

Bishan Singh

Vs

The State of Punjab

Criminal Appeal No. 125 of 1972

(H. R. Khanna, A. Alagiriswami JJ)

09.08.1973

JUDGMENT

KHANNA, J. –

1. The six appellants, Bishan Singh (43), Gurdial Singh alias Dalo (40), Hardial Singh (65), Surjit Singh (20), Harbans Singh (44) and Hazur Singh (22), were tried in the Court of the learned Additional Sessions Judge Jullundur on various charges in connection with an occurrence which resulted in the death of Amrik Singh (29) and Surat Singh (27) and were acquitted. On appeal filed by the State, the Punjab and Haryana High Court convicted the six appellants under Section 302 read with Section 149 Indian Penal Code for the murder of Amrik Singh and Surat Singh and sentenced each of them to undergo imprisonment for life. Each of the six appellants was also convicted under Section 148. Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of two years. Hazur Singh and Surjit Singh appellants were further convicted under Section 449 Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for a period of five years. The sentences in the case of each of the appellants were ordered to run concurrently. The six appellants have now come up in appeal to this Court.

2. Bishan Singh and Gurdial Singh appellants are brothers. Surjit Singh appellant is the son of Hardial Singh appellant. Harbans Singh and Hazur Singh appellants are collaterals. The prosecution case is that a before this occurrence at about 4 p.m. there took place an altercation between Amrik Singh and Surat Singh deceased on the one side, and Bishan Singh, Hazur Singh and Hardial Singh accused on the other on account of a deserted well which was situated near Patti Thakarwal gate of village Samrai. The accused and the two deceased persons belong to that village. The cause of the altercation was that Amrik Singh and Surat Singh deceased wanted the old deserted well near gate Patti Thakarwal to be filled up, while Hardial Singh, Hazur Singh and Bishan Singh accused opposed the idea of filling up the well. During the course of the above altercation, Hardial Singh accused abused Amrik Singh deceased. Surat Singh at that time sided with Amrik Singh. The parties were about to grapple but others intervened and separated them.

3. On May 28, 1969 at about 5 p.m., it is stated, Mohan Singh (P.W. 5), who is the father of Surat Singh deceased, went to Patti Thakarwal gate after asking the respectable persons of the above Patti to settle the dispute regarding the filling up of the well in question. Amrik Singh and Jagdarshan Singh P.Ws. also reached Patti Thakarwal gate. Surat Singh and Amrik Singh deceased were then seen coming from the side of Mohan Singh's haveli. When the two deceased persons came in front of the Patti Thakarwal gate, the six accused emerged out of that gate. The accused raised shouts that Surat Singh and Amrik Singh who were empty handed should be killed. Gurdial Singh accused was armed with gonads P. 5, Harbans Singh had barchha P. 4 and the remaining four accused were

armed with kirpans. Bishan Singh accused then gave a blow with kirpan on the head of Surat Singh. Harbans Singh at the same time gave a barchha blow in the chest of Amrik Singh. On receipt of these blows, both Amrik Singh and Surat Singh ran towards Mohan Singh's haveli. Surat Singh deceased, however, fell down at a distance of about 20 karams. Amrik Singh with a view to save his life then ran into the lane. Hazur Singh and Surjit Singh chased Amrik Singh. Harbans Singh accused gave a barchha blow on the right shoulder of Surat Singh when the latter was lying on the ground. Gurdial Singh also gave a gandasi blow on the right arm of Surat Singh. More blows were then given to Surat Singh with kirpans by Bishan Singh and Hardial Singh. Jagdarshan Singh (P.W. 6) and Amrik Singh (P.W. 7) shouted to the accused not to cause further injuries to Surat Singh. Harbans Singh, Gurdial, Bishan Singh and Hardial Singh accused then went towards the fields with their respective weapons. Mohan Singh, Jagdarshan Singh and Amrik Singh then went near Surat Singh who was bleeding profusely.

