

Tarlok Singh and Others

Vs

State of Punjab

and

Gurdial Singh

Vs

State of Punjab

Criminal Appeals Nos. 141 and 217 of 1970

(A. Alagiriswami, P. Jagmohan Reddy, H. R. Khanna JJ)

30.07.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

1. Eight accused were charged by the Additional Sessions Judge, Gurdaspur, of offences of murder, attempt to murder, kidnapping, theft etc., in respect of an incident which took place on June 9, 1968 at about 9 p.m. in the village of Sathiali. Tarlok Singh accused No. 1, Avtar Singh, accused No. 4, Upar Singh, accused No. 5 are brother. Gurdial Singh, accused No. 6 is their relation. Ajit Singh, accused No. 2, Dilbagh Rai, accused No. 7 and Saudagar Singh, accused No. 8 are said to be drinking friends of the accused. Daljit Kaur, accused No. 3 is the wife of Manjit Pal Singh s/o the village Pradhan Harcharan Singh P.W. 9. The prosecution case against the accused is that Daljit Kaur who is married to Manjit Pal Singh did not want to live in the house of her father-in-law and her husband, because according to her the father-in-law had an evil eye on her and she wanted to go away to her sister's place. According to the prosecution, Harcharan Singh who is said to be aged 90 years had three sons, two of them with whom he did not have good relationship lived separately from him at Amritsar and Batala, while Manjit Pal Singh was living with him. Tarlok Singh accused No. 1 and his brothers were related to Daljit Kaur and were constant visitors to her house. Harcharan Singh suspected that these three accused had illicit relations with his daughter-in-law and this was not like by Harcharan Singh. As a consequence relations between the parties were strained. Earlier, on the day of the incident at about 2 p.m. it is alleged that accused Nos. 2, 5 and 7 came to the house of Harcharan Singh in a drunken state and started abusing the servants of Harcharan Singh which was objected to. They also abused Harcharan Singh. While this was going on Labh Singh, Bhagat Singh P.W. 6 and Rattan Singh P.W. 5 intervened, and the three accused were pushed out or persuaded to go away. On the same day at about 9 p.m. all the seven accused Nos. A-1, A-2, A-4 to A-8 came back to the village with a tractor and parked it in the Haveli of Dilbagh Rai, accused No. 7 which was near the house of Harcharan Singh. Then all of them went to the house of Harcharan Singh. At that time Tarlok Singh, accused No. 1 had a licensed double-barrel shot gun, Avtar Singh, accused No. 4 had a licensed pistol, Ajit Singh, accused No. 2 and Gurdial Singh, accused No. 6 were each armed with a Kirpan. The remaining accused has a dang each. On reaching the house of

Harcharan Singh, Tarlok Singh, accused No. 1 is said to have fired three shots in the air from his gun to frighten the inmates. Immediately thereafter Daljit Kaur, accused No. 3 who is alleged to have come out of her room asked the accused to finish Harcharan Singh whereupon he was manhandled and received simple injuries. The accused then demanded valuables from Harcharan Singh and took away a steel box containing gold ornaments weighing about 25 tolas. Daljit Kaur also took out her box containing her belongings and followed the accused who forced Harcharan Singh to proceed before them. All the accused while going to the house of Dilbagh Rai began to hurl abuses on all and sundry. On reaching the tractor, Daljit Kaur got into the tractor and the boxes were placed in it. Avtar Singh, accused No. 4 drove the tractor and the other accused followed the tractor. As they reached the Chowk near the house of Kartar Singh and Khazan Singh, Ajit Singh deceased, Bhagat, Singh P.W. 6, Karan Singh P.W. 2, Virsa Singh P.W. 3, Rattan Singh P.W. 5 and Bahadur Singh P.W. 4 who were present at the Chowk asked the accused why they were abusing the villagers in general. On being so questioned the other accused asked Tarlok Singh accused No. 1 why he was waiting and why he was not firing. Immediately thereafter Tarlok Singh fired three shots from his gun. The first shot hit Ajit Singh and he fell down. The other shots hit Virsa Singh P.W. 3 and Karan Singh P.W. 2. Immediately the accused picked up the injured Ajit Singh and it is said that Ajit Singh, accused No. 2 who was armed with Kirpan gave three Kirpan blows to the injured Ajit Singh. The injured Ajit Singh was then lifted and carried by the accused who placed him in the tractor. Harcharan Singh in the meanwhile slipped away and took safety in the house of one Pal Singh. The accused then went away in the tractor taking the deceased with them.

