

Nachhattar Singh and Others

Vs

The State of Punjab

Criminal Appeal No. 95 of 1975

(K. K. Mathew, P. K. Goswami, N. L. Untwalia JJ)

09.12.1975

JUDGMENT

UNTWALIA, J. -

1. In village Bapla, police station Mehal Kalan, district Sangrur a very serious occurrence took place on September 18, 1972 in which three persons were killed by firearms. The occurrence is said to have taken place at about 7.30 a.m. Gidho Puri, PW 4, his wife Gurdial Kaur, PW 5 and their son Labh Puri (one of the victims) were present in their house. Appellants Nachhattar Singh, Dalip Gir and Balwant Gir, according to the prosecution case, came from the side of village Seth raising lalkaras. Nachhattar Singh had a rifle. Dalip a gun and Balwant Gir was armed with a gandasa. They caught hold of Labh Puri, dragged him out of his house and took him to the courtyard of Balwant Gir across the lane. Gurdial Kaur tried to save him but Nachhattar Singh gave her a blow with the butt end of his rifle on her right shoulder. In the courtyard of Balwant Gir. Nachhattar Singh is said to have fired his rifle at Labh Puri and caused his death.

2. The prosecution story further runs thus. In the house adjacent to that of Gidho Puri were living Parsa Puri and Chhota Puri - the other two persons killed in the occurrence. They are nephews of Gidho Puri. Their mother is Jangir Kaur, PW 6. Parsa and Chhota slipped out of their house and started running towards the house of Fateh Din, Sarpanch, PW 8. The three appellants pursued them. Nachhattar fired a shot from his rifle which is said to have hit Parsa on his back. Jangir Kaur followed them. Parsa entered the house of Fateh Din while Chhota entered the house of one Nikka Kumhar. Niamat, PW 7 is the mother of Nikka Kumhar. The appellants entered the room of Nikka. It is said that Nachhattar fired his rifle at Chhota and Dalip fired two shots on him with his gun. Chhota died on the spot. Jangir Kaur tried to intervene. But Dalip kept her away by giving her blows with the butt end of his gun. The appellants carried the deadbody of Chhota to the courtyard of Balwant. Then they came to the house of Fateh Din where Niamat, PW 7, was present. From there the appellants took Parsa alive in the courtyard of Balwant. Jangir Kaur followed them entreating the appellants to spare Parsa. Balwant caught hold of the gun of Dalip, fired at Parsa and caused his death. The appellants then fired more shots and left the place.

3. Gidho Puri went to the police station which was at a distance of 10 miles from village Bapla and lodged the first information report at 11.00 a.m. It was recorded by the Station House Officer Prem Singh, Sub-Inspector, PW 15. The prosecution case stated above in brief is the one as told by the four eyewitnesses in court, namely, Gidho Puri, PW 4, Gurdial Kaur, PW 5, Jangir Kaur, PW 6 and Niamat, PW 7. The story told by Gidho Puri in the first information report is substantially the same with this difference that in the report Ext. PM Dalip Gir is said to have fired shot in the lane which hit upon the back of Parsa Puri. The part played by PWs 5 and 6 and the causing of injuries to them

is not found to be in the F.I.R. Station House Officer Prem Singh after recording the F.I.R. left for the place of occurrence and reached there at about 1.00 p.m. on September 18, 1972. There he took various steps in the process of investigation of the case, such as, preparing of inquest reports, seizure list of the recovery of the empty cartridges, wads, blood-stained earth, etc. and noting down the statements of the witnesses. When he had completed the recording of statements of the witnesses at about 5.40 p.m. he received information that the appellants were hiding themselves in a field nearby wherein was standing the crop of gowara. Sub-Inspector Prem Singh went to the field and claimed to have arrested the three appellants in the field which was at a distance of about 250 yards from the basti. Nachhattar was arrested with his licenced rifle and 20 cartridges, Dalip with his licenced double-barrel gun and four cartridges and Balwant with a double-barrel gun and six cartridges. He prepared the recovery memos of the firearms and the cartridges.

4. During investigation it transpired that the three appellants and six more persons had entered into a criminal conspiracy to commit the murder of the Puris with whom they had several litigation, quarrels and inimical factions. Charge-sheet was submitted against all the nine accused and they were put on trial in the Sessions Court for the charge of having entered into a criminal conspiracy of committing murders of the Puris. Appellant Nachhattar Singh was charged under Section 302 for killing Labh Puri, Nachhattar and Dalip for the murder of Chhota, and Balwant for killing Parsa. In substance the appellants were also charged of having committed the murder of three victims, in furtherance of their common intention to do so.

