

Gurdas Singh and Others

Vs

The State of Rajasthan

Criminal Appeal No. 52 of 1974

(V. R. Krishna Iyer, N. L. Untawalia JJ)

15.04.1975

JUDGMENT

UNTWALIA, J. -

1. There are three appellants in this appeal by special leave. The occurrence in question took place at about 4 : 30 p.m. on June 8, 1971 in the house of Dhanna Singh, deceased, in the village Sangrana, police station Gajsinghpur, district in the State of Rajasthan. In the occurrence were killed Dhanna Singh, his younger brother Tota Singh and another person Jagdev Singh by firearms. Ajaib Singh PW 1 received a gunshot injury on his hand. Five persons armed with various firearms are said to have raided the baithak of Dhanna Singh situated on the south of the public road, north of which is a dharamshala.

2. One Charan Singh, Dhanna Singh's uncle was owner of 18 bighas of land in village Sangrana. He sold 12 bighas out of this to Bikar Singh, who forcibly took possession of the entire 18 bighas of land. Possession over the 6 bighas of land which was not sold, was taken back from Bikar Singh. Relations between the two families were embittered in connection with the said land. It is also said that Dhanna Singh had deposed in a criminal case some time before the occurrence against one of the sons of Bikar Singh. In the afternoon of June 8, Dhanna Singh was sleeping on a cot in the baithak towards the eastern side. Jagdev Singh was sleeping on another cot near the northern door of the baithak. Other persons present there were Mst. Sant Kaur, mother of Dhanna Singh, Murti, sister of Dhanna Singh, Ajaib Singh, Naib Singh and Mahender Singh, brother of Dhanna Singh. All of a sudden appellant Gurdas Singh, son of Bikar Singh, appellant Bawa Singh, Gurdas Singh and Darshan Singh, son of Sampuran Singh, appeared at the northern door of the baithak armed with types of firearms. Appellants Gurdas Singh was armed with a 12 bore gun. He fired shots at Dhanna Singh causing his instantaneous death. Bawa Singh was also armed with a 12 bore gun and fired two shots at Jagdev Singh one after the other and caused his instantaneous death. When these shots were fired by the two appellants, appellant Jaswant Singh went from the northern door of the baithak to the western door of the bakhhal and took his position there with a 32 revolver in his hand so that the victims may not escape. Gurdas Singh, son of Sampuran Singh is said have posted himself at the northern gate. Ajaib Singh PW 1, Naib Singh PW 5 and Tota Singh deceased ran from the place. On either side of the baithak is a chabutari also called chowki. On the southern chabutari, Murti was washing clothes. Darshan Singh is said to have aimed his 12 bore gun at Ajaib Singh and fired a shot which hit him on his hand. One by one, scaling over the compound wall, Naib Singh, Murti and Mahender Singh entered the house of Thakar Singh, PW 4 which was adjacent east of the house Dhanna Singh. Sant Kaur remained in the baithak. Tota Singh took shelter in one of the rooms called Kotha. Shots were fired at the door of the kotha. Tota Singh was given an assurance that he would not be killed and was made to come out of the kotha. Upon this Darshan Singh gave him a

push. He fell down. Thereupon appellants Gurdas Singh and Bawa Singh are said to have shot him dead. The three appellants thereafter went to the house of Thakar Singh. They asked him to open the door and hand over the enemies to them. Thakar Singh did not open the door. The assailants then left the place.

3. Ajaib Singh and Naib Singh came back to their house and found Tota Singh lying dead near the western side gate of the bakhhal. Dhanna Singh and Jagdev Singh were found lying dead in the baithak where Sant Kaur was sitting on the floor and weeping. Ajaib Singh went to village 22 R. B. to inform one of their friends Khushal Singh a member of the panchayat about the incident. Naib Singh went to village 28 ff. From There he went to the police station and lodged a first information report Ext. P-9 at 9.30 p.m. on June 8, 1971. Shambhu Singh, PW 11, the then the Station House Officer registered a case against all the five accused whose names were in F.I.R. PW 11 Shambhu Singh visited the spot at about 11-00 p.m. in the same night. PW 10 Jalley Singh took charge of the investigation from him. Part of the investigation was done or supervised by Dy. S. P. Mewa Ram. The District Superintendent of Police also did some supervision work. Eventually chargesheets were submitted against the three appellants only. It is amazing to find this case that chargesheet was not submitted against Gurdas Singh and Darshan Singh the two sons of Sampuran Singh. In their favour a report under Section 169 of the Code of Criminal Procedure, 1898 was submitted to the Magistrate and they were not put on trial in a court of law. It was neither clear to the High Court nor to us as to what was the basis, circumstances and material upon which the investigation agency usurped the role of the court and recorded a verdict of innocence in favour of the two sons of Sampuran Singh. The learned Judges of the High Court have mentioned in their judgment that even on perusal of the case diary they did not find any justification for not submitting a chargesheet against Gurdas Singh and Darshan Singh sons of Sampuran Singh. The evidence of the prosecution witnesses, if true, against the three appellants was prima facie equally true against the other two. The Matter, Therefore, required a probe by the higher authorities of the Rajasthan Government as stated in the judgment of the High Court. Mr. S. M. Jain could not inform us whether any probe was made. If so with that result ? We fully endorse in this regard all that has been said by the High Court in its judgment. We hope and trust that in a serious case of this nature where three murders were committed in broad daylight the matter will not go unnoticed and uncared for, an enquiry into the conduct of the police officers responsible for this apparently unjust and unjustified behavior would be made and such action will be taken as the Government may deem fit and proper to take.

