

Balaka Singh and Others

Vs

The State of Punjab

Criminal Appeal No. 133 of 1970

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

16.04.1975

JUDGMENT

FAZAL ALI, J. -

1. This is an appeal by special leave preferred by the appellants Balaka Singh, Joginder Singh, Pritam Singh, and Darbara Singh and Jarnail Singh. The appellant Balaka Singh has been convicted under Section 302 I.P.C. and sentenced to imprisonment for life. The other appellants have been convicted under Section 302 read with Section 149 and sentenced to life imprisonment and a fine of Rs. 1,000 each or in default further rigorous imprisonment for one year. All the appellants have also been convicted under Section 143 I.P.C. and sentenced to rigorous imprisonment for four months each and under Section 148 to rigorous imprisonment for one year each. Balaka Singh has also been convicted under Section 325 I.P.C. for having caused grievous hurt to Gurmej Kaur and Harnam Kaur and sentenced to two years rigorous imprisonment and fine of Rs. 100. The other accused have also been convicted under Section 325 read with Section 149 I. P.C. and awarded the same sentence as Balaka Singh. Apart from these five appellants there were four other accused who were prosecuted before the trial Court of the Additional Sessions Judge, Patiala, namely, Makhan Singh, Sucha Singh s/o Inder Singh, Teja Singh and Inder Singh but these accused persons were acquitted on appeal by the High Court of Punjab and Haryana. The High Court has, however, confirmed the conviction and sentences passed on the appellants and has dismissed the appeal and hence this appeal before us.

2. Put briefly the prosecution case is as follows. About seven years before occurrence one Gurnam Singh alias Karnail Singh was murdered and Balaka Singh accused and his brother Asa Singh were tried for the murder of Gurnam Singh and convicted and sentenced under Section 302 I.P.C. to imprisonment for life by the Sessions Judge. Balaka Singh and Asa Singh however, went up in appeal to the High Court and were acquitted. Banta Singh PW 3 who is informant in the instant case was the chief prosecution witness in the murder case in which Gurnam Singh was killed. It is also the admitted case of the prosecution that Balaka Singh and his people were on inimical terms with Banta Singh and the deceased Gurnam Singh. It was further alleged that Dharam Singh the deceased in the present case was cousin of Banta Singh and was used by him as a sort of his bodyguard to protect him from his enemies. Shortly before the occurrence the appellant Balaka Singh and his brother Asa Singh had filed an application under Section 107 of the Code of Criminal Procedure against Banta Singh, Budha Singh and Kashmir Singh and in those proceedings the licensed gun of the deceased Dharam Singh was also deposited and this gave rise to a fresh grouse on the part of the prosecution party against the accused. Banta Singh and Dharam Singh also had made a counter-application for taking security proceedings against the present appellants but no action thereupon appears to have been taken. The actual occurrence took place on September 1, 1966, when Banta

Singh PW 3 the informant and Dharam Singh the deceased had gone to see their fields. They returned from their fields at about 6 p.m. and Dharam Singh had entered his house while Banta Singh was going to his house he saw the nine accused persons including the five appellants variously armed with spears, gandasis and lathis proceeding towards the house of Dharam Singh. The party of the accused is said to have entered the house of Dharam Singh and Makhan Singh, Sucha Singh s/o Inder Singh and Teja Singh - hereinafter referred as 'the four accused' (since acquitted by the High Court) are said to have incited and exhorted their companions to finish off Dharam Singh and not to spare any number of his family. Dharam Singh was busy in tying the rope of his ox which was tethered in his courtyard. The accused after entering the courtyard opened attack on the deceased Dharam Singh in which Balaka Singh took a main part and gave a spear blow on the chest of Dharam Singh as a result of which he fell down on the ground. Thereafter Banta Singh raised a hue and cry to the effect that Dharam Singh had been murdered. Not content with giving one spear blow to Dharam Singh even after he fell down, Joginder Singh is said to have given a barchha blow on his right knee and Pritam Singh a gandasi blow in the right shoulder of Dharam Singh. Just at that moment Smt. Gurmej Kaur the wife of Dharam Singh, his mother, Waryam Singh his father and his brothers who were in the house tried to intervene and fell on the body of Dharam Singh. But they were also assaulted by joginder Singh, Balaka Singh and others. It is said that other inmates of the house were also assaulted. On hearing the cries on Banta Singh the informant, Harnam Singh and Kapur Singh reached the spot and they saw Joginder Singh accused catching Dharam Singh by his long hair, while Balaka Singh had caught him by the legs and were trying to drag the deceased towards the entrance gate of the house. Kapur Singh who was armed with a gun fired a shot in the air which dispersed the accused party who ran away. In the aforesaid occurrence apart from the from the deceased Dharam Singh, Mst. Gurmej Kaur, Harnam Kaur, Waryam Singh, Sucha Singh and Budha Singh also received injuries on their person.

