

Mohan Singh

Vs

State of Punjab

Criminal Appeal No. 208 of 1971

(A. Alagiriswami, N. L. Untwalia JJ)

13.03.1975

JUDGMENT

ALAGIRISWAMI, J. –

1. The appellant, his father Teja Singh and his brothers Jaswant Singh and Balwant Singh were tried before the Additional Sessions Judge, Amritsar, for the murder of Dial Singh and causing grievous injuries and simple hurts to Smt. Swaran Kaur on April 27, 1968. The learned Sessions Judge acquitted Balwant Singh and Jaswant Singh and convicted the appellant and his father. On appeal before the High Court of Punjab and Haryana the father was acquitted while the sentence passed on the appellant was confirmed.

2. The occurrence, as already mentioned, took place on April 27, 1968. On that day the appellant's mother was going in the lane in front of the house of Karam Singh. There was an exchange of abuses between Karam Singh's wife and mother and the appellant's mother because Karam Singh's dog had barked at her. Shortly thereafter the appellant and his brothers came to Karam Singh's house and again started abusing. The appellant was then carrying a gun. When Karam Singh returned home and heard about this incident he abused the accused. This brought the appellant and his brothers to the lane and they in turn abused Karam Singh. The deceased Dial Singh, a cousin of the appellant came there at that time carrying a dang and challenged the appellant and his companions. Teja Singh came there at that time and exhorted the appellant to fire. The appellant fired the gun as a result of which Dial Singh died and Swaran Kaur was also hit.

3. According to the appellant when he went to his house to fetch a dang he heard his father, Teja Singh, raise an alarm 'Mar sitty' and he heard the report of a fire-shot. He picked up the gun and went out and saw Swaran Kaur lying injured and Dial Singh armed with a pistol. When Dial Singh started loading his pistol he fired at him in self-defence. The short and simple point therefore is whether the appellant fired at and killed Dial Singh in self-defence.

4. According to the prosecution case Swaran Kaur, the aunt of the appellant, was standing behind Dial Singh when the appellant shot at him and the shot which entered the body of Dial Singh came out and hit Swaran Kaur. The prosecution evidence itself is that Swaran Kaur was trying to dissuade the appellant and his people from quarrelling. Therefore she must have been in front of him and could not have been behind Dial Singh. Moreover, even according to the prosecution evidence she was at least 25 or 30 feet behind Dial Singh when the shot was fired by the appellant. A third circumstance is that whereas the injuries on the deceased were in the chest the injuries on Swaran Kaur were a little above the knee and below the knee. These three circumstances improbably prove the prosecution story of the shot fired at Dial Singh going through his body and then going further and

hitting Swaran Kaur. The shot resulted in Swaran Kaur's femur being fractured. The rib of the deceased was also fractured. In this state of the evidence the learned Judges of the High Court thought it necessary to examine a ballistic expert. They have relied heavily on his evidence in order to sustain the conviction of the appellant. We have carefully gone through his evidence and are of opinion that it does not help to establish the prosecution case, at least not beyond reasonable doubt.

5. According to the expert the parcel, Ex. P-1, contained two shots and the parcel, Ex. P-2 contained one shot. The shots in parcels P-1 weighed 4.41 gms. and 4.24 gms. The correct weight of L.G. and S.G. shots is 4.54 gms. and 3.54 gms. respectively. Therefore the two shots in parcel, Ex. P-1, were discharged from a cartridge of L.G. size. This part of the evidence may be accepted as correct even though there is some difference between 4.54 gms., 4.41 gms. and 4.24 gms. The shot contained in parcel, Ex. P-2, was found to weigh 2.76 gms. It could therefore be either an L.G. or S.G. shot. The expert, however, says that the general shape of the undamaged portion indicated that the shot was possibly an L.G. shot. He was not categorical about it. He was sure that it was a factory-made one. There are 6 and 9 shots in an L.G. and S.G. cartridge of standard size respectively.

