

Labh Singh and Others

Vs

State of Punjab

Criminal Appeal No. 176 of 1971

(A. C. Gupta, R. S. Sarkaria JJ)

10.10.1975

JUDGMENT

SARKARIA, J. -

1. Labh Singh, Jamiat Singh, Banta Singh, Surjit Singh and Harbans Kaur of village Manauli were tried for the murders of Nasib Singh and Sadhu Singh by the learned Additional Sessions Judge, Patiala. All of them were acquitted. The State carried an appeal against that acquittal to the High Court of Punjab and Haryana. The High Court set aside the acquittal of Labh Singh, Jamiat Singh and Banta Singh and convicted them under Section 302 read with Section 34, Penal Code on two counts and sentenced them to imprisonment for life, each. In addition, a fine of Rs. 200 was imposed on each of the convicts.

2. Aggrieved by that order, Labh Singh, Jamiat Singh and Banta Singh have come in appeal to this Court.

3. The prosecution story as adumbrated in the F.I.R., Ex. PA, lodged by Gurdev Singh, PW 5, at the police station Mubarakpur, on October 13, 1968 at 3.50 p.m. was as follows :

I am a resident of village Manauli. Today, at 8/9 a.m. I along with my father, Nasib Singh and my sister's husband, Sadhu Singh son of Assa Singh, jat by caste, resident of Bandey Mahla Khurd, were scraping khal (channel) to bring water from the tubewell of Teja Singh of Kailria, now residing at Manauli. Labh Singh and his companions came running from his maize field; and Labh Singh son of Ram Dass resident of aforesaid village, gave a gandasi blow from its sharp side on the head of Sadhu Singh, who ran away. Jamiat Singh son of Ram Dass gave a barcha blow from the black, on his shoulder blades. Banta Singh, brother-in-law (wife's brother) of Labh Singh, resident of Sahoran, gave a kohala blow from its sharp side on the right leg of Sadhu Singh, who fell down in the maize field of Gurdev Singh, resident of Manauli. Thereon, Harbans Kaur wife of Labh Singh hurled a kirpan blow towards my father which he warded off with his hands, and the hands were injured. Sital, resident of Sahoran, gave a safajang blow from the right side on the head of my father who also fell down. Both the aforesaid accused inflicted injuries with their respective weapons upon Sadhu Singh and my father when they were lying on the ground. Ram Dass father of Labh Singh kept on raising lalkaras that Sadhu Singh and Nasib should not be left alive. My mother, Mihan Singh jat of village Sahoran and Nasib Singh Jat resident of Khuda, had also reached the spot. On the alarm raised by all of us, the accused ran away. Thereafter, I collected panchayat of the village and showed them the spot. The cause of fight is that about one and a half months back, Labh Singh had damaged our gowara crop by letting in bullocks. An altercation had also taken place with Sadhu Singh who had come to Manauli on duty. So abuses were also exchanged many times but the

panchayat used to pacify the matter in the village. They have belaboured my father and Sadhu the latter due to the grudge that he has been helping my father. All the accused have inflicted injuries with their common intention. My maternal uncle, Nasib Singh, and Gurdev Singh, resident of Manauli have taken Sadhu Singh and my father to the hospital at Chandigarh for treatment. I along with Mihan Singh aforesaid have come to lodge the report. Action may be taken.

4. On this report, Station Officer Gurnam Singh (PW 22) registered a case under Sections 307/326/149, Penal Code, Accompanied by Head Constable Santokh, four constables, Gurdev Singh PW 5 and Mihan Singh PW 9, he then reached the bus stand at Chandigarh. From there, he sent the Head Constable to the scene of occurrence, while he along with the PWs, reached the hospital in Sector 16 at 6.30 p.m. He found Sadhu Singh dead, and Nasib Singh unfit to make a statement. He then recorded the statement of Mihan Singh there in the hospital. Nasib Singh also died in the hospital the same night. He prepared the inquest reports regarding the deaths of Sadhu Singh and Nasib Singh. On the following day, October 14, he visited the scene of occurrence in the presence of PWs Sardari Lal sarpanch and Madan Lal panch. Sardari Lal handed over the documents Ex. U/1, and Ex. PW said to be the dying declarations made by Nasib Singh and Sadhu Singh deceased recorded by PWs Madan Lal and Harnam Singh and Sadhu, respectively. The investigator took these documents into possession and prepared the memo Ex. PY.

