

Jagir Singh

Vs

The State (Delhi)

Criminal Appeal No. 5 of 1971

(P. N. Bhagwati, N. L. Untwalia JJ)

04.12.1974

JUDGMENT

BHAGWATI, J. -

1. The appellant was convicted by the Additional Sessions Judge, Delhi of the offence of murder of the Harnek Singh under Section 302 of the Indian penal Code and sentenced to suffer imprisonment for life. The appellant appealed against the order of conviction and sentence but the High Court of Delhi affirmed the judgment of the learned Additional Sessions Judge and rejected the appeal. This appeal is brought by special leave against the judgment of the High Court.

2. The genesis of the incident, in which Harnek Singh met with his death, according to the prosecution, lay in the rivalry between two groups of smugglers, one consisting of Banta Singh, Harnek Singh and others and the other consisting of the appellant, his brothers Karam Singh and Bakhsish Singh and their supporters. There were occasional quarrels between the two groups on account of this rivalry and one such quarrel took place at Hapur at about 3 p.m. on April 3, 1968. The appellant sustained injuries in this quarrel and the fingers of his left hand were fractured. Bakhsish Singh, the brother of the appellant, lodged a report in regard to this incident Ex. P/D at the Police Station at Hapur. It appears - at any rate that was the prosecution case - that the police did not take any action on this report and directed Bakhsish Singh to seek his remedy in a court of law. The appellant and his party accordingly decided to take revenge against Harnek Singh. On the same evening, Harnek Singh with his two drivers Pritam Singh (PW 10) and Swaran Singh (PW 11) left Hapur for U.P. - Delhi border in truck No. USN 2526 in the hope of finding some goods for transport on hire. It was not clear from the evidence of the prosecution witnesses as to whether Sajjan Singh (PW 13) and Mehar Singh accompanied Harnek Singh in truck No. USN 2526 or they went to U.P. - Delhi border in their own truck and met Harnek Singh, Pritam Singh (PW 10) and Swaran Singh (PW 11) at the border. But it was indisputable the prosecution case that from the U.P.-Delhi border Harnek Singh, Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh proceeded together to Delhi in truck No. USN 2526 since they did not find any goods for transport on hire there. When the party reached the junction of Wazirabad Road and Karwal Nagar Road at about 10 p.m., Harnek Singh stopped the truck as he wanted to answer the call of nature. Harnek Singh got down from the truck and proceeded to a spot at a lower level than the road by the side of a culvert in order to ease himself. In the meantime another truck with its number plate covered with mud came from the direction of the Delhi-U.P. border and halted on the left side of the truck of Harnek Singh. The appellant and his brother Karam Singh alighted from that truck and inquired of Pritam Singh and other as to where Harnek Singh was. They stated that Harnek Singh had gone for easing himself. Whilst this conversation was going on, Harnek Singh came up on the road tying the string of his Kachha. On seeing Harnek Singh the appellant and his

brother Karam Singh shouted that they had come to take revenge and he should prepare himself for death. The appellant then fired a shot at the left thigh of Harnek Singh from a country-made pistol of 12 calibre. Harnek Singh fell down on the road on receiving the injury and immediately the appellant and his brother Karam Singh boarded their truck and drove in the direction of Delhi. Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh wrapped the turban of Harnek Singh round the wound which had been caused by the bullet and placing him in the truck brought him to the Irwin Hospital, New Delhi. Sajjan Singh (PW 13) and Mehar Singh got Harnek Singh admitted in the casualty ward of the hospital and gave information about the incident to Bishambhar Dayal (PW 9) who was the police constable on duty at the hospital. Bishambhar Dayal (PW 9) immediately conveyed this information on the telephone at the Shahadra Police Station and this information was recorded in the Roznamcha as Ex. PW 14/A.