2. Labh Singh, father of the injured Ajit Singh immediately went to the police station Kahrowan and lodged an F.I.R. Ext. P.E. at about 11 p.m. After his statement was recorded by Sub-Inspector Harjit Singh P.W. 26, a case was registered under Section 307, I.P.C., after which he sent information to the adjoining police stations about the occurrence, telephoned the Superintendent of Police and proceeded to the scene of occurrence. As a result of the information given by him, Assistant Sub-Inspector of Police Post Qadian Kartar Singh P.W. 11 held 'Nakabandi' at Thind Dhariwal Canal Bridge.

3. At about 2.30 a.m. on the night between June 9/10, 1968, a tractor bearing No. P.N.P. 2180 was seen coming from Harchowal side on the road going to Batala. It was stopped by the police party when it was found that there were three persons on the tractor, one of whom was driving it. Two of them shouted 'Jita fire' whereupon a gun shot was fired at them. The police returned the fire in self-defence. Another gun shot was fired from the tractor and the police returned the firing. It is the case of the prosecution that after the tractor had gone away some distance, one of the occupants fell down. Immediately the police rushed and though he was trying to run away he was held. This person was Gurdial Singh, accused No. 6. The police then pursued the tractor and seized it after the other two had abandoned it on the off side of the road. After the case was registered by P.W. 11, Sub-Inspector Kehar Singh P.W. 16 S.N.O. Batala Police Station started investigations, interrogated Gurdial Singh, and on the statement made by him that the dead body of Ajit Singh and his decapitated head were thrown in the river Beas in the area to village Kiri Afghana and he could get the same recovered, that statement was reduced in writing. It was signed by Gurdial Singh and attested by Surta Singh P.W. 15. Gurdial Singh then led the party and got the dead body and the head of Ajit Singh recovered from the river. The dead body was identified by Darshan Singh brother of the deceased and Gurbachan Singh P.W. 13 as being that of Ajit Singh who was injured and taken away by the accused in the tractor.

4. A post-mortem on the dead body of Ajit Singh was held and apart from the injuries caused by sharp-edged weapon which Dr. N. S. Dhillon P.W. 1, Senior Medical Officer, Incharge Civil

Hospital, said were caused by Kirpan-blows, 96 pellets from gunshot injuries were also recovered. According to Dr. Dhillon the cause of death was due to Kirpan bows. The police also recovered from the place of occurrence seven wads which were sealed. Thereafter they sent Virsa Singh P.W. 3 and Karam Singh P.W. 2 to the Doctor for examination. The Doctor found 7 injuries upon P.W. 3 and 3 injuries on P.W. 2 which were simple in nature.

5. Ajit Singh and Saudagar Singh were arrested on June 12, 1968. Upar Singh was arrested on July 8, 1968. Tarlok Singh accused who was declared a proclaimed offender surrendered in the Court of Hardev Singh, Judicial Magistrate, 1st Class, Faridkot, P.W. 18, on August 1, 1968, and produce a double barrellled gun Ext. P-1 and one revolver for both of which he had a licence. These were got sealed by the Magistrate. Daljit Kaur was arrested some time after November, 1968.

6. According to Daljit Kaur, Harcharan Singh and her husband used to quarrel with her. She had some money in the Bank and they wanted her to withdraw the same and hand it over to them but she did not agree. She asked Avtar Singh, brother of the wife of Tarlok Singh accused to take her away. Avtar Singh accused came with a tractor at 5 p.m. on June 9, 1968. She sat on the tractor and they started on the tractor between 8 or 9 p.m. with the attache case containing some of her clothes. Harcharan Singh P.W. 9 and her husband asked her not to go, but she wanted to go. They pulled her by her arms on which there was an altercation and many villagers collected there. She did not know who fired the gunshots at that time and what happened next. She accompanied Avtar Singh on the tractor and then she went to Uttar Pradesh. She and the other accused denied the prosecution allegation about any illicit connections of Daljit Kaur with Tarlok Singh and his two brothers Avtar Singh and Ajit Singh. Tarlok Singh, however, admitted the ownership of the gun Ext. P-1 for which he had a licence. But the other two accused Avtar Singh and Upar Singh denied the offence. Avtar Singh admitted that the tractor P.N.P. 2180 belonged to him. According to Dilbagh Rai, has brother Hakam Rai had fought an election for the office of Sarpanch against Harcharan Singh P.W. 9 and that is why he had falsely involved due to enmity. Saudagar Singh denied the prosecution case and said that a false case had been foisted against him.