5. Labh Singh, Jamiat Singh and Harbans Kaur accused were arrested on October 17, 1968 when they are produced before the Station Officer by Madan Lal panch. The blood-stained shirts (P-3 and P-4) which they were then wearing, were seized by the police officer and the memos Ex. PAA and Ex. PZ were prepared. After making statements on October 25 Jamiat Singh and Labh Singh led the Police Sub-Inspector to a sugarcane field and produced a blood-stained barcha and a gandasi respectively. These weapons were sealed into parcels which in due course were sent for chemical examination.

6. Surjeet alias Sital Singh accused surrendered before the Magistrate at Jullundur where a test identification parade was held. Prosecution witnesses, Gurdev Singh, Nasib Singh and Mihan Singh identified Surjeet Singh correctly at that parade.

7. At the trial, the prosecution demanded conviction of the accused on the basis of evidence which may be catalogued as under :

(1) Direct testimony of the eyewitnesses, Gurdev Singh (PW 5), Nasib Singh (PW 8) and Mihan Singh (PW 9).

(2) The dying declarations (Ex. PU/1 and Ex. PW) of Nasib Singh and Sadhu Singh deceased recorded by Madan Lal panch (PW 14) and Harnam Singh lambardar (PW 15) respectively.

(3) Discovery of the barcha Ex. P-1 and the gandasi Ex. P-2 at the instance of Jamiat Singh and Labh Singh Appellants respectively, on October 25, 1968.

(4) The seizure of the blood-stained shirts (P-3 and P-4) from the persons of Labh Singh and Jamiat Singh at the time of their arrest on October 17, 1968.

8. The trial Court found that the evidence of all the four categories produced by the prosecution was wholly unworthy of credit. It, therefore, rejected it and in the result acquitted all the accused.

9. Against that order of acquittal, the State preferred an appeal to the High Court. The learned Judges of the High Court agreed with the trial Court to this extent that the evidence of the two eyewitnesses, Nasib Singh and Mihan Singh was wholly unreliable. But in their opinion the same could not be said about the testimony of Gurdev Singh PW 5. According to the learned Judges, the testimony of Teja Singh PW 13 assured the presence of Gurdev Singh at the time and place of occurrence and

if once the presence of Gurdev Singh is accepted ... it will naturally be inferred that he had seen the occurrence and having done that he would not be given up the real assailant and falsely name the appellants as the person who had injured his father and brother-in-law.

Even on "careful scrutiny" they were of the view that the story given by him is substantially true.

10. Reversing the finding of the trial Judge, the learned Judges found that the dying declarations of the deceased persons were genuine, spontaneous and made without any tutoring and "it will be safe to rely on these pieces of evidence".

11. The High Court further held, in reversal of the trial Court's finding, that the seizure of the blood-stained shirts (P-3 and P-4) from the persons of Labh Singh and Jamiat Singh at the time of their arrest on October 17, was also a valuable piece of circumstantial evidence, supporting the prosecution case as against these two appellants. The High Court, however, upheld the finding of the trial Court that the evidence of the discovery of the barcha, P-1, and the gandasi, P-2, at the instance of Jamiat Singh and Labh Singh was not worthy of reliance.

12. Mr. Hardev Singh, the learned Counsel for the appellant has in the course of his arguments sought to make out two points : First, the reasons given by the trial Court for rejecting the evidence of PW 5 and that of the dying declarations, Ex. PU/I and Ex. PW, were weightier and have not been completely displaced by the high Court. Secondly, in any case, the view of the evidence taken by the trial Court was also reasonably possible. In such a situation, it is urged, the High Court should not have reversed the order of acquittal and ignored the principles settled by the pronouncements of this Court. Learned Counsel has taken us through the evidence on record and the judgments of the courts below.