6. Now in this case there were five injuries on the deceased all caused by shots. There were three injuries on Swaran Kaur. Even assuming that all these three injuries were caused by three of the shots which entered Dial Singh's body, a position which we find it difficult to accept as natural in view of the force with which they have entered Swaran Kaur's body, there were two more shots, one found in the wall of Sardul Singh's house and another found in front of Malagar Singh's house. There are thus seven shots the presence of which have to be explained. The learned Judges of the High Court thought that the shot found in front of Malagar Singh's could have dropped from the person of Dial Singh when he was moving into the house of Malagar Singh or dropped from his apparel in which it had got caught after piercing through a wound. This is a proposition which appears to us to be farfetched. There is no evidence to support such a proposition. The expert was not asked about it nor was the doctor who conducted the post mortem. It appears to us that the shots which could pierce through a body and hit another person at a distance of 30 feet and cause grievous injuries to that person cannot drop from the body of the first person or get caught in his apparel after piercing through his wounds. It also appears to us that the shots which passed through the body of Dial Singh could not have travelled another 30 feet and hit Swaran Kaur with such force as to fracture her femur. Furthermore, the location of the injuries on Swaran Kaur compared to the location of the injuries on the body of the deceased person cannot be explained as easily as was thought possible by the learned Judges of the High Court. The expert stated that the shots after entering the body of Dial Singh had deflected downwards and this was particularly true in the case of injury number one; secondly that Dial Singh must have instinctively ducked while receiving the shots or at the instant when the shots came out of his body. It is not possible to accept that all the three shots which entered Swaran Kaur could have deflected downwards. If Dial Singh had also ducked then the shot which was deflected could have gone still lower and could not have hit her at all. The evidence of Joginder Kaur that immediately after the gun-fire the deceased was seen in a bending position and staggering with his hands placed on his wound cannot support this conclusion. A gunshot takes much less than a split-second to enter a body and we are unable to agree that Dial Singh could have ducked and that might have been responsible for the shots which entered his body finding a lower target when they came out of his body.

7. The expert stated that he came to the conclusion that the injuries on Dial Singh and Swaran Kaur were probably caused by one gunfire only. It must first of all be noted that he is not categorical about it. The reasons for his conclusions are the dimensions of the injuries. He had not seen the injuries and it would need superhuman ability to come to a conclusion on this subject by merely

looking at the description of the injuries or even the photographs given by the doctors. The dimensions of the injuries noted by the doctors cannot be correct to the extent of 1/100th of an inch. Most of the expert's answers are not categorical. He did not have an opportunity of seeing the injuries and exist wounds of the shots himself. He was mostly giving his answers on the basis of observations made by others and measurements noted by them. A small difference in the measurements one way or the other might make all the difference to the final result. We think it would be unsafe to place implicit reliance on the evidence of the expert for the reasons we have already given and hold that the shots which hit Swaran Kaur and which resulted in the death of Dial Singh were fired from the same gun in a single shot. Furthermore, when Karam Singh started out of his house, having heard about the appellant and his people having come to his house and abused and the appellant being armed with a gun, he is not likely to have gone out unarmed. He was accompanied by Dial Singh when he met the appellant and his party. Swaran Kaur was appellant's aunt. She was trying to persuade Karam Singh and others not to abuse. So she could not have gone behind Dial Singh while doing so and been hit by the bullets which hit Dial Singh. It seems more likely that the injury was caused to Swaran Kaur from a member of Karam Singh's party as pleaded by the appellant. In any case we consider that it is not established beyond reasonable doubt that the shots which hit Swaran Kaur were the same shots which hit Dial Singh. An accused pleading the right of self-defence need not prove it beyond reasonable doubt. It is enough if he establishes facts which on the test of preponderance of probabilities make his defence acceptable. In any event, the discarding of the prosecution story by us as respects the manner of the causing of the injuries on Swaran Kaur means that the whole story as to the manner of occurrence becomes very doubtful. In such a situation the benefit of doubt must go to the accused.

8. We, therefore, allow the appeal and set aside the conviction and punishment imposed upon the appellant.

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