3. S. I. Baldevraj, on receiving this information, proceeded to the hospital at about 1 a.m. But by the time he reached there Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh had already left the hospital in the truck. Sajjan Singh (PW 13) and Mehar Singh dropped Pritam Singh (PW 10) and Swaran Singh (PW 11) at Rajghat as they wanted to go to Meerut in order to inform Banta Singh about the injuries received by Harnek Singh. Pritam Singh (PW 10) and Swaran Singh (PW 11), according to the prosecution case, obtained lift in a truck and went to Meerut. Sajjan Singh (PW 13) and Mehar Singh took the truck to Mori Gate after dropping Pritam Singh (PW 10) and Swaran Singh (PW 11) and keeping the truck there, left for Ludhiana in a private taxi for the purpose of informing the relatives of Harnek Singh. When S. I. Baldevraj did not find any of these four persons on reaching the hospital, he tried to take the statement of Harnek Singh but the doctors certified that Harnek Singh was not in a position to make any statement. He, therefore, proceeded to the junction of Wazirabad Road and Karwal Nagar Road in order to inspect the site where the incident was supposed to have taken place but he could not locate the site and hence he returned. On the next morning he handed over the investigation to A. S. I. Balkar Singh.

4. A. S. I. Balkar Singh went to the hospital at about 11 a.m. and tried to take down the statement of Harnek Singh but he could not do so as Harnek Singh was not in a fit condition. In fact Harnek Singh had been operated upon during the night but the operation had to be suspended because his condition was rather serious. A. S. I. Balkar Singh then recorded the statement of Pritam Singh (PW 10) who had in the meantime returned from Meerut along with Swaran Singh (PW 11). This statement is Ex. PG and it was forwarded to Shahadra Police Station for the purpose of registration of the first information report. A. S. I. Balkar Singh also recorded the statement of Swaran Singh (PW 13). Thereafter he took Pritam Singh (PW 10) and Swaran Singh (PW 11) with him and inspected the site of the incident and carried on further investigation. On the next day, that is April 5, 1968, Sajjan Singh (PW 13) and Mehar Singh returned to the hospital. A. S. I. Balkar Singh went with them to the Mori Gate near Gokhale Market and took possession of the truck which was parked by them at that place on the night of April 3, 1968. The punchnama of taking possession of the truck was prepared and thereafter A. S. I. Balkar Singh recorded the statement of Sajjan Singh (PW 13) and Mehar Singh. The condition of Harnek Singh had, however, deteriorated in the meantime and he died in the morning of that day before A. S. I. Balkar Singh proceeded with Sajjan Singh (PW 13) and Mehar Singh to take possession of the truck. A. S. I. Balkar Singh then carried on the usual investigation and after completing it, charge-sheeted the appellant and his brother Karam Singh for the offence of murder of Harnek Singh.

5. The prosecution examined several witnesses before the Additional Sessions Judges, Delhi and amongst them were Pritam Singh (PW 10), Swaran Singh (PW 11) and Sajjan Singh (PW 13) who, according to the prosecution, were eyewitnesses to the incident. Mehar Singh was not examined by

the prosecution on the ground that he had been won over the appellant. Pritam Singh (PW 10) and Sajjan Singh (PW 13) gave evidence in support of the prosecution case and deposed to the incident as it had happened according to the prosecution, but Swaran Singh (PW 11) departed from the prosecution story and stated that he did not know the names of the persons who came in the other truck and added that only one of them was present in the Court and that was Karam Singh and when asked to identify Karam Singh, he pointed at the appellant and consequently he was allowed to be cross-examined by the prosecution. The appellant and Karam Singh did not lead any evidence in defence but their case was that they were falsely implicated on account of enmity with the group of Banta Singh and Harnek Singh. The Additional Sessions Judge accepted the evidence of Pritam Singh (PW 10) and Sajjan Singh (PW 13) and primarily on that evidence came to the conclusion that the prosecution case against the appellant was established beyond reasonable doubt and accordingly convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life. Karam Singh was, however, given the benefit of doubt as the evidence was not sufficient to show that Karam Singh had a common intention with the appellant to kill Harnek Singh and he was acquitted of the offence charged against him.

6. The appellant being aggrieved by the order of conviction and sentence passed against him preferred an appeal to the High Court of Delhi. The High Court examined the evidence on record and taking the same view of the evidence as the learned Additional Sessions Judge held that the guilt of the appellant was established beyond reasonable doubt and accordingly confirmed the conviction and sentence of the appellant and dismissed the appeal. The appellant thereafter obtained special leave to appeal to this Court and hence the present appeal.