13. As against this Mr. O. P. Sharma, learned Counsel for the State submits that the reasons given by the trial Court for discarding the entire prosecution evidence were manifestly untenable and had been effectively dispelled by the High Court. The powers of the High Court, it is maintained, to review the evidence and reach its own findings in an appeal against acquittal are as wide as those of the trial Court. Counsel has adopted the reasoning of the High Court, with particular stress on the brutal nature of the murders.

14. In some earlier judgments of this Court, it was said that the High Court should not reverse an order of acquittal unless there are "substantial and compelling" reasons to do so. In order to dispel doubts, it was clarified in subsequent decisions that the use of such phrases was neither intended to lay down a formula to be rigidly applied in every case, nor to curtail the powers of the High Court in appeal over an order of acquittal. It is now well settled that the powers of the High Court under Section 417, 418 and 423 of the Code of Criminal Procedure, 1898 (or for that matter under the corresponding provisions of the new Code of 1973) while hearing an appeal against an acquittal are as wide and comprehensive as in an appeal against a conviction. It has full power to reappraise the entire evidence upon which the order of acquittal was based and to reach its own conclusion. But

before reversing an order of acquittal it should endeavour to displace or dispel in a general or specific way the primary reasoning of the trial Court upon which the acquittal is founded, paying due regard and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses and the value of their evidence; (2) the initial presumption of innocence in favour of the accused, a presumption certainly not weakened by his acquittal at the trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses (see *Sita Ram v. State of M. P.* ((1975) 4 SCC 171 : 1975 SCC (Cri) 464)).

15. It follows as a corollary from the above, that if two views of the evidence are reasonably possible, one supporting acquittal and the other indicating conviction, the High Court should not interfere merely because it feels, that it would, sitting as a trial Court, have taken the other view (see *Bhim Singh Rup Singh v. Singh of Maharashtra* ((1974) 3 SCC 762 : 1974 SCC (Cri) 238)).

16. The judgment of the High Court reversing the acquittal, is to be tested in the light of the above principles.

17. First we take up the evidence of Gurdev Singh, PW 5. The trial Court rejected his evidence for these reasons :

(1) As deposed to by Teja Singh, PW 13, the water from his tubewell had run for about half an hour till it was stopped at about 7.30 a.m., that during this period the water must have run much more than a distance of 4 or 5 killas (260 to 330 yards) which according to Teja Singh was the distance between the tubewell and the field of the deceased; consequently "the story of Gurdev Singh PW 5, regarding he and the deceased (being there ?) only (for ?) scraping khal at the time of occurrence would appear to be palpably false.

(2) In the F.I.R. Gurdev Singh mentioned all the members of the family, including Ram Dass, the father of Labh Singh and Jamiat Singh, and attributed lalkaras to him, though in Court he did not say a word regarding the presence of Ram Dass or any instigation proceeding from him.

(3) Implication by Gurdev Singh of Smt. Harbans Kaur wife of Labh Singh, as one of the assailants of Nasib Singh, was false because -

(a) She was in an advanced stage of pregnancy, and it was not possible to imagine that she would in that condition join in the assault;

(b) On this point his evidence was inconsistent with the medical evidence.

(4) In the F.I.R. and in his statement before the committal Court the witness suppressed the injury caused by Sadhu Singh deceased with a takwa to Jamiat Singh though at the trial he deposed to that fact. This "improvement" upon his former statements throws a "grave doubt" on his truthfulness.

(5) Gurdev Singh while lodging the F.I.R. suppressed the fact of the death of Sadhu Singh. Gurdev Singh's explanation that at the time of making the F.I.R. he did not know of Sadhu Singh's death in the hospital, was contradicted by Nasib Singh PW who stated that he had informed Gurdev Singh of this death, at the time of the latter's

departure from the hospital for the police station.

(6) At the trial, the witness has contradicted his statement in the committal Court in regard to the dying declarations made by Sadhu Singh and Nasib Singh. In the committal Court, he had stated that the victims Sadhu Singh and Nasib Singh had told PWs Sardari Lal, Madan Lal and Harbans Singh all about the incident and those statements of the victims were recorded on the spot in Punjabi and Urdu. At the trial, PW 5 took up the position that these dying declarations were not recorded in his presence, and he omitted this part of the story, perhaps "with a view to rule out the possibility of his having influenced the deceased in making the declarations".

