

Chatar Singh and Another

Vs

State of Haryana

Criminal Appeal No. 195 of 1972

(R.S. Sarkaria, N.L. Untwalia JJ)

19.03.1976

JUDGMENT

UNTWALIA, J. -

1. The two appellants in this appeal filed under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 were acquitted by the Sessions Judge of Hissar but have been convicted by the High Court of Punjab and Haryana for causing the murder of one Amar Singh and for attempting to murder Darya Singh, PW 5 and Balbir Singh, PW 6. Each of the appellants has been sentenced to undergo imprisonment for life for the charge under Section 302 of the Indian Penal Code, in the case of appellant Chatar Singh with the aid of Section 34. Each has been given a concurrent sentence of 5 years rigorous imprisonment for the attempted murder under Section 307, in the case of Dayanand read with Section 34.

2. The facts lie in a narrow compass. The Sessions Judge gave several reasons in support of his finding that the appellant's guilt and complicity in the occurrence were not proved beyond doubt. Keeping in view the well-established principles of law to justify the High Court's interference with an order of acquittal the High Court has discussed and referred to almost all the reasons given by the trial Court and finding its judgment unsustainable it has upset it by giving cogent and good reasons. We think the High Court was right in reversing the order of acquittal. Some of the reasons given by the learned Sessions Judge were too flimsy and insignificant and the High Court has rightly brushed them aside. It has found the others not good enough for a reasonably possible view of acquittal. Only some on which great stress was laid by Counsel for the appellants in this Court will be briefly referred to by us in this judgment.

3. The appellants are sons of one Darya Singh. At the time of the occurrence they were in their twenties. One Ramanand and one Bharat Singh are also their brothers. The prosecution case is that there were several disputes, quarrels and litigations between the family of Darya Singh, PW 5 and Darya Singh - father of the appellants. There were election disputes for the office of the sarpanch which was held by PW Darya Singh. There was previously an assault case. There were proceedings and counter-proceedings under Section 107 of the Code of Criminal Procedure. Ten or twelve days before the occurrence in question, an Alsatian dog of Chanderman was killed allegedly by appellant Chatar Singh and his brother Bharat Singh. Chanderman was a collateral of PW Darya Singh. A complaint was made to the police and the accused party thought that PW Darya Singh was at the back of this case. Regarding the bad blood and the enmity between the two families, there is no substantial difference or dispute between the findings recorded by the two court below.

4. On November 15, 1969 at about 11.00 a. m. Darya Singh, PW 5 with his son Balbir Singh, PW 6

and his nephew Bharat Singh, PW 7 was going to his field on a tractor-cum-trolley to bring fodder from there. The tractor was driven by Bhe Ram, PW 15 - a tendered witness. He is also a relation of Darya Singh. PW Amar Singh - since deceased, was a servant of Darya Singh for doing his agricultural work. He also accompanied the party for bringing the fodder. After having loaded the fodder on the trolley all the five persons left the field for their village Devawas which was at a distance of about a mile. Bhe Ram was driving the tractor back. Amar Singh and Balbir Singh sat on the right mudguard. Darya Singh and Bharat Singh were on the left mudguard of the tractor. When the tractor had moved about 250 paces from the field, appellant Chatar Singh who was standing to the left of the road with appellant Dayanand gave a signal to Bhe Ram to stop it. Bhe Ram stopped the tractor. Dayanand fired a shot from a pistol which hit the chest of Amar Singh. Darya Singh shouted to Bhe Ram to drive away the tractor else all of them might be killed. Bhe Ram started the tractor. Amar Singh fell down from the tractor on account of the gun-shot wound sustained by him. When the tractor started moving Chatar Singh fired a shot from his pistol and the bullet grazed against the left arm and left side of the back of Darya Singh. Chatar Singh then ascended on the trolley from its back side and fired a shot from his pistol which hit on the buttock of Balbir Singh, PW 6. The appellants thereafter made their escape. Leaving Amar Singh the spot, Darya Singh and others went to their house on the tractor where Balbir Singh was given first aid to stop the bleeding. About two hours later Ram, Sarup, PW 10 carried Darya Singh and Balbir Singh in a tractor to the police station Siwani which by direct route is about 12 miles from village Devawas. But due to fear they went to the police station through a circuitous route which was longer by six miles. The party reached police station Siwani at 3.45 p. m. Sub-Inspector Surat Singh, Station House Officer of the police station was away to Dabwali and Assistant Sub-Inspector Nardev Shastri, PWs 21 had gone to village Chaudhari was in connection with the investigation of another case. A first information report was, therefore, recorded by Moharrir Head constable Ram Karan, PW 19 at 3.45 p. m. on November 15, 1969 on the statement of Balbir Singh. Information was sent to Assistant Sub-Inspector Shastri who reached the Siwani bus stand at about 5.00 p. m., met Ram Karan there and both reached the place of occurrence at about 6.00 p.m. Injured Darya Singh and Balbir Singh were taken in a tempo from Siwani to Hissar which is situated at a distance of about 25 miles from the police station. Their injuries were examined by the doctor on duty at about 10.00 p.m.