7. Now, it is apparent from the judgment of the High Court that the conviction of the appellant rested entirely on the evidence of Pritam Singh (PW 10) and Sajjan Singh (PW 13). Swaran Singh (PW 11) was also examined on behalf of the prosecution but his evidence is of no help to the prosecution because he went back on the story of the prosecution and was permitted to be cross-examined on behalf of the prosecution. It is now well settled that when a witness, who has been called by the prosecution, is permitted to be cross-examined on behalf of the prosecution, the result of that course being adopted is to discredit that witness altogether and not merely to get rid of a part of his testimony. See *Khijiruddin v. Emperor* (27 Cr LJ 266 : AIR 1926 Cal 139 : 92 IC 442). The question which, therefore, arises for consideration is whether the evidence of Pritam Singh (PW 10) and Sajjan Singh (PW 13) can be regarded as sufficient to found the conviction of the appellant. While considering their evidence, the first question which we must ask ourselves is as to when they first disclosed the name of the appellant as assailant of Harnek Singh. If they were really and truly eyewitnesses to the incident, as deposed to by them, they would have known that the appellant had caused a bullet injury on the left thigh of Harnek Singh and in that event they would have disclosed the name of the appellant as the person who shot at Harnek Singh at the earliest opportunity. Pritam Singh (PW 10) undoubtedly stated in his statement Ex. PG that the appellant had fired a shot at the left thigh of Harnek Singh, but this statement Ex. PG was recorded by A. S. I. Balkar Singh after 11 a.m. on April 4, 1968 after Pritam Singh (PW 10) and Swaran Singh (PW 11) had returned from Meerut. The earliest opportunity which Pritam Singh (PW 10), Swaran Singh (PW 11) and Sajjan Singh (PW 13) had of disclosing the name of the appellant as the assailant of Harnek Singh was at the hospital when they brought Harnek Singh in the truck. Bishambhar Dayal (PW 9) was the police constable on duty at the hospital and though Sajjan Singh (PW 13) and Mehar Singh did give information about the incident to Bishambhar Dayal (PW 9) - and that was done in the presence of Pritam Singh (PW 10) and Swaran Singh (PW 11) - none of them disclosed the name of the person who had fired at Harnek Singh. Surely the name of the assailant was very important part of the information in regard to the incident and there can be little doubt that if Pritam Singh (PW 10),

Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh or any one of them knew who the assailant was, they would have definitely mentioned the name of the assailant to Bishambhar Dayal (PW 9). Even if these witnesses did not disclose the name of the appellant while narrating the incident, Bishambhar Dayal (PW 9), as an experienced police constable would have certainly asked them as to who the assailant was and got the name of the assailant from them if they knew it. But when we turn to the evidence of Bishambhar Dayal (PW 9), we find that he nowhere states that the name of the appellant was disclosed to him. His evidence is quite laconic. All that he states is that he "sent information to the P. S. Shahadra on telephone". The information conveyed by him is recorded in the roznamcha as Ex. PW 14/A. This exhibit shows that the information was conveyed at 11.37 p.m. and it was in the following terms : ". . . Harnek Singh ... injured today in a Larai Jhagra (fight and scuffle) near Timarpur bridge, Shahadra side has been got admitted to Irwin Hospital in an injured condition by Sajjan Singh . . . and Mehar Singh ..." Obviously, the name of the assailant of Harnek Singh was not given by Bishambhar Dayal (PW 9) when he telephoned to the Shahadra police station. The irresistible inference must be that he did not know the name of the assailant at that time. If he knew, he would have certainly conveyed it as part of the information of the offence given by him. It can be presumed that as an experienced police constable he would know that when he is giving information to the police station about an incident of 'Larai Jhagra' where a man has been severely injured, the most important part of the information would be the name of the assailant and he would definitely convey it if it was disclosed to him. We cannot accept the theory which found favour with the High Court that the name of the assailant was disclosed by Sajjan Singh (PW 13) and Mehar Singh to Bishambhar Dayal (PW 9), but he must have forgotten to mention it when he gave the information Ex. PW 14/A. It is also significant to note the Bishambhar Dayal (PW 9) did not state in his evidence that the name of the assailant of Harnek Singh was disclosed to him. If the case of the prosecution was that the name of the appellant was disclosed to Bishambhar Dayal (PW 9) by Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) or Mehar Singh, the prosecuting Counsel should have put a question to that effect in the examination-in-chief of Bishambhar Dayal (PW 9), but no such question was asked. Then again, it may be noted that when S. I. Baldev Raj came to the hospital at about 1 a.m., pursuant to the information received from Bishambhar Dayal (PW 9), he enquired, but Bishambhar Dayal (PW 9) did not give him the name of the assailant of Harnek Singh. That would indeed be most extraordinary if Bishambhar Dayal (PW 9) knew the name of the assailant. On the next day also, when A. S. I. Balkar Singh went to the hospital at about 11 a.m. he contacted Bishambhar Dayal (PW 9) and the latter accompanied him to the ward and yet no questions were asked and no information was given as to the identity of the assailant. It is only at about 11.45 a.m. or 12 noon when A. S. I. Balkar Singh met Pritam Singh (PW 10) that he came to know for the first time the name of the assailant. It is, therefore, clear that the name of the assailant was not given to Bishambhar Dayal (PW 9) at the time when Harnek Singh was brought to the hospital by Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh. Pritam Singh (PW 10) also did not say in his evidence that the name of the assailant was mentioned to Bishambhar Dayal (PW 9). It is only Sajjan Singh (PW 13) who said so and that evidence obviously cannot be accepted. It is a definite improvement by Sajjan Singh (PW 13), coming after Bishambhar Dayal (PW 9) and Pritam Singh (PW 10), coming after Bishambhar Dayal (PW 9) and Pritam Singh (PW 10) in the witness box. There can, therefore, be no doubt that the name of the appellant as assailant of Harnek Singh was not disclosed by Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh at the earliest opportunity and it was only on the next day at about 11.45 a.m. or 12 noon that for the first time the name of the appellant was given out by Pritam Singh (PW 10) and that was after he and Swaran Singh (PW 11) had gone to Meerut, discussed the matter with Banta Singh and returned to the hospital. This circumstance casts serious doubt on the testimony of

Pritam Singh (PW 10) and Sajjan Singh (PW 13) that the incident happened as deposed to by them and it was the appellants who fired a shot at Harnek Singh. It seems that either Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh did not witness the incident or they could not identify the assailant of Harnek Singh and it was for this reason that they did not - indeed could not - disclose the name of the assailant at the earliest opportunity to Bishambhar Dayal (PW 9).

8. It is also significant to note that after leaving Harnek Singh in the hospital, Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh did not proceed to the Shahadra Police Station for giving information in regard to the incident, nor wait at the hospital in order to attend on Harnek Singh and watch his condition, but two of them, namely, Pritam Singh (PW 10) and Swaran Singh (PW 11), decided to go to Meerut the same night in order to meet Banta Singh and obtained lift by a truck proceeding to Meerut, and the other two, namely, Sajjan Singh (PW 13) and Mehar Singh, took the truck to Mori Gate and parked it there and immediately left for Ludhiana in a private taxi. This was strange and inexplicable conduct on the part of Pritam Singh (PW 10), Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh. It is difficult to understand why Pritam Singh (PW 10) and Swaran Singh (PW 11) should have been in such a hurry to go to Meerut to meet Banta Singh that they should have proceeded the same night without even carrying to lodge a report at the Shahadra police Station or bothering to find out how Harnek Singh was faring in the hospital. The only hypothesis on which this extraordinary conduct of Pritam Singh (PW 10) and Swaran Singh (PW 11) can be explicable is that they did not know who was the assailant of Harnek Singh and they wanted to discuss the matter with Banta Singh before they gave out the name of some assailant to the police. The truck of Harnek Singh was attached to the fleet of trucks belonging to Banta Singh and Banta Singh was obviously the leader of the group and presumably that was the reason why Pritam Singh (PW 10) and Swaran Singh (PW 11) decided to discuss the matter with Banta Singh so that they could fix upon the name of the assailant to be given to the police. The discussion with Banta Singh provided the inspiration for giving the name of the appellants as the assailant of Harnek Singh.