(7) The story given by PW 5 was unnatural. If the deceased persons and the witness were scraping the khal with kahies, they should have used them in self-defence. Gurdev Singh should have gone to the rescue of the deceased persons and used his kahi against the assailants. But he did not do so.

(8) If PW 5 had been present at the time and place of occurrence he could not escape uninjured. The fact that there was no injury on Gurdev Singh makes his presence at the scene of occurrence doubtful.

18. The learned Judges of the High Court have fully and specifically considered every one of these reasons given by the trial Court and, in our opinion, effectively dispelled them.

19. The mere fact that water had flown in the khal for about half an hour upto 7.30 or so, was no ground to hold that there was no necessity to scrape, mend or construct the water channels further. It is a matter of common knowledge that most of the work of scraping, repairing and levelling irrigation channels is done during the flow of water. Moist or wet soil, after the flow of some water, can be scraped and moulded more easily and with less effort. Nasib Singh deceased had on the previous evening settled with Teja Singh, PW 13, to take the water from the latter's tubewell on the following morning for irrigating the field which was at a distance of about 300 yards from the tubewell. The supply of water was to be paid for at the rate of Rs. 5 per hour. The longer the tubewell worked, the more would be the charges. There must have been an anxiety on the part of Nasib Singh to irrigate his field within the shortest time possible. Only a properly aligned well-embanked and flow commanding channel could cut short the irrigation time and the supply charges. There was, therefore, necessity for the deceased to mobilize his family strength for this purpose. In such a compelling situation, Gurdev Singh's collaboration with his father and brother-in-law would be indispensable. Nor does the switching off of the tubewell at about 7.30, lead to the inference that no more work on the water-channels or in the field remained to be done. Rather, it would be otherwise. Probably, sometime after the water started flowing into the field, Nasib Singh deceased and his companions felt the necessity of scraping the khal further or to set right its alignment to avoid wastage of water or facilitate its flow. The learned Judges of the High Court, therefore, were right in concluding that far from casting any doubt on the evidence of Gurdev Singh, the statement of Teja Singh establishes his presence at the spot at the time of occurrence and makes this part of the prosecution story highly probable.

20. It may be recalled that Teja Singh's version that Gurdev Singh (PW 5) came to him at about 7-30 a.m. or so and asked the witness to stop the tubewell engine, was not challenged by the defence in cross-examination. He however, admitted in cross-examination that Nasib Singh deceased was his collateral. Homogeneity of descent among all or most the proprietors in a Punjab village is not

unusual. The mere fact that Teja Singh was a collateral of Nasib Singh, in some degree, is no ground to hold that he is not a disinterested, independent witness. He is a respectable person, the veracity of whose testimony was not doubted even by the trial Court. Thus, Teja Singh's unimpeached testimony had indubitably fixed the presence of Gurdev Singh, PW 5 in connection with the irrigation of the field of his father Nasib Singh, at about 7.30 a.m., that is, shortly before the occurrence which took place at 8 a.m. The tubewell is about 260 or 330 yards - though according to the other witnesses this distance is much less - from the field of Nasib Singh. This much distance could be covered in about 10 or 15 minutes. Gurdev Singh therefore, must have returned to his field well before the commencement of the assault on the deceased persons.

21. Once Gurdev Singh's presence about the scene of occurrence is accepted as a reasonably certain fact, there is no escape from the conclusion that he was an eyewitness of the fatal assault on Sadhu Singh and Nasib Singh. The only question remaining to be considered would be, how far his evidence could be safely acted upon.

22. It is true that in the F.I.R. Gurdev Singh attributed relatively minor, though an incriminating part to Ram Dass, the father of the appellant. But he did not repeat this allegation in court. That only shows that the witness had jettisoned the exaggerations or embellishments which he has made in the F.I.R. and returned to the path of restraint and truth. This omission of Ram Dass by the witness in court was not put to him. He had no opportunity to explain the same. Possibly he might have given some plausible explanation as to why in the F.I.R. he has mentioned Ram Dass also as an instigator of the actual assailants. In any case, the evidence of Gurdev Singh, PW 5, could not be thrown overboard on this account although it will be necessary to scrutinise his evidence with care.