5. After investigation and enquiry the appellants were put on their trial. Appellant Dayanand was charged under Section 302 for causing the murder of Amar Singh and appellant Chatar Singh was charged for the same offence with the aid of Section 34. Appellant Chatar Singh was charged under Section 307 of the Penal Code for attempting to murder Darya Singh and Balbir Singh and Section 34 was applied for the said offence in the case of appellant Dayanand. As stated above the trial Judge acquitted the appellants but the High court has convicted them. Hence this appeal.

6. Since we are affirming the judgment of the High Court we do not consider it necessary to refer to each and every fact or reason mentioned in the judgments of the two courts below. We shall briefly discuss only a few of them which were pressed with vehemence before us by the learned Counsel for the appellants.

7. The first attack on the prosecution case is that the first information report was not recorded at 3.45 p. m. It was recorded late after due deliberations and consultations. It was antetimed. A copy of it was received by the Illaka Magistrate, Bhiwani at 7.00 p. m. in the morning. The party consisting of the two injured reached Hissar Hospital very late in the night at 10.00 p. m. It was, therefore, submitted that the first information report - the foundation of the prosecution case, is very shaky and suspicious. In our opinion the High Court has rightly explained the alleged delay. The occurrence had taken place at about noon. After giving first aid to injured Balbir Singh the party left through a

circuitous route for the police station in a tractor. That route was 18 miles. In such a situation it is difficult to say that there was any undue delay in the lodging and the recording of the first information report. We are inclined to believe in agreement with the High Court that the report was recorded at 3.45 p. m. at the police station by Moharrir Head Constable PW 19. It is no doubt true that there is some delay in the journey of the injured from police station Siwani to Hissar hospital. But that was due to the fact that they lost some time in arranging for a tempo. According to the evidence, they left Siwani at about 7.00 p. m. In the meantime Assistant Sub-Inspector Shastri had come to Siwani and left for the place of occurrence in the company of Ram Karan. According to the evidence of the injured witnesses, they had not met Assistant Sub-Inspector Shastri. Reasons, given by the trial Judge were wholly insufficient to lead to the conclusion that the first information report was lodged late or antetimed. The place was within the jurisdiction of Bhiwani tehsil. A special report was sent to the Illaka Magistrate at Bhiwani through a constable who handed it over to a chowkidar at 2.00 a.m. in the night - the date being November 15 by that time. As it appears from the endorsement of the Illaka Magistrate, the chowkidar, gave that report to him at 7.00 a. m. in the morning. In our judgment the first information report contained the true version of the occurrence and not coloured an concocted narration after any deliberation or consultation.