7. The prosecution examined Karam Singh P.W. 2, Virsa Singh P.W. 3, Bahadur Singh P.W. 4, Rattan Singh P.W. 5, and Bhagat Singh P.W. 6 and Harcharan Singh P.W. 9 with respect to the incident. The trial court on an appreciation of the evidence convicted Tarlok Singh under Section 302 or under Sections 302/149, I.P.C. and awarded life imprisonment to him. Avtar Singh, Upar Singh, Dilbagh Rai and Saudagar Singh were convicted under Sections 302/149, I.P.C. and awarded life sentence. Tarlok Singh was further convicted under Section 307 in respect of the shooting at Karam Singh and Virsa Singh and sentenced to seven years rigorous imprisonment. The other six accused, namely, Ajit Singh, Avtar Singh, Upar Singh, Gurdial Singh, Dilbagh Rai and Saudagar Singh were also convicted under Sections 307/149, I.P.C. and each of them was sentenced to five year rigorous imprisonment. Further all the seven accused except Daljit Kaur were convicted under Section 364 and each of them sentenced to seven years rigorous imprisonment as well as under Sections 201 and 148, I.P.C., for which each of them was awarded two years rigorous imprisonment on each count. Daljit Kaur was acquitted of all the charges and set free.

8. The High Court on appeal acquitted all the accused of the offences under Sections 302/149, I.P.C. but convicted Gurdial Singh of an offence under Sections 302/34, I.P.C., and sentenced him to life imprisonment. Ajit Singh, Avtar Singh, Upar Singh, Dilbagh Rai and Saudagar Singh were convicted under Sections 307/149, I.P.C., and each of them awarded five years rigorous imprisonment, while Tarlok Singh was convicted under Section 307, I.P.C., and awarded life sentences. The convicted and sentences under Sections 364, 201 and 148 awarded by the Sessions

Judge were maintained. Against these convictions and sentences two appeal are before us by special leave. Criminal Appeal No. 217 of 1970 is by Gurdial Singh, while Criminal Appeal No. 141 of 1970 is by the other accused.

9. It may be mentioned that after the judgment of the High Court the Sessions Judge, Gurdaspur in Sessions Trial No. 11 of 1970 acquitted Ajit Singh, Tarlok Singh and Gurdial Singh of the offences under Sections 307/34, I.P.C., in respect of the second incident where it was alleged that those persons had all fired at the police party when they stopped the tractor at the village Dhariwal Third. Copy of that judgment has been filed before us to show that no such incident took place as alleged by the prosecution, nor was Gurdial Singh arrested as alleged after falling from the tractor and the whole case of the prosecution in respect of this occurrence was false. If so, it is contended, that the statement about the recovery of the dead body and the decapitated head of Ajit Singh deceased at the instances of Gurdial Singh from the river Beas is belied and cannot be accepted. From a perusal of the judgment of the Sessions Judge in Session Trial which has become final, since no appeal was filed, it would appear that in the opinion of the Sessions Judge there was serious discrepancy which cut at the root of the prosecution case and that it was not able to establish that the three accused had committed the offences with which they were charged. Apart from the inherent defect in the prosecution case that Gurdial Singh was arrested in the manner alleged by the prosecution, even the evidence of this having made the statement leading to the recovery of the dead body and the decapitated head of the deceased Ajit Singh is, in our view, unreliable and cannot be depended upon.

10. The injuries on Gurdial Singh as would appear from Ext. P-BB - Injury Report, dated June 10, 1968, show that he had as many as eleven contusions some of which were big injuries on arms, back, shoulder, scapular spine, buttocks etc. One of such injuries was 7" x 1". Apart from these injuries there were few abrasions. The Sessions Judge noted that though those were simple injuries they were caused by blunt weapon. In that case Gurdial Singh accused had stated that he was arrested by the police from Qadian at about 10 a.m., on June 10, 1968. The police then took him to the place post Qadian. There the police asked him to sign some papers which he refused to do. Thereupon the police gave him a sever beating and afterwards implicated him in the case falsely. The Sessions Judge came to the conclusion that if the occurrence had taken place in the manner alleged by the prosecution, it was impossible to believe that none of the three accused received even a single injury from the rifle or revolver shots which had been fired at them by no less than four members of the picket party from a very close range, and that if really any encounter had taken place between the picket party and the three accused near the bridge. Thind Dhariwal some pellet, spent-bullet or wad or piece of card-board must have been found at that place and the absence of any of these articles negatives the prosecution version. It was further stated that most probably Gurdial Singh accused had received his injuries at the hands of the police after his arrest and that the present story of encounter had been trumped up simply to explain away his injuries, but in this attempt also the police had failed miserably. Apart from these findings of the Sessions Judge which are binding, even a perusal of the evidence and the unexplained injuries on Gurdial Singh which could not have been caused merely by a fall from the tractor show that the must have been given a severe beating. The evidence of the recovery of the dead body and the decapitated head of the deceased Ajit Singh is equally unsatisfactory. P.W. 15 Surta Singh denied that he had accompanied the police on the night of the occurrence. He was treated as hostile witness and in cross-examination he denied that he had signed the recovery memo. He further stated he was taken by the police to village Sathiali. The dead body was lying on a cot and he did not know from where it was brought from (sic). P.W. 14 Sewa Singh was also treated as hostile witness as he denied any knowledge about the statement of Gurdial Singh or the recover. The evidence of P.W. 12 Darshan Singh and