5. The Additional Sessions Judge, Barnala, who tried the case disbelieved the evidence of Fateh Din, PW 8 on the point of criminal conspiracy and held that the said charge was not proved against any of the accused. The six accused who were charged only under Section 120-B of the Penal Code were acquitted. In regard to the main occurrence, however, believing a part of the prosecution story and disbelieving a part, ultimately, the trial Judge held that the three appellants participated in the incident resulting in murder of three persons and they had all shared the common intention to kill them. Appellant Dalip was found guilty under Section 302 for the murder of Chhota Puri and was sentenced to death. The other two appellants were held guilty under Section 302/34 and each of them was awarded a sentence of life imprisonment and a fine of Rs. 2,000 for the murder of Chhota Puri. For the murder of Labh Puri and Parsa Puri, the trial Court could not fasten the guilt under Section 302 on any of the appellants and convicted all of them with the aid of Section 34.

6. The matter came up before the High Court of Punjab and Haryana in reference for confirmation of the death sentence of appellant Dalip Gir and in appeal filed by the three appellants. The high Court maintained their convictions and sentences. The appellants filed this appeal in this Court by special leave.

7. On behalf of the appellants the points urged in support of the appeal are the following :

(1) That there was no sufficient motive proved on the part of the appellants for the commission of the ghastly crime of three murders. In any event the immediate cause of the occurrence was not known.

(2) That the first information report was not lodged at the police station at the time it was said to have been recorded. Recording was done later after Sub-Inspector Prem Singh had arrived at the scene of occurrence at about 8.30 in the morning on receipt of some information.

(3) The prosecution story of the arrest of the appellants, the recovery of firearms and cartridges from them, the recovery of the empties and bloodstained earth from the place of occurrence was very shaky and doubtful.

(4) That the empty cartridges and the firearms were sent to the ballistic expert after an undue and unexplained delay of 5 weeks.

(5) That all the four eyewitnesses to the occurrence are highly interested persons and their evidence is not worthy of credence at all.

(6) No independent witness has been examined in the case. There were many enemies of the victims in the village and it is not known who killed them and in what manner.

(7) That the prosecution story of the use of rifle in the occurrence and the causing of the injuries with it is false. It has been found to be so by the two courts below.

(8) That the firearms said to have been recovered from the appellants at the time of their alleged arrest in the gowara field were not tested to have been freshly used by Sub-Inspector Prem Singh.

(9) That some empty cartridges found at the scene of occurrence were not connected with the third gun said to have been recovered from appellant Balwant Gir at the time of his arrest.

8. This Court is generally loathe to interfere with the concurrent findings of fact recorded by the courts below, reappraise the evidence for itself and then take a view different from the one taken by them. But in a gross case where there appears to have been a miscarriage of justice by the wrong application of the well-settled principles of law, then this Court is obliged to enter into facts and take its own view of the matter. This is one such case. We are fully alive to the fact that the guilty persons should not be permitted to escape lightly and for reasons which are not very weighty and sufficient. But at the same time we are unable to sustain the convictions of persons whose guilt has not been proved beyond reasonable doubt and when we find that the whole prosecution case is very shaky and doubtful because of some inherent defects and improbabilities running through its entire story.

9. The trial Court as well as the High Court has given several instances of litigations, disputes and enmity between the appellants and the Puris on whose side Fateh Din, Sarpanch, PW 8 was an active participant. Although the immediate cause of the occurrence is not known, without any elaborate discussion of the point, we agree with the High Court that there was sufficient motive for the appellants to commit the crime.

10. In our opinion materials in the records of the case are not sufficient to show that the first information report by Gidho Puri, PW 4 was not lodged at the police station and at 11.00 a.m. The first information report was received by Illaka Magistrate at about 3.30 or 3.45 p.m. the same day, i.e. on December 18, 1972. In one of the columns of the first information report, the date and time of despatch of the copy of the F.I.R. as required by the Punjab Police Rules, 1934 was not mentioned. It is also true that Sub-Inspector Prem Singh admitted that he did not give the names of the eyewitnesses and of the deceased in the Daily Diary Report. But having appreciated all that was said on behalf of the appellants, we did not feel persuaded to differ from the High Court on the

question of lodging of the first information report at the time and place it purports to have been lodged.

