

Kasturi Lal

Vs

State of Haryana

Criminal Appeal No. 276 of 1971

(R.S. Sarkaria, P.N. Shinghal JJ)

05.05.1976

JUDGMENT

SHINGHAL, J. -

1. This appeal by Kasturi Lal accused arise from the judgment of the High Court of Punjab and Haryana dated April 7, 1971, upholding his conviction for various offences, including the offence of committing the murder of Sardari Lal for which he has been sentenced to imprisonment for life and fine of Rs. 500 under Section 302 read with Section 149 I.P.C. There were six other accused in the case including Khazan Singh and Gurdial Singh, but both of them were acquitted by the Sessions Judge of Karnal by his judgment dated December 19, 1970, whereas the appellant and the other accused were convicted for various offences and sentenced to various terms of imprisonment. Four appeals were filed in the High Court, including an appeal by the present appellant Kasturi Lal and an appeal by the State of Haryana against the acquittal of Khazan Singh and Gurdial Singh. The High Court dismissed all the four appeals and the present appeal of Kasturi Lal has come up for consideration by special leave.

2. A report of the incident in this case was lodged by Girdhari Lal (PW 4), brother of Sardari Lal deceased, at police station Ladwa, on December 25, 1967, at 5.15 p.m. It was stated in the report that Girdhari Lal's brothers Sardari Lal (deceased) and Madan Lal (PW 5), who were residents of Ghallaur, left for Ladwa in the morning of December 25, 1967, as the Tehsildar had summoned them in connection with idgah-wali land, Girdhari Lal Followed them at a distance of 2/3 'killas' along with Sardari Lal's wife Smt. Ram Piari (PW 7), Charan Singh and Subhash. When Sardari Lal and Madan Lal reached a sugarcane field on the way, in the area of village Mehra, at about 10 or 11 a.m. they shouted "mar diya, mar diya". Girdhari Lal and others who were accompanying him can and reached there and saw that appellant Kasturi Lal, Khazan Singh and Gurdial Singh were "belabouring" Sardari Lal with 'kulhar', Ajit Singh, Pooran Singh and Gurmukh Singh were "belabouring" Madan Lal with 'lathis' and Mangal Singh with a spear. It was further alleged that when Girdhari Lal reached there along with Smt. Ram Piari, Subhash and Charan Singh, accused Ajit Singh, Mangal Singh, Pooran Singh and Gurmukh Singh left Madan Lal and started beating him. Mangal Singh gave a spear blow on his right leg, Ajit Singh a lathi blow on his head arms and chest. Sardari Lal and Madan Lal fell down on account of their injuries, and Girdhari Lal ran towards village Mehra. He narrated the incident there to sarpanch Ram Kishan (PW 10) and asked him to save him. After some time, Smt. Ram Piari (PW 7), Charan Singh and Subhash brought Sardari Lal and Madan Lal to village Mehra in a bullock cart. Girdhari Lal joined them on their way to Civil Hospital, Ladwa. Sardari Lal succumbed to his injuries on the way near Dera Dhanaura. The Medical Officer declared that Sardari Lal had died, and he examined the injuries of Madan Lal. On his report of Girdhari Lal, the police registered the case and started investigation resulting in the

conviction of Kasturi Lal, Ajit Singh, Gurmukh Singh, Pooran Singh and Mangal Singh, and the acquittal of Khazan Singh and Gurdial Singh, as stated above.

