

Chain Singh

Vs

State of Punjab

Criminal Appeal No. 50 of 1970

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

14.09.1973

JUDGMENT

ALAGIRISWAMI, J. –

1. The appellant, his father Karam Singh, his uncle Bawa Singh and Bawa Singh's son Charan Singh were tried by the Sessions Judge, Hoshiarpur for offences under Sections 302, 307 and 324, read with Section 34 I.P.C. in respect of the murder of one Darshan Singh on October 12, 1967. The learned Sessions Judge acquitted Karam Singh and on appeal the High Court of Punjab and Haryana acquitted Bawa Singh. Charan Singh has not filed any appeal. This appeal is by Chain Singh alone against the judgment of the High Court which modified the death sentence awarded to him by the Sessions Judge to one of imprisonment for life.

2. The day in question was the Dussehra Day. Sadhu Singh, P.W. 6, and his brothers, Ajit Singh, P.W. 9 and Malkiat Singh, P.W. 11 as well as his cousin Lachhman Singh, P.W. 10 and his brother-in-law Ajit Singh, P.W. 7 had gone to village Garhdiwala to witness the Dussehra festival. While they were returning therefrom the appellant, who came on a cycle from behind them struck against Darshan Singh and a sharp exchange of abuses ensued between the deceased and the appellant, and Darshan Singh is alleged to have slapped the appellant. The appellant then went away towards his village and returned back with his father, uncle and uncle's son. The appellant is then alleged to have fired shots from his gun hitting Darshan Singh who dropped down dead. Charan Singh fired shots from his pistol injuring P.Ws. 7 and 9. Karam Singh was alleged to have merely fired in the air from his pistol. Bawa Singh was alleged to have given barchhi blows to Ajit Singh, Malkiat Singh and Lachhman Singh. The appellant is alleged to have fired again hitting Malkiat Singh. Sadhu Singh himself claimed to have hid himself behind a tree and after the assailants went away he went to village Gondpur, arranged for a taxi and removed P.Ws. 7, 9, and 10 to Hoshiarpur Civil Hospital leaving P.W. 15 to guard the dead body of Darshan Singh. On the way P.W. 6 got down at the Police Station Haryana while the injured persons were taken by another Sadhu Singh to Hoshiarpur. The FIR was lodged at 8 p.m. The Sub-Inspector of Police reached the spot at 9.15 p.m., held an inquest and sent the dead body to the Civil Hospital Hoshiarpur for post-mortem examination. He found there empty cartridge cases near the dead body and 8 cartridge cases at some distance. He took all of them into possession. The post-mortem examination revealed that one of the two injuries caused on the body of Darshan Singh by fire arms was sufficient to cause death in the ordinary course of nature. The medical examination showed that P.Ws. 7 and 9 had a number of gun shot wounds, P.W. 10 had two lacerated wounds and one contused wound, P.W. 11 one contused wound and two penetrating wounds. The appellant produced his single barrel gun and Charan Singh produced a country made 12-bore pistol. The ballistic expert gave evidence that five of the empty cartridges had been fired from the gun belonging to the appellant and that three of them were fired from the pistol

belonging to Charan Singh. He was not able to give a definite opinion about the other three empty cartridges. On this evidence, as already mentioned, the Sessions Judge convicted three of the accused, except Karam Singh and the High Court on appeal acquitted Bawa Singh.

3. The main points urged before this Court, as also before the High Court were the following :

- (1) That the First Information Report was inordinately delayed and it could not have been lodged at 8 p.m. and that it has been tampered with.
- (2) That two persons at least had been falsely implicated.
- (3) That all the witnesses are highly interested.
- (4) That Sadhu Singh is a false witness.
- (5) That the witnesses have improved upon their previous statements in material particulars.
- (6) The accused had no motive to kill the deceased.

4. The High Court on an elaborate review of the evidence came to the conclusion that the First Information Report was in all likelihood recorded at about midnight. It also thought that Sadhu Singh was not necessarily an untruthful witness who had not seen anything of the occurrence though his evidence had to be scrutinised with a good deal of caution. But about P.Ws. 7, 9, 10 and 11 it thought that they being stamped witnesses it could not be said that the delay in making the FIR as well as sending the report to the Magistrate and the arrival of the dead body at the mortuary were made for procuring false witnesses, and therefore, the delays are not fatal to the prosecution case. It elaborately went into the material particulars leading to Karam Singh's acquittal and held that evidence did not warrant a clear-cut finding that he must have been falsely implicated but that the circumstances were such that the Court could give the benefit of doubt. As regards Bawa Singh the High Court particularly noticed the fact that while the FIR mentioned that he had a dang with a barchhi. It also took into account the fact that Malkiat Singh, P.W. 11 was not very seriously injured. It discussed the nature of the injuries on Malkiat Singh and came to the conclusion that they were probably due to gun shot and Bawa Singh could not, therefore have caused the injuries on P.Ws 9 and 10, and on the ground that Bawa Singh would not have caused them acquitted him. Various other arguments urged on behalf of the appellant were also considered by the High Court and it was of opinion that no effective argument would be built on those minor discrepancies and that there was no ground to reject the testimony of P.Ws 6, 7, 9, 10 and 11 as there was general agreement as to the material particulars. It considered that the medical evidence fully supported the account given by the eye-witnesses. It was not prepared to place any reliance on the contention that the empty cartridges should have been tampered with as there was a long delay between the delay of seizure of those cartridges and of the guns and their being sent to the ballistic expert, and rejected the suggestion that the various police officers constituted a gang which was out to falsely implicate the appellant. In the result the High Court came to the conclusion that the death sentence on appellant should be converted to one of the life imprisonment which was the sentence awarded to Charan Singh by the Sessions Judge.

5. We have set out at length the discussion of the prosecution evidence by the High Court, which shows how full, fair and unexceptional the discussion and the conclusions arrived at by the High Court are. This Court in considering an appeal under the provisions of Article 136 of the

Constitution does not re-appraise the evidence unless there has been gross miscarriage of justice. We are satisfied that the conclusions of the High Court are correct and do not call for any interference at the hands of this Court. This appeal is, therefore, dismissed.

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