11. We, however, find that one of the serious infirmities in the prosecution story lies in the manner of arrest of the appellants and recoveries of the firearms and cartridges from them. Sub-Inspector Prem Singh does not say that he took steps to arrest the appellants at their houses which were situated nearby. It does not stand to reason, rather, it looks highly improbable, that all the three appellants found the gowara field a convenient place for the hiding and, there too, armed with firearms and cartridges. They are said to have been arrested in the field about more than 10 hours after the occurrence. Although Fateh Din, PW 8 exaggerated the story of their hiding in the gowara field, Prem Singh said that the appellants were visible in the field as soon as he arrived near it. It is not always possible to read the criminal's mind as to how it acts, but then, for their safety they are not likely to act in the manner they are alleged to have done in this case. We are not prepared to believe that the appellants after the lapse of several hours found the gowara field a convenient place for hiding and went there all armed, Balwant Gir not armed with the gandasa which he is said to have been carrying at the time of occurrence, but with a gun which could not be shown to have been used in the occurrence. The Additional Sessions Judge is not right when he said that the appellants did not challenge the manner of their arrest. Appellant Nachhattar Singh clearly stated that he was taken away from his house shortly after 2.00 p.m. along with his licensed rifle, gun and live cartridges. Similar was the claim of appellant Dalip Gir. Balwant Gir also in his statement under Section 313 of the Code of Criminal Procedure, 1973 denied the prosecution story of his arrest. Arrest of appellant Nachhattar Singh armed with a rifle becomes all the more doubtful when we come to deal with the main story of the occurrence. The high Court does not seem to have attached any importance to this question and has not dealt with it all. The recovery memos of the rifle guns and the cartridges are Exts. PS, PT and PU. The recovery witnesses on these memos are Fateh Din, PW 8 and one Teza Singh, panch. The evidence of Fateh Din does not inspire confidence and Teza Singh has not been examined.

12. Out of the several recovery memos prepared at the place of occurrence we shall specifically deal with the recovery memos of the empty cartridges. Before we do so, we may point out that on the recovery memos Exts. PN/2, PN/3, PN/4, PU, PO/2 and PO in respect of the bloodstained earth the "respectable" witnesses as stated in the memos themselves were Kaka Singh, s/o Harnam Singh and Zora Singh. None of them was examined and no explanation was given by the prosecution for their non-examination. Ext. PN is the recovery memo showing recovery of two empty cartridges of 8 mm. and 4 empty cartridges of 12 bore from the courtyard of Balwant of Gir. Ext. PO/1 shows the recovery of two empty cartridges of 12 bore in the lane at the Chowk near the house of Gidho Puri. From the courtyard of Nikka Kumhar is said to have been recovered under memo Ext. PR one empty cartridge of 8 mm. and two cartridges of 12 bore. On these memos Zora Singh is one of the witnesses. On some is written Kaka Singh s/o Harnam Singh and on other Kaka Singh, Chowkidar Purports to be a witness. No Kaka Singh was examined. No Zora Singh was examined. Nor was any explanation given for their non-examination. Gidho Puri figuring as a witness of the recovery is not an independent witness, as being father of Labh Puri he is highly Interested.

13. Although the empties and the firearms were all recovered on the date of the occurrence, they were not despatched to the ballistic expert until October 24, 1972. They were received by him on the 25th. The trial Court committed an error in saying that they were sent to the expert within a week. The delay was of five weeks. Not a word was said by way of an explanation for the delay. The significance of all these criticisms will be tell-tale when we come to deal with the main story of occurrence. Suffice it at this stage to say that according to the opinion of the ballistic expert L. A.

Kumar, PW 16 the three empty cartridges of 8 mm. were fired from the rifle of Nachhattar Singh and out of the 8 empty cartridges of 12 bore 3 were found to have been fired from the right barrel and one from the left barrel of Dalip's gun. It could not be known that from which gun the other 4 empty cartridges had been fired. From the evidence of the expert, it appears that they were not fired from the gun which is said to have been recovered from the possession of appellant Balwant Gir. Surely they were not fired from Dalip's gun.