23. As regards the implication of Smt. Harbans Kaur, the High Court has found and in our opinion for good reasons that it could not be positively said that the part ascribed to her in the assault was necessarily false. Only a minor part was attributed to Harbans Kaur that she had attempted a Kirpan blow on Nasib Singh which the latter tried to ward off with his hand in the process received an injury. The trial Court gave two reasons for holding that PW 5 had falsely implicated her. These reasons we have already set out earlier in this judgment. Undoubtedly she was in an advanced stage of pregnancy but it must be remembered that she was a rustic who would be used to manual work in the fields. It could not therefore be said that in that stage of pregnancy, she was physically incapable of wielding a kirpan. The medical evidence did not contradict Gurdev Singh. There was an injury on the hand of Nasib Singh caused with a sharp edged weapon. Kirpan is also a sharp edged weapon. Thus the two reasons advanced by the trial Court for stigmatising Gurdev Singh's version implicating Harbans Kaur as false were not sound and had been effectively offset by the High Court. In maintaining the acquittal of Mst. Harbans Kaur, the High Court only accorded her the benefit of doubt only. Her acquittal was not based on the ground that she had been falsely implicated.

24. Reasons (4) and (5) given by the trial Court were manifestly puerile and we do not think it necessary to elaborate the point further. It would suffice to say that we agree with the reasoning of the High Court that the mere fact that in his earlier statement Gurdev Singh did not state that Sadhu Singh deceased had also caused an injury to Jamiat Singh in self-defence to which fact he deposed at the trial or that in the F.I.R. he had not said that Sadhu Singh had succumbed to his injuries in the hospital - a fact of which according to him, he was not aware - was not a ground to brush aside the testimony of the witness.

25. Similarly with regard to the dying declarations, the so-called discrepancies in his statement were of no consequence. His statement to the effect that Sadhu and Nasib Singh deceased had narrated all

about the incident to the village dignitaries was obviously based on hearsay or on derivative information.

26. Lastly the presence of Gurdev Singh at the scene of occurrence could not be disbelieved merely because he had not received any injury at the hands of the assailants of his father. Nor his conduct in not going to the rescue of his father and in not using his kahi against the assailants who were armed with superior weapons, was in any way inconsistent with his being an eyewitness. Gurdev Singh was a lad of only 16 or 17 years. He had only a kahi with him which was no match for the superior weapons and strength of the assailants. No wonder that Gurdev Singh in such a situation realising that discretion was the better part of valour did not intervene. Different persons react differently; some are bold; some are timid and some get panicky. Thus no inference can be drawn against the presence or veracity of Gurdev Singh merely because he had been left unhurt.

27. Gurdev Singh no doubt was an interested witness but there is reliable independent evidence on the record which lends sufficient assurance to his testimony qua the appellants. Firstly, there was valuable evidence furnished by the dying declaration Ex. PU/I and PW made by the deceased persons before Sardari Lal (PW 16) sarpanch, Madan Lal (PW 14) panch and Harnam Singh (PW 15) lambardar who were brought to the spot soon after the occurrence by Gurdev Singh PW 5.

28. The trial Court had discarded the evidence furnished by Exts. PU/I and PW for three reasons. Firstly, that they do not bear the thumb impression or signatures of the deponents and the explanation given by these village dignitaries in regard to the absence of thumbmarks/signatures was not satisfactory. Secondly, Madan Lal PW had admitted in cross-examination that at the time of making the statement Ex. PU/I Nasib Singh was not fully conscious although he was conscious enough to make that statement. Thirdly, there was no explanation why these dying declarations were not handed over to the informant Gurdev Singh for transmission to the police station at the time of lodging the first information report.