4. In the meanwhile, Amrik Singh deceased while running through the lane found that the door of the house of Charan Singh was open. Charan Singh's house is at a distance of about 100 karams from Patti Thakarwal gate. Amrik Singh deceased entered the house of Charan Singh and wanted to shut the door from inside but Hazur Singh, and Surjit Singh pushed it open and followed Amrik Singh into the house. A number of kirpan blows were given by Hazur Singh and Surjit Singh to Amrik Singh. Surjit Singh and Hazur Singh accused thereafter ran away. The assault on Amrik Singh deceased by Surjit Singh and Hazur Singh was witnessed by Avtar Singh (P.W. 8) and Pritam Singh (P.W. 9) who were going to their houses at that time. Amrik Singh deceased died soon after the receipt of injuries. Leaving Pritam Singh P.W. to stay near the dead body, Avtar Singh P.W. proceeded towards the house of Amrik Singh to inform his relatives. On the way near the gate of Patti Thakarwal, Avtar Singh saw Surat Singh lying injured. Mohan Singh, Jagdarshan Singh and Amrik Singh P.Ws. were present there near Surat Singh. Avtar Singh then told Mohan Singh about the assault on Amrik Singh deceased by Hazur Singh and Surjit Singh accused and about Amrik Singh having died as a result of that assault.

5. Mohan Singh P.W. then went to the house of Charan Singh and saw the dead body of Amrik Singh lying there. Mohan Singh, thereafter returned to the spot where Surat Singh was lying. Surat Singh was then taken on a cot to Jandiala Health Centre at a distance of 1 1/2 miles from Samrai. Dr. Prithavi Raj of Jandiala Health Centre found that the condition of Surat Singh was serious. Dr. Prithavi Raj accordingly called for the ambulance and after given first aid treatment to Surat Singh, took him in the ambulance to the Civil Hospital Jullundur. Mohan Singh P.W. went from Jandiala Health Centre to Nurmahal police station and lodged there report P.S. at 7.30 p.m. Nurmahal police station is at a distance of six miles from village Samrai. Sub-Inspector Kartar Singh (P.W. 19) then went to village Samrai. The sub-Inspector found the dead body of Amrik Singh lying in Charan Singh's house. The sub-Inspector prepared inquest report relating to the dead body of Amrik Singh. The dead body was then sent to the mortuary at Phillaur. Blood-stained earth was taken into possession by Sub-Inspector Kartar Singh from the place of occurrence.

6. Surat Singh died in the Jullundur hospital at 9.55 p.m. on May 28, 1969. Post mortem examination on the dead body of Amrik Singh was performed by Dr. Miglani on May 29, 1969 at 9.15 a.m. Dr. V. K. Jindal performed post mortem examination on the dead body of Surat Singh at 10 a.m. on May 29, 1969.

7. After the arrest of the accused, it is stated, the various weapons with which they were armed, were recovered in pursuance of their disclosure statements on June 3, 1969.

8. At the trial Bishan Singh accused gave the following version of the occurrence.

"Amrik Singh and Surat Singh deceased, along with Amrik Singh and Jagdarshan Singh P.Ws. used to crack jokes with the ladies who come to the well for taking water, sitting on the platforms in the gate near the well. I had many a time objected to their behaving in that way. On this, they said that they would fill up well and then we would not be able to prevent them from sitting in the gate. On May 28, 1969, after closing of the School, I had gone to a relative of mine in village Kotla near Shamchaurasi and returned from there on the following day. I learnt on my return that Amrik Singh and Surat Singh tried to demolish the well on which the people of the village assaulted them and filled them. I also came to know that my name had also been mentioned as one of the assailants and I therefore appeared before the police on the same day."

9. The plea of the other accused was denial simpliciter. No evidence was produced in defence.

10. The trial Court acquitted the accused because it was of the view that there was no reliable evidence to prove the charge against the accused. The evidence of Mohan Singh, Jagdarshan Singh and Amrik Singh P.Ws. with regard to the assault on the two deceased persons near Patti Thakarwal gate was found to be interested and not worthy of credence. Likewise, the trial Court did not accept the evidence of Avtar Singh and Pritam Singh P.Ws about the assault on Amrik Singh in the house of Charan Singh. No reliance was also placed upon the evidence of recoveries of different weapons. The trial Court further took the view that the first information report was not lodged at the time to purported to have been done.