9. There are also a few other features which throw grave doubt on the credibility of the prosecution case. In the first place, Pritam Singh (PW 10) stated in evidence that the appellants fired the shot "with his arm stretched horizontally with a slight bent downwards" and Sajjan Singh (PW 13) also repeated that the appellants fired "with his hands stretched downward and aiming at the thigh of the deceased". That would mean that the bullet must have travelled downward from the point of entry in the thigh of Harnek Singh. But Dr. Bishnu Kumar, Head of the Department of Forensic Medicine, Maulana Azad Medical College, New Delhi, who gave evidence as PW 2, definitely asserted that "the hand which fired the shot must have been at a slightly lower level than the part of the body hit by the shot. The barrel of the weapon would be slightly pointing upward". This expert evidence given by the Head of the Department of Forensic Medicine clearly shows that the incident did not happen in manner deposed to by Pritam Singh (PW 10) and Sajjan Singh (PW 13) and their evidence being in conflict with the unimpeachable expert evidence, which was not even attempted to be contradicted in cross-examination, cannot be accepted. Then again, it is rather difficult to appreciate why A.S.I. Balkar Singh should not have taken possession of the tarpaulin when he seized the truck in the morning of April 15, 1968 when, according to the prosecution case, Harnek Singh was placed in truck, he was still bleeding and blood kept tarpaulin was, therefore, blood stained, if not blood soaked and it would have been a valuable piece of evidence which should have been taken possession of by A.S.I. Balkar Singh. The fact that A.S.I. Balkar Singh did not take possession of the tarpaulin is also a circumstance which detracts from the veracity of the prosecution case. It is also strange and inexplicable as to why Pritam Singh (PW 10), Swaran Singh (PW 11)

and Sajjan Singh (PW 13) and should not have gone to a police station to report the incident even though Darya Gani Police Station and Civil Lines Police Station were almost on the way from the place of incident to the hospital. One also fails to understand why the blood stained clothes of Pritam Singh (PW 10) and Swaran Singh (PW 11) should have been taken possession of by A.S.I. Balkar Singh. Sajjan Singh (PW 13) of course stated that he had washed his blood stained clothes and did not, therefore, hand them over to the police, but there is no reason why he should have acted in this manner. Then the story that Sajjan Singh (PW 13) and Mehar Singh parked the truck on the road near Mori Gate and leaving it there proceeded to the village of Harnek Singh near Ludhiana by a private taxi costing Rs. 300 is also rather difficult to accept. Why should Sajjan Singh (PW 13) and Mehar Singh have spent Rs. 300 on a private taxi merely for the purpose of going to Harnek Singh's village. They could have easily sent an urgent telegram to the relatives of Harnek Singh informing them about the incident and asking them to come over to New Delhi. Sajjan Singh (PW 13) could not even give the number of the private taxi by which they went to Harnek Singh's village or the name of the driver or any other particulars about the private taxi. Moreover, when Sajjan Singh (PW 13) was asked who was the nephew of Harnek Singh who came with him from Harnek Singh's village to the hospital, he could not even give his name. If in fact Harnek Singh's nephew had come with Sajjan Singh (PW 13) and Mehar Singh to the hospital, the prosecution could have easily examined him to support the version of Sajjan Singh (PW 13). It is also significant that neither Pritam Singh (PW 10) nor Sajjan Singh (PW 13) could give the number of the truck in which the appellant and Karam Singh came to the place of the occurrence. If in fact the incident had happened, as deposed to by them, they would have surely noticed the number of the truck and disclosed it to the police. But they were not in a position to give the number of the truck, and therefore, they gave a false excuse that all the four number plates of the truck were covered with mud. Lastly, it is too much of a coincidence that the appellant, wishing to take revenge against Harnek Singh for the incident which took place at Hapur in the afternoon of April 3, 1968, should chance to meet Harnek Singh the same night on a lonely road and be provided with an opportunity for avenging himself. These circumstances cast grave doubt on the story of the prosecution and it is difficult to accept that the attack on Harnek Singh took place in the manner alleged by the prosecution and the appellant was responsible for the same.