29. The learned Judges of the High Court found, and we think correctly, that these reasons were quite hollow. Dr. Manmohan Goyal, who conducted the post-mortem examination of the body of Nasib Singh found no less than six injuries including two lacerated wounds on the left hand; one incised wound on the web of left thumb and index finger and one wound on left forearm with fracture of radius. He further found another lacerated wound on the right thumb. It was manifest that not only both the right hand and left thumbs of Nasib Singh were injured but practically the whole of his left arm was badly mangled and fractured. The explanation given by PWs 14, 15 and 16 as to why the thumb impression or the signature of the deceased (Nasib Singh) was not taken on the dying declarations Ex. PU/I was that his thumbs and hands were so injured that he could not affix his thumb-impressions. This was a very satisfactory explanation and there was absolutely no good reason for the trial Court to disbelieve these village dignitaries on those point. Same was their explanation for not getting the statement, Ex. PW, thumbmarked or signed by Sadhu Singh. He too had a punctured wound and multiple abrasions on his left arm. His right elbow and right forearm near the wrist were badly injured. Both the bones, that is, the radius and the ulna of the arm, were found fractured. The medical evidence thus confirmed the correctness of the explanation given by these witnesses for not getting these dying declarations thumbmarked by the deponents.

30. It is true that Madan Lal in cross-examination did opine that Sadhu was semi-conscious but he qualified this with the addition, that he was fit to make the statement he did. In this connection it may be noted that the statement Ex. PW of Sadhu Singh was not recorded by Madan Lal panch but by his colleague, Harnam Singh Lambardar, PW 15, who stated in categorical terms that Sadhu

Singh was in his senses and on being questioned by the sarpanch (PW 16) made the statement PW without interruption. The statement Ex. PW represents the answer given by Sadhu Singh to a single question put by the sarpanch. It was only after making this statement, according to the witness, Sadhu Singh started becoming unconscious.

31. The High Court has correctly interpreted that by saying that Sadhu Singh was semi-conscious but at the same time he was conscious enough to make the statement he did, what these unsophisticated villagers meant was that Sadhu Singh was not fit enough to make an elaborate statement. There is nothing in the statement of these witnesses to show that Nasib Singh at the time of making the statement PU/I, was not fully conscious.

32. The very brevity and rugged simplicity of these statements is a guarantee of their genuineness. Had these documents been prepared after the arrival of the police officer, they would not have been so cryptic. Not could they have been written in this form. It may be noted that in Ex. PU/I, Nasib Singh stated that he had been assaulted by five persons, viz., Labh Singh, Jamiat Singh, Banta Singh, brother-in-law of Labh Singh, Harbans Kaur and an unknown person. Similarly in Ex. PW, Sadhu Singh stated that one of his assailants was an 'unknown' person. In the first information, Gurdev Singh has named this 'unknown' person as Sital Singh alias Surjit of Saheran.

33. This circumstance indicates two things : First, that these statements were made without prompting or tutoring by Gurdev Singh, PW 5, or anybody else, and possibly they were made after PW 5 had gone to arrange for conveyance to remove the injured to the hospital. Secondly, they were not written after the registration of the case in the police station or during investigation.

34. These dying declarations were handed over by the sarpanch to the Investigating Officer when he reached the spot on the following morning. UP to that time, he kept these documents in his safe custody. These village dignitaries were wholly disinterested persons. They were not related to the victims or the appellants. They had not axe of their own to grind against the appellants. There was absolutely no ground to disbelieve their sworn word.

35. The dying declarations, PU/I and PW, fully support and confirm the testimony of Gurdev Singh, PW 5 qua the appellants.

36. These village dignitaries have testified that it was Gurdev Singh, PW 5, who had taken them to the scene of occurrence. They thus assure the presence of Gurdev Singh about the time of the occurrence on the spot.

37. The medical evidence also corroborates the ocular account given by Gurdev Singh in regard to the nature of the weapons used by the appellants in inflicting injuries on the deceased persons.

38. The injuries found on Labh Singh by the doctor, also, corroborate Gurdev Singh, PW 5, inasmuch as the latter stated that Sadhu Singh had also wielded his takwa in self-defence, and in the process caused an injury to Labh Singh.

39. Lastly, a relatively minor circumstance which further supports the testimony of Gurdev Singh against the appellants, is that stains of human blood were found on the shirts of Jamiat Singh and Labh Singh appellants when they were arrested by the police.

40. For the foregoing reasons, we are of opinion that the High Court had rightly reversed the order of acquittal in the case of the appellants. The appeal accordingly fails and is dismissed.

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