11. On appeal the High Court took the view that the evidence of Mohan Singh, Jagdarshan Singh and Amrik Singh P.Ws. was reliable and convincing. The High court excluded from consideration the evidence of Avtar Singh and Pritam Singh P.Ws. regarding the assault on Amrik Singh at the house of Charan Singh but the fact, in the opinion of the High Court, did not make any material difference. The trial Court, it was observed by the High Court, had brushed the substratum of the prosecution case for insignificant reasons which could hardly bear the test of a closer scrutiny. The approach of the trial Court to the case as a whole and its appreciation of the evidence was found to be clearly unreasonable and untenable. In the result, the appeal was accepted and the accused-appellants were convicted and sentenced as above.

12. In appeal before us Mr. Mukherjee on behalf of the appellants has assailed the judgment of the High Court and has contended that the High court was not justified in reversing the Judgment of acquittal of the trial Court. As against that, Mr. Mulla on behalf of the respondent-State has submitted that there were substantial grounds for the High Court to reverse the order of acquittal and for making an order of conviction.

13. It cannot be disputed that a number of injuries were caused to Amrik Singh and Surat Singh deceased as a result of which they died. Dr. Miglani on performing post mortem examination on the body of Amrik Singh found seven incised wounds besides a linear abrasion. The incised wounds were on the left side of the chest, the right temporal region, the right side of the forehead, left fronto-parietal region, right shoulder, right forearm and front aspect of the right leg. Injury No. 1 which was sufficient in the ordinary course of nature to cause death was as under :

"An incised wound 1 1/4 x 1/2" on the left side of the chest, the inner edge touching

the middle line in the left third intercostal space, oblique in direction elliptical in shape."

14. The fatal injury, according to Dr. Miglani, could have been caused with a spear, while the remaining incised wounds have been caused with kirpan.

15. Thirteen injuries were found on the body of Surat Singh when Dr. Jindal performed the post mortem examination on the dead body. One of these injuries was the result of an operation. There were five incised wounds, one contusion, four lacerated wounds and two abrasions on the body of Surat Singh. The incised wounds were on the left fronto-parietal region, right parietal oblique, right temporal region, right lower arm and right elbow. The contusion was on the back of the right forearm. The lacerated wounds were on the right shoulder, right leg, back of the left ring finger and back of the left little finger. The bones under the lacerated wounds on the left ring finger and left little finger were found to have been fractured. The various injuries in the opinion of the doctor, were sufficient in the ordinary course of nature to cause death.

16. According to the prosecution case the injuries to Amrik Singh and Surat Singh deceased were caused by the accused appellants. In support of its allegation, the prosecution has examined Mohan Singh (P.W. 5), Jagdarshan Singh (P.W. 6) and Amrik Singh (P.W. 7) as eye-witnesses of the occurrence near Patti Thakarwal gate. It is primarily upon the evidence of these three witnesses that the High Court has based the conviction of the accused appellants. After having heard the learned Counsel for the parties, we find no particular reason to interfere with the appreciation of the evidence of these witnesses by the High court. Mohan Singh, Jagdarshan Singh and Amrik Singh P.Ws. have deposed as to how the accused appellants attacks the two deceased persons near Patti Thakarwal gate. It is also in the testimony of these witnesses that when Amrik Singh ran away after being hit with a barchha by Harbans Singh accused, he Amrik Singh) was followed by Hazur Singh accused and Surjit Singh, who were at that time holding unsheathed kirpans. These witnesses have further given evidence about the injuries caused to Surat Singh by the accused appellants. There is, in our opinion, no cogent ground to disbelieve the evidence of the above mentioned three witnesses. Mohan Singh P.W. is no doubt the father of Surat Singh but that fact is not sufficient to discredit the testimony of Mohan Singh. Normally a close relative of the deceased would be most reluctant to spare the real assailants and falsely mention the names of other person as those responsible for causing injuries to the deceased. Jagdarshan Singh P.W. is a B.A. student and is a wholly disinterested witness. So far as Amrik Singh P.W. is concerned, it is pointed out that he and Amrik Singh deceased jointly owned a car which was being used as a taxi. This fact would not, in our opinion, detract from the evidence of Amrik Singh P.W.