3. The High Court examined the appeal, which had been filed by the State against the acquittal of Khazan Singh and Gurdial Singh, but dismissed as aforesaid. In doing so, it took note of the fact that there were only two incised injuries on the person of Sardari Lal, and one on the person of Girdhari Lal, while the allegation was that Khazan Singh, Gurdial Singh and appellant Kasturi Lal were armed with axes and Mangal Singh with a spear and all of them beat Sardari Lal and Girdhari Lal with axes and spear. The High Court however distinguished the case of Khazan Singh and Gurdial Singh from the case of appellant Kasturi Lal as follows :

There is no allegations against these two respondents that they followed Girdhari Lal PW to village Mehra. The evidence of all the three eyewitnesses is that it were Gurmukh Singh, Kasturi Lal and Mangal Singh appellants who followed Girdhari Lal PW to village Mehra. No doubt, the allegation against Kasturi Lal appellants is that he gave a kulhari blow on the head of Sardari Lal deceased, but his case is distinguishable from the case of these two respondents, firstly, on the ground that it is proved from the evidence recorded in this court that Kasturi Lal's brothers and other relatives were employed in the police department at the relevant time, and from the other attending circumstances of the case, it is clear that the investigation was tainted in this case and was tried to be moulded in favour of Kasturi Lal appellant. Secondly, according to the evidence of the eyewitnesses, Kasturi Lal appellant followed Girdhari Lal PW to village Mehra along with Gurmukh Singh and Mangal Singh Appellant. Therefore, as against Kasturi Lal appellant, there is other corroborative evidence which proves the case against him beyond all reasonable doubt.

4. It would thus appear that the following two reasons were given by the High Court for distinguishing the case of Khazan Singh and Gurdial Singh from the case of Kasturi Lal's and for upholding Kasturi Lal's conviction :

(i) It was proved from the evidence that "Kasturi Lal's brothers and other relatives were employed in the police department at the relevant time, and from the other attending circumstances of the case, it is clear that the investigation was tainted in this case and was tried to be moulded in favour of Kasturi Lal", and

(ii) According to the evidence of the eyewitnesses Kasturi Lal "followed Girdhari Lal PW to village Mehra along with Gurmukh Singh and Mangal Singh". These two circumstances were held by the High Court to be the "corroborative evidence" which proved the case against Kasturi Lal beyond all reasonable doubt.

5. It has been argued by Mr. Anthony that although the High Court distinguished the case of appellant Kasturi Lal with that of the acquitted two accused Khazan Singh and Gurdial Singh for the aforesaid two reasons, it lost sight of the fact that these reasons were of no consequence and could not lend support to the parol evidence on the record.

6. In order to appreciate the argument of Mr. Anthony it will be necessary to mention that the Medical Officer Dr. K. L. Passi (PW 1), found that there were only two incised wounds on the person of Sardari Lal. One of them was a cut of the frontal and left parietal bones, and the other was

a cut of the left parietal bone. The parol evidence on the record however was to the effect that accused Khazan Singh, Gurdial Singh and Kasturi Lal were all armed with axes and inflicted injuries was therefore a fact which did not corroborate the evidence of the witnesses, and that was why the High Court took the view that a finding could not be recorded beyond all reasonable doubt that Khazan Singh and Gurdial Singh participated in the crime. The High Court realised that would normally have been a reasonable conclusion in the case of appellant Kasturi Lal also, but it tries to distinguish his case from the case of Khazan Singh and Gurdial Singh by taking into consideration the above two circumstances for the purpose of corroborating the parol evidence of the prosecution.

7. Now the first circumstances which weighed with the High Court was that it found it proved from the evidence recorded by it that appellant Kasturi Lal's brothers and other relations were employed in the police department at the relevant time and that the investigations of the case had been tainted and an effort had been made to mould it in his favour. The High Court did not however give its reasons for holding that the investigation was 'tainted' or 'moulded' in favour of appellant Kasturi Lal and, did not state in what respect the evidence was tainted or moulded. As it is, we find it difficult to ignore the argument of Mr. Anthony that even if it were assumed, for the sake of argument, that the appellant had some junior policed officers as his relations, that could not be said to corroborate the evidence of those who claimed to have witnessed the incident, or to lend support to their version in that regard, when there was, as mentioned above, a discrepancy in the evidence of the medical officer and their version in regard to the infliction of injuries by axes on the head of the deceased.