P.W. 13 Gurbachan Singh merely showed that they had been called there to identify the dead body and the head of the deceased Ajit Singh after the same were recovered. According to P.W. 12 Darshan Singh a police constable came and said that the dead body had been found and that they should identify the same. The evidence of these two witnesses shows that the discovery of the dead body and the head had already been made when they were called, as such the alleged statement of Gurdial Singh leading to the recovery of the dead body will not be admissible. The result of the findings of the Sessions Court in Session Trial No. 11 of 1970 and our own reading of the evidence is that the prosecution story of the circumstances in which Gurdial Singh was arrested and his having made a statement thereafter leading to the recovery of the dead body and the decapitated head of the deceased Ajit Singh cannot be accepted. Apart from this there is no other evidence against Gurdial Singh to sustain his conviction under Sections 302/34, I.P.C.

11. Now coming to the main incident since all the six other accused (Nos. A-1, A-2, A-4, A-5, A-7 and A-8) have been acquitted of the offences under Sections 302/149, I.P.C., it is unnecessary to examine the case of the prosecution whether three Kirpan blows were inflicted on Ajit Singh deceased before he was lifted and taken on the tractor or subsequently. Labh Singh's version in the F.I.R. did not state that the Kirpan blows were inflicted on his son Ajit Singh before he was taken on the tractor. According to his version Ajit Singh the deceased fell down on receiving gun shots. Avtar Singh etc., immediately picket him up and placed him on the tractor. Tarlok Singh at the same time started the tractor and took his son in an injured condition so that they might finish him after taking him away. The statements given by the eye-witnesses in the Court, however, show that the accused Ajit Singh went near the injured Ajit Singh and gave three kirpan blows on his head and then the accused lifted the injured Ajit Singh and carried him on the tractor and the party went away with him. This version of the eye-witnesses is nothing but an embellishment to make their evidence conform with the medical evidence that the kirpan blows were the cause of the death of the deceased Ajit Singh. The eye-witnesses were asked whether they made such statements before the police, and even though they said that they did, they were confronted with their previous statements in which they did not say so. They had no explanation from this. In these circumstances the evidence of the eye-witnesses has to be scrutinised carefully and with caution. The evidence of Labh Singh could not be recorded by the Sessions Judge because by that time he was dead. His evidence in the committal court as P.W. 4, however, was treated as evidence, though, in our view, the High Court seems to have incorrectly thought that it could be so treated under Section 288 of the Code of Criminal Procedure. The evidence of eye-witnesses duly recorded in the presence of the accused under Chapter XVIII of the Code of Criminal Procedure can be treated, in the discretion of the Presiding Judge, as evidence in the case if such witness is produced and examined at the trial. As such it could not be marked under Section 288 of the Code of Criminal Procedure as Labh Singh's evidence which was subjected to cross-examination however could be treated as evidence under Section 33 of the Indian Evidence Act. According to the evidence of Labh Singh was also considered eye-witness evidence. In any case, there is sufficient eye-witnesses' evidence in this case for sustaining the conviction of the accused Tarlok Singh of the offence under Section 307, I.P.C.

12. Though initially the case of the prosecution was that all the accused got on to the tractor and went away, that version also was changed in their evidence. According to Virsa Singh P.W. 3 who was one of the injured, Tarlok Singh, Avtar Singh and Daljit Kaur were on the tractor, and the other accused were behind the tractor at a distance of 2 or 3 Karams. He denied that he stated in the trial court that all the accused came on a tractor. When confronted with a statement in the committal court he said how could so many persons sit on a tractor? It was not a bus. Karam Singh P.W. 2 was also injured by the firing by Tarlok Singh. Even according to him when he was confronted with a statement made before the committing court that all the accused came from the house of Harcharan