17. A suggestion which was put on behalf of the accused was that Mohan Sing P.W. was at his well at the time of the occurrence and that on learning about the occurrence, he came to the village after his son had already been removed to the hospital. This suggestion, in our opinion, was wholly unfounded, because we find that the evidence of Dr. Prithvi Raj shows that Surat Singh was brought to the Primary Health Centre, Jandiala by Mohan Singh, Jagdarshan Singh and some others. Mohan Singh's field is at a distance of about one mile from the place of occurrence and if could not have been possible for him to take Surat Singh on a cot from the place of occurrence to Jandiala Health Centre and reach there at 6 p.m. if the witness had, in fact, been away to the fields. In any case, the evidence of Mohan Singh receives ample corroboration from that of Jagdarshan Singh and Amrik Singh P.Ws. None of these witnesses had any animus against the accused and no cogent ground has been shown to us as to why these witnesses should falsely depose against the accused.

18. The trial Court referred to the fact that Surat Singh had five injuries consisting of a contusion and lacerated wounds. As these injuries had been caused with a blunt weapon and as none of the accused was shown to have been armed with a blunt weapon, the trial Court came to the conclusion that the three eye-witnesses were not stating the truth. In this respect we find that there were a number of brickbats at the spot at which Surat Singh fell down in an injured state. Some of the injuries found on the person of Surat Singh could have also been received by the lathi portion of the gandasi with which Gurdial Singh was armed. The nature of the injuries found on the body of Surat Singh would not show that the evidence of Mohan Singh, Jagdarshan Singh and Amrik Singh P.Ws. cannot be relied upon and that the appreciation of their evidence by the High Court suffers from any infirmity.

19. The conclusion of the trial Court that the first information report was not recorded at the time it purports to have been done, in our opinion, was rather far-fetched and not warranted by the material on record. The trial Court in arriving at this conclusion took note of the fact that the copy of the first information report reached the Ilaka magistrate at Jullundur at 7.15 a.m. on the following day. Jullundur is at a distance of about 16 miles from the police station Nurmahal. It is in the evidence of A. S. I. Swarn Singh, who was deputed by Sub-Inspector Kartar Singh to go to Jullundur for recording the dying declaration of Surat Singh deceased, that he could get no conveyance to go to Jullundur on the evening of the day of occurrence. If the Assistant Sub-Inspector could get no conveyance to go to Jullundur on the evening of the day of occurrence, the same difficulty must have been encountered by the constable who was deputed to take the copy of the first information report to the Ilaka magistrate. From the fact that the first information report was received by the Ilakas magistrate on the following morning at 7.15. a.m. it would not necessarily follow that the first information report was not recorded at the time it purported to have been done.

20. The conduct of Mohan Singh, as brought out in his evidence has been criticised before us and it is argued that there were something unnatural about it. Mohan Singh, even though he is father of Surat Singh it is pointed out, did not go with Surat Singh from Jandiala Health Centre to Jullundur hospital. We find nothing unnatural in the above conduct of Mohan Singh because Mohan Singh after taking Surat Singh to the Health Centre must have been anxious to make a report about this occurrence at the police station. Reference was made by the trial Court to the statement of Mohan Singh that he had changed his clothes which had got blood stains before he went with Surat Singh to Jandiala Health Centre and thereafter to the police station. In this respect we find that different individuals often react differently in a given situation. It may be that some others in the situation in which Mohan Singh was might not have changed their clothes before going to the Health Centre and the police station. The fact that Mohan Singh acted differently and changed his clothes would not go to show that his account of the actual occurrence is not trustworthy.

22. It is well settled that the High Court in appeal under Section 417 of the Code of Criminal Procedure has full power to review at large the evidence on which the order of acquittal was founded and to reach the conclusion that upon the evidence the order of acquittal should be reversed. No limitation should be placed upon that power unless it be found expressly state in the Code, but in exercising the power conferred by the code and before reaching its conclusion upon fact the High Court should give proper weight and consideration to such matters as : (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellat court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (see Sheo Swarup and others. v. The King Emperor, (61 IA 398 AIR 1934 PC 227 : 1934 ALJ 905 : 161

IC 322) Sawant Singh and others v. State of Rajasthan, ((1961) 3 SCR 120 : AIR 1961 SC 715 : (1961) 2 SCJ 179 : (1961) 1 Cri LJ 766) and Sohrab v. The State of Madhya Pradesh ((1972) 3 SCC 751 : 1972 SCC (Cri) 819). We have been taken through the judgment of the High Court. and we find nothing in it which runs counter to the principles enunciated above. The judgment of the High Court in our opinion, calls for no interference. The appeal consequently fails and is dismissed.

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