3. Banta Singh PW 3 went to the police station Julkan and lodged the F.I.R., the police station being 6/7 miles away from the place of occurrence. The report was lodged at about 10 p.m. Accordingly a case under Section 302, 307 and others sections of the Indian Penal Code was registred by the police. Assistant Sub-Inspector Teja Singh reached the spot along with Banta Singh and some constables. After reaching there at about 2 or 2-30 a.m. he prepared the inquest report and the injury statement of the injured persons. The dead body was sent to the mortuary at Patiala for post-mortem examination. The A.S.I. also took blood-stained clothes of the deceased were also were taken. After completion of the usual investigations the nine accused persons were challenged in the Court of the Judicial Magistrate, Patiala who committed for trial to the Court of Session which resulted in the ultimate conviction and sentence against the accused as mentioned above. The accused pleaded innocence and averred that they had been falsely implicated due to previous enmity.

4. In support of the prosecution 19 witnesses were examined but the defence did not give any evidence at all. The learned Sessions Judge after considering the evidence came to the conclusion that the prosecution case against all the accused persons was fully proved and he accordingly convicted and sentenced the accused persons as mentioned in his judgment. The accused persons then filed an appeal in the High Court, which, while accepting the prosecution case against the five appellants in this Court, acquitted the four accused namely, Makhan Singh, Such Singh s/o Inder Singh, Teja Singh and Inder Singh. The High Court has given cogent and substantial reasons for acquitting the aforesaid accused, but in that process they have given the finding which, in our opinion, is completely destructive of entire prosecution case itself.

5. We may now refer to the reasons given by the High Court for acquitting the four accused mentioned above. The first and fore most reason given by the High Court was that although the

inquest report was prepared by the A.S.I. at about 2-30 a.m. in the morning yet the names of the four accused did not find place in the body of the inquest report which was made on the basis of the report made to the police by the informant Banta Singh. It is true that the names of all the nine accused were mentioned at the top of the inquest report but the High Court found that this appears to have been an addition made by the Assistant Sub-Inspector to help the prosecution and to bring the inquest report in conformity with the F.I.R. In this connection the High Court observed as follows :

The first thing to be noted in this connection is that the names of three four appellants do not figure in the body of the inquest report although they are mentioned in the heading thereof as well as in the first information report. The circumstance leads clearly to the inference that throughout the preparation of the inquest report these appellants were not named as members of the party of the culprits and that their names were added in the said heading as well as in the first information report later.

We have perused Ext. PH inquest report ourselves and find that in the brief facts of the case which were made to the Investigating Officer by Banta Singh only the names of Balaka Singh, Joginder Singh, Pritam Singh, Darbara Singh and Jarnail Singh are mentioned. There is no reference at all to Makhan Singh, s/o Inder Singh, Teja Singh and Inder Singh in the report nor is it mentioned that Teja Singh and Inder Singh incited or exhorted the other accused persons to open the assault on the deceased which appears to be the starting point of the occurrence. The prosecution has not been able to give any reasonable explanation for this important omission in the inquest report, the A.S.I. Teja Singh was questioned on this point and he stated thus :

The brief statements of the facts of the case mentioned in the inquest report are based on report lodged by Banta Singh. In this brief statement, however, the names of Inder Singh, Sucha Singh, Teja Singh and Makhan Singh accused are not mentioned as culprits, specially. It is correct that in the brief facts mentioned in the body, there is no reference of the names of these four men.

