of the disclosure statement of Darshan Singh that he had kept it in a sugar cane field. Likewise, kirpan P-3 was recovered in pursuance of the disclosure statement of Sewa Singh that he had kept it in a heap of bhusa near his Haveli. Spears P-1 and P-2 and Kirpan P-3 were found by the chemical examiner to be stained with blood. According to the report of Serologist, the blood in question was of human origin.

7. Post mortem examination on the dead bodies of Hardev Singh, Sarwan Singh and Gurmit Singh was performed by Dr. Radha Krishan on July 17, 1965. Asa Singh and Darshan Singh had some injuries on their person and were got examined from Dr. Mela Singh (P.W. 2). Asa Singh was found

to have four simple injuries caused with sharp-edged weapon, one simple injury caused with sharp-edged pointed weapon, and two simple injuries caused with blunt weapon. Darshan Singh had five simple injuries of a superficial nature.

8. At the trial Sewa Singh, Iqbal Singh and Kehar Singh accused denied their presence at the scene of occurrence and stated that they had been falsely involved in this case. The version of the occurrence which was given by Darshan Singh and was also adopted by Asa Singh was as under :

"On the night of this occurrence, Gurmit Singh, Sarwan Singh and Hardev Singh forcibly entered our house by breaking open the shutters of the entrance door of that house when I and my brother Asa Singh were present inside our house. They were then armed. They attacked and injured us. We raised alarm on hearing which Malkiat Singh son of Ganga Singh, Bekhahish alias Sees and Shangara Singh, son of Amrik Singh reached there and they rescued us from Hardev Singh, Sarwan Singh and Gurmit Singh by inflicting injuries on them. Malkiat Singh was also injured in the same incident. I also picked up a kirpan and in my defence I also caused some injuries to Hardev Singh, Sarwan Singh and Gurmit Singh."

No evidence was produced in defence.

9. The learned Sessions Judge accepted the prosecution case regarding the infliction of injuries by the five accused. He was also of the view that the eye-witnesses had attempted to suppress the part played by them and the deceased regarding the injuries to be found on the person of Asa Singh. This fact in the opinion of the Sessions Judge did not justify rejection of the evidence of the eye-witnesses. The version of the accused was rejected. The accused were accordingly convicted and sentenced as above. The High Court also took the same view of the evidence as had been taken by the Sessions Judge. The conviction of the accused was consequently upheld.

10. There can be no manner of doubt that Hardev Singh, Sarwan Singh and Gurmit Singh were killed as a result of murderous assault upon them. Dr. Radha Krishan who performed post-mortem examination on the three dead bodies found nine injuries consisting of six incised wounds, one penetrating incised wound, one abrasion and one injury caused by the twisting of right arm on the body of Hardev Singh. Out of them, the following two injuries of Hardev Singh were individually sufficient to cause death in ordinary course of nature :

"(1) An incised wound 4" x 1" x bone and brain deep on the left side of the scalp 3" above and parallel to the pinna of left ear cutting through the underlying kots bone.

(2) A penetrating incised wound 2"x 1/2" x deep into the abdominal cavity on the right side of the abdomen 1/2" below the right costal margin with part of small intestines protruding through the wound."

11. Sarwan Singh was found to have four injuries consisting of three incised wounds and one penetrating incised wound on his body. The following two injuries of Sarwan Singh were individually sufficient to cause death in ordinary course of nature :

"(1) A penetrating incised wound 2"x 3/8" x deep into the left chest cavity on the left side of front of chest at the level of third left intercostal space along the left border of sternum.

(2) An incised wound 2"x 1/2" x 5" deep on the front and upper third of left thigh."

12. Gurmit Singh had three incised wounds on his body. The following injury of Gurmit Singh was sufficient in ordinary course of nature to cause death :

"An incised wound 2 1/2"x 1/2 x deep and cutting up to the liver substance on the right side in front of chest, in the right mammary line 4 1/2" below the right nipple in the 9th intercostal space cutting through the 9th rib costal cartilage."

13. According to the prosecution case, the injuries on the bodies of Hardev Singh, Sarwan Singh and Gurmit Singh were caused by the five accused in the circumstances given above. The accused, however, denied that allegation. We have taken through the evidence on record and are of the view that the case against Asa Singh, Sewa Singh, Darshan Singh and Kehar Singh accused-appellants has been fully proved. Swaran Singh (P.W. 3), Sohan Singh (P.W. 4), Surinder Singh (P.W. 5) and Surjeet Singh (P.W. 6) have deposed about the causing of the injuries by Asa Singh, Sewa Singh, Darshan Singh and Kehar Singh as alleged by the prosecution. The evidence in this respect was accepted by the courts below and Mr. Kohli, who took us through that evidence, has not been able to point out anything as may induce us to take a different view. The part attributed to Asa Singh, Sewa Singh, Darshan Singh and Kehar Singh by the eye-witnesses is in accord with the medical evidence and we find no cogent ground to disbelieve the evidence of the eye-witnesses in this respect. The evidence of eye-witnesses is also corroborated by the fact that spear P-1 stained with human blood was secured from Asa Singh. Likewise, spear P-2 and kirpan P-3 both of which were stained with human blood, were recovered in pursuance of the disclosure statement of Darshan Singh and Sewa Singh accused.

14. The defence version given by Asa Singh and Darshan Singh is not at all convincing and has been rightly rejected by the courts below. It is, in our opinion, most difficult to believe that Asa Singh and Darshan Singh would escape with minor and superficial injuries if they were attacked in their house by Hardev Singh, Sarwan Singh and Gurmit Singh who were said to have been armed with weapons. According to Dr. Mela Singh, the injuries which were found on the persons of those two accused were of a simple nature and most of them were of a superficial character.

15. Coming to the case of Iqbal Singh, we find that according to the prosecution case, he was armed with a spear and gave a spear blow on the thigh of Sarwan Singh and in the chest of Gurmit Singh. None of the two injuries which were attributed to Iqbal Singh were found by Dr. Radha Krishan to be penetrating or punctured wounds. There is not even the evidence of the doctor that the injury on the thigh of Sarwan Singh and the wound in the chest of Gurmit Singh could be caused with a spear. The nature of the two injuries in question, in our opinion, was such that it seems likely that they were caused with a kirpan and not with a spear.

16. Another circumstance of which note may be made is that no spear, much less a blood stained spear, was recovered during the investigation of the case from Iqbal Singh or at his instance. We thus find that there are circumstances which create reasonable doubt regarding the complicity of Iqbal Singh. Iqbal Singh must necessarily have the benefit thereof. We consequently accept the appeal in respect of Iqbal Singh, set aside his conviction and acquit him. The conviction of the other four accused appellants is maintained. The appeal in respect of them is dismissed.

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