

Harbajan Singh

Vs

State of Jammu & Kashmir

Criminal Appeal No. 227 of 1974

(Y. V. Chandrachud R. S. Sarkaria, P. N. Bhagwati JJ)

22.07.1975

JUDGMENT

CHANDRACHUD, J. -

1. The appellant Harbajan Singh and one Gurmukh Singh were tried by the learned Sessions Judge, Poonch under Section 302 of the Ranbir Penal Code on the charge that they had committed the murder of a girl called Kamli Devi. Gurmukh Singh was acquitted by the learned Judge but the appellant was convicted of murder and was sentenced to death. The State Government did not challenge the acquittal of Gurmukh Singh and that order has become final. The High Court of Jammu and Kashmir has confirmed the conviction and sentence of the appellant. This appeal by special leave is directed against the judgment of the High Court.
2. The appellant Harbajan Singh and his co-accused Gurmukh Singh were members of the Border Security Force and were posted at the material time at Baripattan near a village called Kangri, situated in tehsil Nowshera. On December 16, 1971 they absented themselves from the evening parade without obtaining leave and sauntered into Kangri, armed with two rifles which were issued to them for the performance of their official duties. They went to the house of one Kashu Ram, demanded eggs from his wife and helped themselves to a bottle of rum. Thereafter, they went to the house of the complainant Munshi Ram. Gurmukh Singh mounted guard at the door of his house while the appellant went inside. The appellant caught hold of Munshi Ram's daughter, Kamli Devi, and began to drag her out of the house. Munshi Ram entreated the two intruders to be merciful but Gurmukh Singh fired a shot at him which fortunately missed its target. In the confusion that followed Kamli Devi managed to rescue herself and started running back to her house. Thereupon the appellant fired a shot from his rifle at her as a result of which she died instantaneously.
3. The evidence of Munshi Ram (PW 1), the father of the girl, Mulkh Raj (PW 2), a neighbour, and of Saro Devi (PW 18), the mother of the girl, shows that the appellant dragged Kamli Devi from her house, that Gurmukh Singh fired a shot at Munshi Ram but missed and that the shot fired by the appellant caused the death of Kamli Devi. The evidence of these witnesses finds ample corroboration in the circumstances that on the evening of December 16, 1971, the appellant and Gurmukh Singh were absent at the time of the roll call, that on the night of the 16th when they were arrested their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed Kamli Devi was fired from the rifle of the appellant. The evidence of Kashu Ram (PW 3) also shows that after the appellant and Gurmukh Singh drank liquor at his house they went to the house of Munshi Ram.
4. In view of this corroborative evidence we find no substance in the argument urged on behalf of

the appellant that the Investigating Officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in *Jadunath Singh v. State of U. P.* ((1971) 2 SCR 917 : (1970) 3 SCC 518 : 1971 SCC (Cri) 124), absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative to the implication of the appellant. Gurmukh Singh's acquittal errs in its generosity but that order has become final.

5. We therefore confirm the judgment of the High Court and dismiss Harbajan Singh's appeal.

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