Thus even the A.S.I. while admitting that the names of the four accused were not mentioned by Banta Singh has not chosen to give any explanation for this deliberate omission to that effect. According to the prosecution the names of the four accused who have been acquitted by the High Court had already been mentioned in the F.I.R. which was lodged 4/5 hours before the inquest report was prepared. Any investigating officer possessing some intelligence would have at once questioned Banta Singh as to how it that while he had named the four accused in the F.I.R. he had not referred to them in his brief statement in the inquest report. In these circumstances, therefore, the High Court was fully justified in holding the omission of the names of the four accused acquitted by the High Court in the inquest report was a very important circumstance which went in favour of the four accused. This omission has two-fold reaction. In the first place it throws doubt on the complicity of the four accused acquitted by the High Court and secondly it casts serious doubt on the veracity and authenticity of the F.I.R. itself. It is not understandable as to why the four accused who are alleged to have taken an active part in the assault on the deceased were not at all mentioned in the inquest report and in the brief statement of the very person who had lodged the F.I.R. four hours before. Counsel for the state tried to justify this omission on the ground that in the inquest report Ext. PH the names of all the nine accused appear to have been mentioned at the top of that document. There is, however, no column for mentioning the names of the accused and, therefore, there was no occasion for the Investigating Officer to have mentioned the names of the accused in that particular place.

6. Finally the Investigating Officer PW 23 Teja Singh admitted in his evidence that he had prepared the inquest report and that he had read out the same to Banta Singh and Harnam Singh PWs. but later tried to say that he did not recollect whether he had read out the inquest report to Banta Singh and Harnam Singh before getting their thumb impression on the inquest report. This circumstance speaks volumes against the prosecution case. If, therefore, it is once established that the names of the four accused were deliberately added in the inquest report at the instance of the prosecution there is no guarantee regarding the truth about the participation in the assault on the deceased by the appellants.

7. Another finding which demolishes the entire edifice and fabric of the prosecution case is that the F.I.R. it was not written at 10 p.m. as alleged by the informant Banta Singh but it was written out after the inquest report was prepared by the A. S.I. and after the names of the four accused acquitted by the High Court were inserted in the inquest report. If this is true then the entire case of the prosecution becomes extremely doubtful. The High Court has also derived support from another important circumstance to come to the conclusion that the F.I.R. was not written at 10 p.m. as alleged by the prosecution but after the preparation of the inquest report at about 2.30 p.m. The High Court points out according to the prosecution the special report reached the Ilaqa Magistrate at 11 a.m. on September 2, 1966, i.e. more than 12 hours after the F.I.R. was lodged at the police station, whereas it should have been delivered to the Ilaqa Magistrate during the night or at least in the early morning. Counsel appearing for the appellants submitted that under High Court Circulars and the Police Rules it was incumbent upon the inspector who recorded the F.I.R. to send a copy of the F.I.R. to the Ilaqa Magistrate immediately without any loss of time and the delay in sending the F.I.R. has not been properly explained by the prosecution as rightly held by the High Court. It is, therefore, clear that the F.I.R. itself was belated document and came into existence during the small hours of September 2, 1966. Indeed if this was so, then there was sufficient time for the prosecution party who are undoubtedly inimical to the accused to deliberate and prepare a false case not only against the four accused who have been acquitted, but against the five appellants also. The High Court also found that the best person to explain the delay in sending the special report the Ilaqa Magistrate was the police constable who carried the F.I.R. to the Ilaqa Magistrate but that constable has not been examined by the prosecution. On this point the High Court observed as follows :

The delay with which the special report was made available to the Ilaqa Magistrate is indicative of the fact that the first information report did not come into existence probably till about sunrise by when the dead body had already been despatched for the purpose of the post-mortem examination to Patiala along with the inquest report, so that the Investigating Officer was no longer in a position to make alterations in the body of the report and all that he could do was to add later on the names of the said four appellants to its heading.