4. The prosecution story and its evidence did receive a jerk and jolt because two persons were not put on trial. But we agree with the two courts below that the jerk or jolt was not such as to upset and tilt the prosecution version against the three appellants and create any reasonable doubt in regard to their complicity in the ghastly crime.

5. The defence of the appellants was that some unknown persons committed the crime and they have been falsely implicated in the case out of enmity. Three defence witnesses were also examined. DW 1 Gurdev Singh and DW 2 Balbir Singh were examined to say that Gurdas Singh and Darshan Singh, the two sons of Sampuran Singh were present in the dharamshala and were not participants in the crime. We could not appreciate as to what was necessity of examining such defence witnesses when the said two persons were not put on trial. D W 3 Gopal Dass was a formal witness. None was examined on behalf of the appellants to say that it was not they who had committed the crime but some-body else.

6. The four eyewitnesses to the occurrence examined in the Sessions Court are Ajaib Singh, Mahender Singh, Murti and Naib Singh respectively, PWs 1, 2, 3 and 5. Sant Kaur was examined as

an eyewitness in the committing Court. She was also cross-examined by the accused in that Court. She, however, died before the case was taken up in the Sessions Court. Her deposition in the committing Court was taken under Section 33 of the Evidence Act as a deposition of PW 19. Thakar Singh was examined as PW 4. He made several statements in the Sessions Court, contradictory to those made before the investigating agency. He was therefore, declared hostile and was permitted to be cross examined by the prosecution.

7. Inter se relationship of the five persons accused of having committed the crime is like this. As already stated appellant Gurdas Singh is son of Bikar Singh. Appellant Bawa Singh is son of a maternal uncle of Bikar Singh. Appellant Jaswant Singh is brother-in-law (sister) of Malagar Singh—another son of Bikar Singh. Sampuran Singh, father of the two persons not put on trial, is said to be another maternal uncle of Bikar Singh. Thus all the five were closely related.

8. During the course of investigation seven cartridges were recovered at the place of occurrence. One empty cartridge and one misfired 12 bore cartridge were found near the dead body of Tota Singh. Five empty Cartridges were found lying on the southern chabutari where Murti was washing clothes. A licenced DBBL gun was recovered at the instance of Gurdas Singh. A SBBL gun was recovered on being pointed out by appellant Bawa Singh. Four of the cartridges, according to the evidence of the ballistic expert, PW 13 Dr. M. Johari, had been fired from the single-barrel gun recovered at the instance of Bawa Singh. Dr. Johari was definite that misfired cartridge was neither from the double barrel gun of appellant Gurdas Singh nor from the single barrel gun of appellant Bawa Singh. This clearly established the use of a third gun in the occurrence as was the prosecution case. Dr. Johari could not give any definite opinion about the other two empty cartridges as to whether they were fired from the DBBL gun of appellant Gurdas Singh. The findings of the ballistic expert and exemption of two persons from trial did create some confusion in the prosecution evidence and perhaps led the witnesses to make some changes or embellishments in their evidence. Nonetheless as found by the courts below, in material particulars the evidence of the eyewitnesses was trustworthy, credible and truthful.

9. The learned Sessions Judge, Ganganagar found that appellant Bawa Singh was armed with a single-barrel gun which was recovered at his instance. Appellant Gurdas Singh was armed with double barrel gun and appellant Jaswant Singh with a revolver. He also found that appellant Gurdas Singh fired at Dhanna Singh and caused his death, appellant Gurdas Singh fired at Tota Singh and caused his death. Although Darshan Singh was not on trial but the trial Judge was constrained to believe the prosecution evidence that Ajaib Singh was hit by the shot of Darshan Singh. His finding further was that appellant Jaswant Singh was armed with a revolver and took his stand near the western gate. The evidence regarding firing by him from his revolver was contradictory and was therefore not accepted. The trial Judge, therefore, convicted appellant Gurdas Singh under Section 449 of the Penal Code and sentenced him to life imprisonment. For the murder of Dhanna Singh and Tota Singh, Gurdas Singh was sentenced to death under Section 302 of the Penal Code. He was also held guilty under Section 302/34 for the murder of Jagdev Singh and was given sentence of death on that count too. He was also convicted under Section 27 of the Indian Arms Act with sentence of 2 years' imprisonment. Appellant Bawa Singh was given death sentence under Section 302 for the murder of Jagdev Singh and with the aid of Section 34 for the murder of Dhanna Singh and Tota Singh. Convictions and sentence were also awarded to him under Section 449 of the Penal Code and Section 27 of the Arms Act. Appellant Jaswant Singh was held guilty under Section 302 with the aid of Section 34 for the murder of all the three persons. He was sentenced to life imprisonment. He was also given two years rigorous imprisonment under Section 27 of the Indian Arms Act. All sentences were directed to run concurrently. The case went to the High Court in