14. The greatest loophole of the prosecution story in this case is the finding of no rifle injury on any of the victims. The evidence of the two doctors who held the autopsy over the deadbodies of the three deceased was not thrown to any doubt. On basis of that evidence the trial Court as well as the High Court was constrained to find that no injury was caused to any of the victims with a rifle. The prosecution story is that appellant Nachhattar Singh shot dead Labh Puri with his rifle. No rifle injury was found on him. Gidho Puri. PW 4 in his evidence in the Sessions Court was certain that when Parsa Puri was running in the lane the rifle shot fired by Nachhattar Singh from a distance of about 8 karmas (40 ft) did hit Parsa on the back. No rifle injury was found on Parsa not even a wound of entry on his back. According to the ocular version of the witnesses Nachhattar fired at Chhota in the house of Nikka Kumhar with his rifle. No rifle injury on him. The evidence, further, was that Dalip fired two shots at him his gun. On the person of Chhota Puri were found 4 gunshot injuries. Only one was the wound of entry being injury No. 1 showing a charred margin 1 1/2" x 1 1/2" in the left anterior axillary fold. This clearly indicated that the gun was fired from a distance of few inches - may be at the most a foot. It caused two wounds of exit being injuries Nos. 2 and 3. The fourth injury in the opinion of the doctor could have been caused by a stray flying pellet. The prosecution story of two shots having been fired by Dalip at Chhota stands discredited by the nature of the injuries found on his person. One shot was fired from a close range and the other could not have been just a flying pellet causing injury No. 4.

15. A big question mark arises. How is it that 3 empty cartridges of 8 mm. said to have been recovered from the place of occurrence were found by the expert to have been fired from Nachhattar's rifle and yet no rifle injury was found to been caused on any of the victims although the rifle was used on two according to the first information report and on all the 3 according to the evidence in court ? There being no answer to this question mark, it could not but shake the foundation of the whole prosecution case and shake it to an irreparable extent. Principles of criminal jurisprudence which govern the trial of criminal cases in our country do not permit the ignoring of or brushing aside such a big jerk given to the prosecution evidence. Neither the trial Court nor the High Court was justified in law in brushing aside such a serious infirmity and coming to the conclusion that even if this part of the prosecution story was not correct, still all the three appellants had committed the crime in furtherance of their common intention. In such a situation it is not safe to say that the death of Chhota Puri was caused only by the gunshots of Dalip Gir. One could find all the appellants guilty with the aid of Section 34 of the Penal Code for the three murders if the prosecution would have merely proved the participation in general of the persons armed with firearms in the commission of the crime. But it chose to give the details of the story of assault with the different firearms by the appellants. It cannot escape the consequence when a vital part of the details is demonstrably found to be wrong.

16. In the above background of the case the finding of the expert that out of 8 empty cartridges of 12 bore recovered from the scene of occurrence only 4 were fired from Dalip's gun clearly shows that the other 4 were fired from some other gun. According to the prosecution case only two firearms were used at the time of occurrence viz. a rifle and a gun. According to the empties recovered three firearms were used. Again the question as to who was the person who used the third

firearm in the occurrence remained shrouded in mystery. It is because of the serious infirmities in the main version of the occurrence that the story of arrest, recovery of firearms and cartridges from the person of the appellants and the findings of the empties at the place of occurrence assumed importance. The High Court does not seem to have attached any importance to it. The recovery in the circumstances of this case, ought to have been proved by examining the witnesses who had witnessed the recovery. Failure of Sub-Inspector Prem Singh to find out by smelling the firearms at the time of their recovery whether they had been freshly used or not also adds its own weight to the volume of doubt created in the prosecution case as discussed above.

17. The four eyewitnesses examined in the case were highly interested. But merely because of that, their evidence could not be rejected. As pointed out by the High Court, they were the most natural witnesses who could be present at the time of the occurrence. It could be so if the occurrence took place in the manner alleged. But surely the High Court committed a grave error in not scanning their evidence in the background of the serious infirmities. It did try to separate the grain from the chaff and thought that it succeeded in separating them. But in our opinion it did so wrongly. The various infirmities and defects in the prosecution case, as referred to above, had broken the grain of the story and mixed it with chaff to such an extent it was difficult, almost impossible, to separate them and find the guilt of the appellants to have been proved beyond reasonable doubt. We entertain a grave suspicion against the appellants that they may have committed the crime. The learned Judges of the High Court, it appears to us, allowed their suspicion to take the place of proof when they thought that the appellants must have committed the crime. We are unable to agree with the High Court that the distance to be bridged between "may" and "must" has been bridged and covered in this case by the prosecution. On the other hand, they have left the gulf unbridged leaving many things in the womb of mystery and we do not find it possible to salvage the prosecution case out of the gulf. It is a matter of great regret and concern to everybody, including ourselves, that for the diabolical murder of three persons, nobody would be punished. But the inclination to punish the appellants is or any of them has got to be checked if the court cannot be sure of their guilt. The responsibility for the failure of the conviction must squarely rest on the prosecution witnesses or those who were in charge of the prosecution.

18. For the reasons stated above, we allow this appeal, set aside the convictions of all the appellants and the sentences imposed upon them.

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