The finding of the High Court is based on cogent materials and convincing reasons, but unfortunately the High Court has not considered the effect of this finding on the truth of the prosecution case with regard to the participation of the appellants. In our opinion, in view of the finding given by the High Court it has been clearly established that the F.I.R. was lodged not at 10 p.m. as alleged by the prosecution but some time in the early morning of September 2, 1966. If this was so, then the F. I.R. lost its authenticity. If the prosecution could go to the extent of implicating four persons by inserting their names in the inquest report and the F.I.R. which was written subsequent to the inquest report they could very well have put in the names of the other five appellants also because they were equally inimical to the prosecution party, and there could be no difficulty in doing so because it is found by the High Court that all the prosecution witnesses belonged

to one party who are on inimical terms with the accused.

8. The suggestion of the appellants is that they were falsely implicated because the prosecution could not succeed in convicting Balaka Singh for the murder of Gurnam Singh in the various murder case. It to wreak fresh vengeance on the accused that they had been falsely implicated in the present case. It is true that there are as many as eight witnesses who are alleged to have seen the occurrence and they have given a parrot-like version of the entire regarding the assault on the deceased by the various accused persons. All these witnesses have with one voice and with complete unanimity implicated even the four accused persons, acquitted by the High Court, equally with the appellants making absolutely no distinction between one and the other. A perusal of the evidence of the prosecution witnesses would show that the prosecution case against the appellants and the four accused is so inextricably mixed up that it is not possible to sever one from the other. It is true that, as laid down by this Court in *Zwinglee Ariel v. State of M. P.* (AIR 1954 SC 15 : 1954 Cri LJ 230) and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff re so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply. We are satisfied that in the facts of the present case, having regard to the partisan and interested evidence of the prosecution witnesses who can implicate the appellants and the four accused equally with the regard to the assault on the deceased it is not possible to reject the prosecution case with respect to the four accused and accept it with respect to the other five appellants. If all the witnesses could in one breath implicate the four accused who appear to be innocent, then one cannot vouchsafe for the fact that even the acts attributed to Balaka Singh, Joginder Singh, Pritam Singh, Darbara Singh and Jarnail Singh may have been conveniently made to suit the needs of the prosecution case having regard to the animus which the witnesses as also Banta Singh bore against the appellants. In these circumstances, therefore, we are satisfied that in view of finding of the High Court that the F.I.R. was a belated document having come into existence much later than the time it is said to have been recorded and which adds the names of the four accused against whom the prosecution case is absolutely identical with the appellants, the case of the appellants cannot at all be distinguished from that of the four accused in any respect. If the case against the four accused fails, then the entire prosecution will have to be discarded and it will not be possible for this Court to make out a new case to convict the appellants as has been done by the High Court.

9. In order to test the veracity of the prosecution witnesses we find that one of the eyewitnesses, namely, Waryam Singh has deposed that Gurmej Kaur, the wife of the Deceased, who was drawing water from the handpump when the accused came, ran towards Dharam Singh and fell upon his body in order to protect him from receiving further injuries. At this the appellant Balaka Singh, is alleged to have given her a barchha blow on her right hand and the appellant Joginder Singh gave a barchha blow on the left buttock of Gurmej Kaur. According to the evidence of this witness the two appellants Balaka Singh and Joginder Singh appear to have assaulted Gurmej Kaur with a sharp-cutting instrument, namely, barchha and spear. This version is completely falsified by the medical evidence of Dr. Mohinder Singh who examined Gurmej Kaur and who stated in this evidence that all the inquiries on Gurmej Kaur were caused by blunt weapon. Moreover out of the six injuries which Gurmej Kaur received on her body not a single one could be caused by a sharp-cutting instrument because there was no penetrating or incised wounds. The injuries were either contusions, abrasions or lacerated wounds. While the witness Waryam Singh says that the accused Joginder

Singh had given a barchha blow on the left buttock of Gurmej Kaur, according to the medical evidence it was a lacerated wound deep on the upper and outer part of the left buttock. This, therefore, clearly demonstrates the extent to which the witness could have gone in order to implicate all the accused.

10. In view of these circumstances and the evidence discussed above, we are clearly of the opinion that the prosecution case against the five appellants has also not been proved beyond reasonable doubt and the manner in which the F.I.R. and the inquest report have been made throws considerable doubt on the complicity of the five appellants in the crime.

11. The result is that the appeal is allowed and the order of conviction and the sentence passed on all the appellants is set aside the appellants are acquitted of the charges framed against them and are directed to be released forthwith.

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