appeal as also in reference for confirmation of the death sentence on the two appellants.

10. The High Court found appellant Gurdas Singh guilty for killing Dhanna Singh and Tota Singh. The evidence of Sant Kaur that appellant Gurdas Singh his leg on the chest of Tota Singh and opened fire was believed. His death sentence was confirmed chiefly because of the allegedly brutal manner of causing death of the young boy Tota Singh. The High Court did not except the evidence of recovery of single-barrel gun at the instance of appellant Bawa Singh. It, therefore, did not accept the prosecution case that Bawa Singh killed Jagdev Singh by using the said single-barrel gun. There was a great confusion in the evidence on the point whether Bawa Singh was armed with a single-barrel gun or a double-barrel gun. But this much is certain that he was armed with a gun. In that view of the matter Bawa Singh was held responsible for the murders by applying Section 34 of the Indian Penal Code. His death sentence was not confirmed and instead he was awarded life imprisonment by the High Court. At one place the High Court seems to have found regarding appellant Jaswant Singh, in view of the contradictions in the evidence, that he was armed with a deadly weapon. At another place it seems to be of the view that he was armed with a revolver. But finding him an active participant in the crime by his presence at the western door, his conviction and sentence under Section 302 with the aid of Section 34 of the Penal Code have been maintained. The other convictions and sentences of the appellants were not disturbed.

11. Mr. A. N. Mulla who had argued the case of the appellants in the Rajasthan High Court, canvassed their case before us also their acquittal more or less on all the points which were pressed before the High Court. We shall enumerate the submission made by him but do not consider it necessary to discuss all of them in this judgment as mostly they are concerned with the concurrent findings of fact recorded by the two courts below. This Court is loathe to reappraise the evidence in any detail and does not think it necessary to go into all questions of fact and the points in relation to them. Mr. Mulla submitted :

- (1) That the witnesses examined in this case are all members of the family of Dhanna Singh and are highly partisan witnesses. No independent witness was examined. Although two persons sitting in dharamshala were cited as witnesses and many others could have been of help in unfolding the story, none was examined.
- (2) According to the evidence of PW 4 Thakar Singh only Ajaib Singh went to his house and not Naib Singh. Therefore, Naib Singh was not present at the scene of the occurrence.
- (3) The evidence of Ajaib Singh and Naib Singh has not been relied upon on material particulars by the High Court especially in regard to the part played by the appellant Bawa Singh in killing Jagdev Singh and Tota Singh.
- (4) Naib Singh did not come back to his house from the house of Thakar Singh. Therefore the first information report lodged by him was doubtful.
- (5) Ajaib Singh had become unconscious after reaching village 22 R. B. His statement, therefore could not be recorded at 1.00 a.m. in the night between June 8 and 9 as claimed to have been done.
- (6) The statements of other witnesses were recorded late by the investigating agency.
- (7) The witness made a definite development in their evidence when they put the

single-barrel gun in the hands of appellant Bawa Singh after the opinion of the ballistic expert.

(8) One or two more guns other than the guns in the hands of appellants Gurdas Singh and Bawa Singh had been used, not known by whom.

(9) There were substantial changes in the prosecution story given before the police in the committing Court and the Sessions Court.

(10) Case of the appellant Jaswant Singh is entirely different and he could not be held guilty with the aid of Section 34 for any of the murders when there was no certainty as to the weapon in his hand and the firing by him with his weapon was not accepted.

(11) That in view of the matter appellant Gurdas Singh ought not to have been sentenced to death. As in the case of Bawa Singh, in his case too a sentence of life imprisonment would have met ends of justice.

12. It is no doubt true that some persons who could have supported the eyewitnesses as independent witnesses have not been examined. But the reason is not far to seek. The appellants, if they could commit the ghastly crime for the type enmity which they had with the family of Dhanna Singh no independent person could dare come and depose against them. The High Court has rightly rejected this point. Thakar Singh the next door neighbour was examined as PW 4. It is clear from his evidence that although he was constrained to admit some portions of the prosecution story, he made a violent departure from his statement made before the investigating agency and did not apparently, out of fear from or collusion with the appellants, support the prosecution case as he was supposed to do. Although his statements before the police could not be used as substantive pieces of evidence in the case, demonstrably they showed the hostile attitude of Thakar Singh who was examined after examining three members of the family. Prosecution in the circumstances was not expected to examine any other so-called independent witness who it thought not safe to examine as due to one reason or other he by joining hand with the accused did no longer remain independent.