8. Appellant Dayanand is said to have surrendered before the Station House Officer on November 16, 1969 and is also said to have produced a countrymade pistol. The High Court has not rightly relied upon the story of production of the pistol by appellant Dayanand. It is a peculiar characteristic of several cases in the States of Punjab and Haryana that the accused is found ready to surrender the weapons allegedly used in the occurrence. Be that as it may, although the pistol was sent to the ballistic expert, it could not be examined and proved by him that the pistol said to have been produced by the appellant Dayanand was the one from which a shot has been fired at Amar Singh. It may be state here that a bullet on autopsy was recovered from the body of Amar Singh and another bullet was extracted from the buttock of Balbir Singh. The two bullets were also sent to the ballistic expert. The pistol and the bullets remained lying for a considerable time at his end but he did not find time to examine them. It appears from the records of the trial Court that the ballistic expert wanted some more time to examine the materials and give his opinion. But since the court was in a hurry to close the case the Public Prosecutor decided to give up the examination and obtaining of opinion of the ballistic expert.

9. It was strenuously urged by Mr. Kohli for the appellants that if the bullets could have been examined by the expert, in all probability, he could have found that both were fired from the same firearm because of the speciality of the rifling grooves left on the bullets when they were fired. Counsel submitted that the expert's opinion would have demolished the prosecution case that the two brothers had fired two shots - one at Amar Singh and the other at Balbir Singh - from two different pistols. It is unfortunate that the opinion of the expert could not be obtained in this case. But that does not shake the prosecution case in the least. The pistol said to have been produced by appellant Dayanand must not necessarily be the one which he used in the occurrence. Unless there were rifling marks in the bullets and which were not defaced by the entry in the bodies of the victims, no expert could ordinarily and generally give an opinion. J. S. Hatcher in his Text Book of Fire Arms Investigation, (1946 print) at page 255 has referred to the rifling marks on bullet and has said that such identifying marks are

caused by its passage over surface irregularities and rough spots on the interior of the gun barrel that got there principally during the machining operations of reaming the bore and rifling the grooves.

But the learned author has pointed out at page 256 :

It should be understood by the reader that some guns have the barrels smoothed up after machining by a process known as lapping. A rod is inserted into the barrel, and a lead plug is cast on the end of this rod, so that it exactly fits the lands and grooves. This lead plug is then covered with oil and emery flour, and passed back and forth through the barrel a number of times, until the most noticeable roughnesses are removed. This operation makes the inside of the barrel much smoother than it would otherwise be, and adds somewhat to the difficulty of bullet identification.

None of the appellants had a licensed pistol. In all probability, therefore, they had used country-made pistols. In such a situation it is difficult to assume that the ballistic expert could have found identifying marks on the bullets and his opinion would have gone against the prosecution. We do not think that the prosecution had any design or motive in not obtaining the opinion of the expert.

10. It was submitted on behalf of the appellants that both the brothers might not have taken part in the occurrence and they were falsely implicated. Only one, and not known which one, may be responsible for firing all the three shots. We see no substance in this argument. They had other two brothers but they were not falsely implicated. Only one of the brothers would not have taken the risk of going alone to intercept a party of five coming on a tractor and commit the assault with a pistol. The story of the prosecution that there were two persons and those two were the appellants to our mind is true and true beyond doubt.

11. It was further submitted that the doctor had found the edges of the injuries on the victims burnt which showed that the firearms must have been fired from a close range of a few inches only. And that according to the submission belied the ocular version of the prosecution witnesses that the shots were fired from some distance. We have given due consideration to this aspect of the matter and arrived at the conclusion that the doctor's evidence is not correct. He did not find the corresponding portions of the clothes of the victims burnt. His evidence as to the edges of the wounds being burnt seems to have been given due to error of the observations. He says that they were lightly burnt. The assailants could not possibly fire on the victims going on a tractor from a range of a few inches. Amar Singh fell down from the tractor after the bullet injury in the chest and got other injuries on his person due to fall from the tractor which had come in motion by that time. The whole prosecution evidence is so consistent and the story is so natural that we are not prepared to discard it and hold that the High Court committed a mistake in accepting it.

12. In the result the appeal fails and is dismissed.

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