10. The evidence of Pritam Singh (PW 10) and Sajjan Singh (PW 13) also suffers from various infirmities. Pritam Singh (PW 10) stated in his evidence that all four of them, namely, he himself, Swaran Singh (PW 11), Sajjan Singh (PW 13) and Mehar Singh went with Harnek Singh in his truck from Hapur to U.P.-Delhi border. But on this point Sajjan Singh (PW 13) had a different story to tell. According to Sajjan Singh (PW 13), only Pritam Singh (PW 10) and Swaran Singh (PW 11) accompanied Harnek Singh in his truck from Hapur to U.P.-Delhi border, while Sajjan Singh (PW 13) and Mehar Singh proceeded from Hapur to U.P.-Delhi border in Mehar's truck and it was only at the U.P.-Delhi border that they all met. The versions of Pritam Singh (PW 10) and Sajjan Singh (PW 13), thus, different on a rather important point. Both Pritam Singh (PW 10) and Sajjan Singh (PW 13) stated in their evidence that the head lights of the truck of the appellant were on throughout the time when the incident took place and it was on account of this light that they could see and identify the appellant and Karam Singh when they challenged Harnek Singh and the appellant shot at him. Now, it could hardly be disputed that it was a dark night when the incident took place and but for some artificial light, it could not be possible for any one to identify the assailants of Harnek Singh. Pritam Singh (PW 10) and Sajjan Singh (PW 13) were, therefore, constrained to introduce the theory that throughout the time that the incident took place the head lights of the appellant's truck were on. This theory was clearly an after thought and no trace of it was to be found in the statements made by them before the police or in the court of the committing Magistrate. Pritam

Singh (PW 10) stated in his evidence that he and Swaran Singh (PW 11) went to Meerut in order to inform Banta Singh about the incident and at Meerut he "narrated the occurrence to Banta Singh", but on this point he was contradicted by reference to his statement before the committing Magistrate where he had stated that Banta Singh was not available at Meerut and he could not give and explanation for this contradiction. He also at first pleaded ignorance about the incident which took place at Hapur in the afternoon on April 3, 1968, but when pressed, he had to admit that "a fight took place that day at Hapur and that Harnek Singh and I participated in it". Though, according to him, he had been serving as a driver of Harnek Singh for about two months, he could not say to what place during this period the truck had been taken and what goods had been carried. When asked whether Harnek Singh had a permit for plying the truck in Delhi, he stated that Harnek Singh had such permit, but he was then constrained to admit that he had neither seen the permit nor had Harnek Singh told him about it and he did not know when the permit was applied for and in whose name it stood. Sajjan Singh (PW 13) also made various statements in his evidence which contradicted what was stated by him in his statements before the police and the committing Magistrate. He had, according to the evidence given by him, gone to Meerut in order to obtain old tyres for his "rehri", but in cross-examination he stated that he did not talk about the tyres with Harnek Singh throughout the period he stayed with him. These infirmities, coupled with the various circumstances which we have discussed above, clearly show that the evidence of Pritam Singh (PW 10) and Sajjan Singh (PW 13) is not at all worthy of credit and it cannot be relied upon for the purpose of holding that it was the appellant who fired a shot at Harnek Singh and killed him.

11. Since, apart from the evidence of Pritam Singh (PW 10) and Sajjan Singh (PW 13), there is no other evidence to establish the prosecution case against the appellant, the appellant cannot be held guilty of the offence charged against him and the conviction and sentence recorded against him by the learned Additional Sessions Judge and confirmed by the High Court must be set aside.

12. We accordingly allow the appeal, set aside the conviction and sentence recorded against the appellant and acquit him of the offence charged against him. Since the appellant is on bail, the bail bonds executed by him will stand cancelled.

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