13. Points Nos. 2, 3, 4, 5 and 6 have rightly been rejected by the High Court and do not merit any detailed discussion in this judgment.

14. Points Nos. 7, 8, 9, 10 and 11 may be taken up together. On perusal of the evidence of the eyewitnesses which was placed before us, and the judgments of the two courts below we have come to the conclusion that there is absolutely no doubt that the three appellants in the company of two more came to the place of occurrence being armed with firearms. Appellants Gurdas Singh and Bawa Singh had guns in their hands. It is immaterial whether the latter had a double-barrel or a single-barrel gun. No empty cartridge was found in the baithak. It could not, therefore, be definitely found whether appellant Gurdas Singh was armed with the double-barrel gun which was recovered at his instance. It is of no consequence in this case whether he had this double-barrel gun or any other double-barrel gun. It is preposterous to suggest that some unknown persons had come and committed the ghastly crime of three murders by firearms. The family members did not implicate the appellants falsely leaving out the real culprits or because they were unidentified. As we have stated earlier in this judgment, the prosecution version did receive a jerk because of the finding of the single-barrel gun allegedly at the instance of appellant Bawa Singh and exemption from the dock of the two of the five culprits. There was some change in the prosecution evidence as respects the

double-barrel or the single-barrel gun in the hands of Bawa Singh. Otherwise there was no material change in the different versions given at different stages. We have no doubt in our mind that appellant Gurdas Singh fired shots with the gun which was in his hand at the time of occurrence of Dhanna Singh and killed him. He along with another assailant was responsible for causing the death of Tota Singh. But the story that Gurdas Singh put his leg on the chest of Tota Singh as told by Sant Kaur in the committing Court was not supported by any of the eyewitnesses in the Sessions Court. The High Court seems to have committed an error in thinking that Mahender Singh, PW 2 and Murti, PW 3 supported the said story. We, therefore, do not accept that appellant Gurdas Singh adopted any different brutal method in firing at Tota Singh from the one adopted by the other assailant. We are further inclined to think that the evidence clearly showed that appellant Bawa Singh shot at Jagdev Singh with a gun which was in his hands at the time of occurrence. It does not matter whether it was a single-barrel gun or a double-barrel gun. He was responsible for the murder of Jagdev Singh. But the High Court has maintained its conviction with the aid of Section 34 only.

15. Regarding appellant Jaswant Singh we affirm the finding that he was armed with a revolver and stood as a guard against the possible escape of the victims. He had taken his stand near the western door of the bakhal of the house of Dhanna Singh. The constituent prosecution evidence was that appellant Jaswant Singh was armed with a revolver. PW Naib Singh stated in the earlier portion of his deposition in the Sessions Court that this appellant had a rifle with him, but that was out of sheer mistake, as in the latter portion of the same deposition he said that he opened fire at him with his revolver. The story of opening fire may not have been accepted but it is clear that he was armed with a revolver. In the latter portion of the judgment where the case of Jaswant Singh was being considered, the High Court has said :

Jaswant Singh was seen at the northern door of the 'baithak' of Dhanna Singh along with the other co-accused and he was also found to be armed with a revolver. Thereafter, he was seen at the western gate of the 'bakhal' standing with his revolver.

16. On the facts and in the circumstances of this case it is amply clear that the assailants had raided the house of Dhanna Singh with a pre-planned common intention of committing his murder and murder of the inmates of the house. There was, therefore, no difficulty in finding any of them guilty for the murders with the aid of Section 34 of the Penal Code.

17. On the facts of this case we could not persuade ourselves to make a distinction in the case of the appellant Gurdas Singh and appellant Bawa Singh so far as the imposition of sentence of them is concerned. Both had used their guns and committed the murders. Since Bawa Singh has been awarded life imprisonment, we think that the sentence of death imposed on appellant Gurdas Singh should not be confirmed by us especially when we have not accepted the prosecution story of his having caused the death of Tota Singh in the allegedly brutal manner by putting his leg on his chest. He was a young man of 24 years of age at the time of occurrence and by now has been under the agony of the sentence of death for a considerable time. Taking the totality of the circumstances while confirming his convictions, we commute his sentence of death to life imprisonment for his conviction both under Section 302 Penal Code simpliciter and under Section 302 read with Section 34.

18. In the result subject to modification in the sentence of appellant Gurdas Singh, the appeal of all the appellants fail and is dismissed.

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