8. The other reason which prevailed with the High Court was that there was evidence to show that appellant Kasturi Lal followed Girdhari Lal (PW 4) to village Mehra along with Gurmukh Singh and Mangal Singh. What Girdhari Lal stated in this connection was that he ran towards village Mehra after he had been beaten by the accused and that on reaching there he narrated the incident to sarpanch Ram Kishan (PW 10). According to the witness, in the meantime, appellant Kasturi Lal, and Gurmukh Singh and Mangal Singh followed him there, to beat him. So as the witness did not state that he was followed to village Mehra by Khazan Singh and Gurdial Singh accused, the High Court took the view that Kasturi Lal's case was distinguishable from their case and he did not deserve an acquittal. But we find that here again the High Court fell into an error. As has been pointed out by Mr. Anthony it did not take notice of the fact that there was no mention in the first information report, which had been recorded by Girdhari Lal himself, that appellant Kasturi Lal followed him to village Mehra alone or in the company of Gurmukh Singh and Mangal Singh accused. The report makes a mention of Girdhari Lal's running to village Mehra and narrating the incident to sarpanch Ram Kishan, but it does not mention that there was any pursuit by appellant Kasturi Lal or any other accused. The High Court also lost sight of the fact that Madan Lal (PW 5) and Smt. Ram Piari (PW 7), who were examined as the other eyewitnesses of the incident, stated clearly that all the seven accused ran after Girdhari Lal, to village Mehra, after beating the deceased. So even if the statement of Ram Kishan (PW 10), which runs counter to the version given by the prosecution, is left out of consideration, it appears that the High Court did not read the evidence correctly even though it had a material bearing on the second circumstance mentioned any it for distinguishing the appellant's case from that of Khazan Singh and Gurdial Singh accused.

9. Our attention has been invited by Mr. Goswami to the question of motive, and it has been argued that while appellant Kasturi Lal had a motive for committing the offence, there was no such motive in the case of the acquitted accused Khazan Singh and Gurdial Singh, so that it was another reason for distinguishing his case. Mr. Anthony has argued, on the other hand, that the High Court did not come to grips with the evidence on the question of motive also, and that was why it failed to

appreciate that the case of Kasturi Lal was not distinguishable from the case of the acquitted accused on that account also.

10. It has been stated by Girdhari Lal (PW 4) that accused Khazan Singh and Gurdial Singh were first cousins, and appellant Kasturi Lal was the brother-in-law of Gurdial Singh. The witness has stated further that accused Ajit Singh was the nephew of Khazan Singh and that Gurmukh Singh, Mangal Singh and Pooran Singh, the other accused, were on visiting terms with the remaining accused. Girdhari Lal has stated that there was fight between his brothers and accused Ajit Singh and Khazan Singh in 1961, and that accused Gurmukh Singh and Pooran Singh used to cultivate some Land the paddy crop of 1967. Then he has stated that Mohan Singh, brother of Ajit Singh, removed the barley crop of Sardari Lal in 1967 and there were cross security proceedings against them. The witness has further stated that the field of Sardari Lal and Madan Lal and they used to cultivate it, and that a dispute was raised in the respect by kasturi Lal, Gurdial Singh, Pooran Singh, Gurmukh Singh, Ajit Singh, Khazan Singh and Mangal Singh. It would thus appeal that the evidence regarding motive was common to all the accused and was not confined to appellant Kasturi Lal who could not be said to have motive different from the acquitted accused Khazan Singh and Gurdial Singh. Then there is the further fact that all three of them were not found to have received any injuries in the alleged incident so that their cases were not different in that respect also.

11. Thus the reasons given by the High Court for distinguishing the case of Kasturi Lal from that of Khazan Singh and Gurdial Singh were not correct, and there is justification for the argument of Mr. Anthony that such a distinction would not have been made if the High Court had read the evidence correctly in all material particulars. So when the case of kasturi Lal was not distinguishable from that of Khazan Singh and Gurdial Singh, the High Court erred in taking the view that he was not entitled to acquittal.

12. Kasturi Lal's appeal is allowed and he is acquitted of the offences of which he has been convicted. He is in jail and shall be released forthwith.

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