Singh on a tractor, he said that it was incorrect and that he was not changing the statement because it may not be said that all the accused could not sit on one tractor. When confronted with the statement that he did not say in the committing court as stated by him in the Sessions Court that the accused exhorted Tarlok Singh to fire, he said that he did so state. He also, when confronted with his previous statement, said that he had stated to the police that after Ajit Singh fell down the accused Ajit Singh went there and gave two or three kirpan blows to the injured. All these statements of the two injured persons P.Ws. 2 and 3 who were obviously there show that they have been falsely deposing, in respect of all the accused sitting in the tractor and coming from the house of Harcharan Singh, their exhorting Tarlok Singh accused to fire, and after the deceased fell down Ajit Singh accused gave two or three kirpan blows on the injured person. After sifting the chaff, the grain of truth that this evidence establishes is that Daljit Kaur wanted to leave the house of her father-in-law from whatever reason and asked her relations accused Nos. 1, 4 and 5 to take her away, that these accused along with other accused came to the house of Harcharan Singh and wanted to take her away, and when Harcharan Singh and others resisted, it led to an altercation and accused Tarlok Singh fired three shots from his gun injuring the deceased Ajit Singh and P.W. 2 and 3. Thereafter the deceased was picked up and put on the tractor and Tarlok Singh and Avtar Singh drove away with Daljit Kaur and the boxes while the other accused followed the tractor. On these facts the common object of the accused either to murder or injure the deceased or P.Ws. 2 and 3, none of whom were initially involved in the incident of rescuing Daljit Kaur from her father-in-law's house, is not established. These persons merely joined the other villagers in trying to stop the accused from taking away Daljit Kaur and it is at that stage that Tarlok Singh fired three shots from his gun. The version of the prosecution that the other accused exhorted Tarlok Singh to fire has also not been established. As such, none of the other accused, except Tarlok Singh, could be held to have at any time entertained an intention to commit murder, and they cannot therefore be held liable under Sections 307/149, I.P.C.

13. It also appears from the evidence of all these witnesses including Labh Singh, that after Ajit Singh fell down the accused picked him up and put him on the tractor. That is an omnibus statement made by all the witnesses who did not particularise whether one or two or all the accused picked up the injured and put him on the tractor. In the F.I.R. Labh Singh states that Avtar Singh etc. picked up the deceased and put him on the tractor. The word 'etc.' is significant in that the informant is leaving himself sufficient play to later add other accused as persons who along with Avtar Singh picked up the injured and put him on the tractor. Having regard to the various embellishments, contradictions and deliberate false statements to which we have referred, particularly the statement that Daljit Kaur called upon the accused to finish off Harcharan Singh which has been found by the trial court to be unacceptable, it would be unsafe to rely on the evidence of the prosecution that all the accused picked up the injured and put him on the tractor. There is also nothing to indicate that murder or an attempt to murder was the common intention of all the accused when they came to take Daljit Kaur and as such the other accused could not have acted in furtherance of that design. The firing appears to have been sudden and the other accused could not have known that Tarlok Singh would fire. If so, there would have been a consternation even among the other accused when this firing took place and in this case we have sufficient credible evidence that these accused except Avtar Singh did not go away on the tractor. The prosecution evidence that all the accused picked up Ajit Singh deceased and put him on the tractor cannot therefore be accepted. There is also no evidence as to what happened after injured was taken away, and who gave the kirpan blows which killed him, who disposed of the dead body and who decapitated his head.

14. In view of these serious defects in the prosecution evidence accused No. 2, accused No. 4 to accused No. 8 cannot be held guilty of the offences under Sections 307/149, I.P.C. Nor and the

conviction of accused Nos. 2, 5 to 8 be sustained under Sections 364 and 201, I.P.C., and they are, therefore, entitled to an acquittal of those charges. Accused No. 1, accused No. 2, accused No. 4 to accused No. 8 are, however, guilty along with Tarlok Singh of the offence of rioting armed with deadly weapons under Section 148, I.P.C. In the result Criminal Appeal No. 217 of 1970 is allowed and the conviction of Gurdial Singh under Sections 302/34, I.P.C., Sections 364 and 201, I.P.C., is set aside. Criminal Appeal Nos. 141 of 1970 is partly allowed and the conviction and sentence of Tarlok Singh under Sections 307, 364 and 148, I.P.C., is confirmed. The conviction of accused No. 2 and accused Nos. 4 to 8 under Sections 148, I.P.C., and the sentences awarded to each of them by the High Court are confirmed. They are, however, acquitted of the offences under Sections 307/149 and 201, I.P.C., and their convictions for these offences are set aside. Accused No. 4 Avtar Singh, who was the owner and driver of the tractor in which the injured Ajit Singh was taken away is alone guilty of kidnapping and hence his conviction and sentence under Section 364 is also confirmed, and the conviction and sentence of accused No. 2, accused No. 5 to accused No. 8 under the said section is set aside.

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