

Maghar Singh

Vs

State of Punjab

Criminal Appeal No. 272 of 1974

(N. L. Untawalia, Syed Fazal Ali JJ)

16.04.1975

JUDGMENT

FAZAL ALI, J. –

1. This is an appeal by Maghar Singh by special leave against the order of the High Court dated February 12, 1974 confirming the conviction and sentence of death against Maghar Singh and sentence of life imprisonment on Smt. Surjit kaur under Section 302 I.P.C. Both the High Court of Punjab and Haryana who have confirmed the conviction and sentence against the appellant as also to Sessions Judge have carefully scanned the evidence and it is, therefore, not necessary for us to detail the facts of the present case. We shall, however, give a brief resume of the prosecution case which resulted in the murder of Gurbux Singh resulting from lust and greed on the part of the appellant and Smt. Surjit Kaur.

2. Smt. Surjit Kaur was living with the deceased Gurbux Singh for about 9/10 years as his wife. The approver Baldev Singh, PW 11, was her pichhlagu son offspring from the first husband. What appeared to be a happy married life for quite a few years appears to have been subsequently disrupted by the entry of Maghar Singh accused who started clandestine visits to the house of the deceased 3/4 years before the occurrence and developed illicit intimacy with Smt. Surjit Kaur. According to the prosecution Smt. Surjit Kaur eloped with the appellant about 6/7 months before the occurrence but returned to her husband Gurbux Singh after an attempt was made by him to bring her home 9/10 days before the occurrence, the occurrence having taken place on June 14, 1972 at 10 p.m. in village Kotduna, tehsil and district Barnala. Even after the return of Surjit Kaur, Maghar Singh continued to visit the house of the deceased and continued his intimacy with Surjit Kaur which was strongly resented by the deceased. As the deceased appeared to be a very serious obstacle in the illicit relations of Surjit Kaur and Maghar Singh, the two accused after taking Baldev Singh approve (PW 11) into confidence planned the murder of the deceased Gurbux Singh. The immediate cause for the murder of the deceased was provided by the fact that the deceased Gurbux Singh had made a will in favour of the pichhlagu son Baldev Singh and Surjit Kaur thought that lest the deceased might change his mind it is better to finish him off and grab the entire property for her son. Animated with this object, Maghar Singh knocked at the door of the house of the deceased at 10 p.m. when the deceased was sitting in his house. The door was opened by Smt. Surjit Kaur and Maghar Singh entered with a kirpan Ext. P-5. Surjit Kaur caught the deceased by him long hair while the approver Baldev Singh caught his legs. Maghar Singh gave several kirpan blows in quick succession on the neck and other parts of his body causing as many as 17 injuries out of which injuries Nos. 2, 3, 5, 8 and 15 as mentioned by Dr. M. S. Caplash PW 1 were incised wounds and were sufficient to cause the death of the deceased. The deceased raised an alarm on receiving the first blow which attracted Sarwan Singh, PW 3, the brother of the deceased, to the house, but as he

got no response from the inmates of the house he climbed the roof of the house and found Surjit Kaur and Maghar Singh sitting on one cot in the courtyard. He enquired from Surjit Kaur as to what had happened but she explained away that the deceased has some fits and she was looking after him. This apparently satisfied Sarwan Singh and he went back to his house. In the morning Sarwan Singh again returned to the house of the deceased to enquire about the welfare of his brother, but Surjit Kaur gave incoherent answers and tried to avoid his questions. This abnormal conduct of Surjit Kaur as also the presence of blood in the courtyard aroused the suspicion and he at once went to the house of Bachan Singh, PW 4, the panch of the village and narrated the entire story to the panch as also to Bhajan Singh Lambardar. When these persons reached the spot, Maghar Singh slipped out of the house and Surjit Kaur had sent away her son Baldev Singh to the village of his father-in-law. On inquiry by Bachan Singh, PW 4 Surjit Kaur made an extra-judicial confession and admitted that she and Maghar Singh had murdered the deceased because she found him a great obstacle in their illicit relationship. Sarwan Singh then proceeded to the police station but he was informed at the bus-stop that the Inspector Gurchetin Singh was present in the village. So he met the Investigating Officer in the bank building and lodged the F.I.R., Ext. P.D./1. Smt. Surjit Kaur was immediately arrested. The police officer started the investigation in the course of which blood-stained salwar of Surjit Kaur was recovered at the time of her arrest as also the blood-stained earth was taken from the place of occurrence. On June 16, 1972, Maghar Singh, realizing that there was no way out came to the house of Kartar Singh Sarpanch where Jit Singh Lambardar was also present, and confessed his guilt and then was produced before the Inspector who arrested him. After the usual investigation a charge-sheet was submitted against the appellant and Surjit Kaur which resulted in the commitment inquiry and in the ultimate conviction and sentence by the Sessions Judge as indicated above.

3. The central evidence in this case consists of the testimony of the approver Baldev Singh, PW 11, who has given a full narrative of the manner in which the deceased was hacked to death by Maghar Singh, with the aid of the approver and Smt. Surjit Kaur. The learned Counsel appearing for the appellant raised two points before us. In the first place he submitted that the evidence of the approver Baldev Singh must be excluded from consideration because the provisions of Section 337 of the Code of Criminal Procedure were not complied with inasmuch as the statement given by the approver on the basis of which he was granted pardon was a purely self-exculpatory statement and did not fall within the four corners of Section 337 of the Code of Criminal Procedure. On a perusal of the statement of Baldev Singh we are unable to agree with this contention. It is true that Baldev Singh did not say that he took any active part in the assault on the deceased, but his statement clearly shows that he was a privy to or an abettor in the commission of the offence. The Magistrate who granted the pardon to the approver was fully satisfied that the approver was going to make a full and complete disclosure which he undoubtedly did. In these circumstances, we do not think that the provisions of Section 337 of the Code of Criminal Procedure have been violated in any way.

4. Another leg of the argument regarding the testimony of the approver was that he was not examined before the committing Magistrate, as required by sub-clause (2) of Section 337 of the Code. On a reference to the record of the committing Court we find that the statement of Baldev Singh was recorded by the committing Magistrate who had taken cognizance of the case and when the attention of the learned Counsel for the appellant was drawn to this fact he did not press this point.

5. The second contention put forward by the learned Counsel for the appellant was that there was no material corroboration of the statement of the approver and the High Court had convicted the appellant on the basis of the extra-judicial confession made by the two accused before some person but that could not in law be regarded as any corroboration at all, because one tainted evidence

cannot corroborate another tainted evidence. The evidence furnished by the extra-judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required it is only by way of abundant caution. If the Court believes the witnesses before whom the confession is made and it is satisfied that the confession was voluntary, then in such a case conviction can be founded on such evidence alone as was done in *Rao Shiv Bahadur Singh v. State of V. P.* (1954 SCR 1098 : AIR 1954 SC 322 : 1954 Cri LJ 910), where their Lordship of the Supreme Court rested the conviction of the accused on the extra-judicial confession made by him before two independent witnesses, namely, Gadkari and Perulakar. In the instant case also, after perusing the evidence of PW 3 and PW 12 we are satisfied that they are independent witnesses before whom both the appellant and accused Surjit Kaur made confession of their guilt and this therefore forms a very important link in the chain of circumstantial evidence. In our opinion the argument proceeds on fundamentally wrong premises that the extra-judicial confession is tainted evidence.

6. The High Court has pointed out that there was sufficient circumstantial evidence, even apart from the extra-judicial confession to connect the two accused with the murder of the deceased. There was the evidence of the recovery of the blood-stained clothes from Surjit Kaur, there is evidence of Sarwan Singh who had seen the deceased along with Surjit Kaur and Maghar Singh shortly before the murder took place and immediately thereafter. The F.I.R. was lodged on June 15, 1972 at 9.00 a.m. the blood-stained kirpan was also recovered at the instance of the accused Maghar Singh and the blood was found to be human blood. The matter did not rest here, but even blood-stained clothes were found from the person of the accused which also contained human blood. Apart from this circumstantial evidence which conclusively connects the two accused with the murder of the deceased, namely, recovery of the weapon of offence, the false explanation given by Surjit Kaur, the recovery of the clothes from the person of the accused, there is another important circumstance which almost clinches the issue and completes the link in the chain of circumstantial evidence and this is that the kirpan recovered from the possession of the appellant Maghar Singh contained blades of hair of the deceased stuck to it and on scientific examination the blades were found to be identical with the hair of the deceased. This, therefore, completely establishes that it was the accused Maghar Singh alone who had caused the death of the deceased with the kirpan and this circumstance is not explainable on any other hypothesis except that the accused was guilty of the offence of murder. Thus the circumstantial evidence against the accused referred to above is not only conclusive and independent to prove the charge for the offence of murder but also constitutes substantial and sufficient corroboration of the approver's statement in material particulars.

7. Lastly there is the evidence of extra-judicial confession made by Maghar Singh to Kartar Sarpanch and Jit Singh, PW 12, which has been proved by PW 12. Even Smt. Surjit Kaur made a clear breast of the whole story in her statement to Bachan Singh, PW 4, when he enquired as to how the deceased had been murdered. To crown it all, there was the question of the motive. Surjit Kaur has clearly admitted that the deceased had made a will in favour of her pichhlagu son Baldev Singh. It was also admitted that previous to that the deceased had made a will in favour of his brother Sarwan Singh and the accused thinking that the deceased might change his mind again planned the murder of the deceased so that he may not be in a position to change his mind and make a will of his property in favour of Sarwan Singh. This provided sufficient motive for the murder. This Court in an appeal leave does not go into the evidence, but even after going through the evidence in this case we are satisfied that the prosecution case has been proved against the two accused beyond any reasonable doubt.

8. Lastly it was urged that the sentence of death passed on the accused Maghar Singh may be

commuted to life imprisonment in view of the fact that the accused had been convicted and sentenced about a year hereinbefore. That by itself does not appear to be good ground for reducing the sentence passed on the appellant Maghar Singh. It was a pre-planned, cold-blooded and dastardly murder in which as many as seventeen injuries were caused on the deceased most of which were on vital parts of his body. There are no extenuating circumstances to justify the giving of any lesser sentence by this Court. In these circumstances, we are unable to agree with the Counsel for the appellant that there is any room for awarding a lesser sentence to Maghar Singh.

9. The result is that the conviction of and the sentence passed on the appellant are confirmed and the appeal is dismissed.

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