

Kartar Singh

Vs

State of Punjab

Mukand Singh

Vs

State of Punjab

Malkiat Singh

Vs

State of Punjab

Criminal Appeal Nos. 159 and 382 of 1975

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

07.05.1976

JUDGMENT

SHINGHAL J. -

1. These appeals and the petition for review arise out of the judgment of the High Court of Punjab and Haryana dated November 7, 1974, upholding the conviction of appellants Mukand Singh and Kartar Singh and petitioner Malkiat Singh in the following circumstances.
2. Roor Singh (deceased) used to live in village Kurrar. His daughter Smt. Pritam Kaur was married to one Karnail Singh who was appointed by some Sadhs as their mukhtar-am in respect of their lands measuring 15 bighas in that village. Karnail Singh sold that land to his father-in-law Roor Singh. Kalu Sadh filed a suit for pre-emption through his wife Smt. Harnam Kaur. The suit was decreed some five or six months before the date of incident. Roor Singh filed a suit in the court of Sub-Judge, Barnala, claiming that he was in possession of the land and was entitled to it, but it was dismissed. He again filed a suit against Smt. Harnam Kaur and Kalu Sadh, and it was pending on the date of the incident. Roor Singh obtained a temporary injunction against Smt. Harnam Kaur and her husband Kalu Sadh on August 23, 1971, restraining his dispossession as they wanted to execute the pre-emption decree.
3. It is alleged that as Smt. Harnam Kaur wanted to dispossess Roor Singh somehow, she obtained the help of her son-in-law accused Malkiat Singh who, in turn took the help of accused Mukund Singh who was a friend of Darshan Singh (PW 3) also. Accused Malkiat Singh and Mukund Singh went to village Tappa to meet Darshan Singh on December 26, 1971, and asked him to bring his tractor-trolley and licensed rifle to Mahal Kalan on December 30, 1971, because they wanted to cultivate the aforesaid land that day. Darshan Singh agreed to the proposal and reached Mahal Kalan at about midday in his tractor-trolley. He met accused Mukund Singh and Malkiat Singh there,

along with the other four accused and Lal Singh. Malkiat Singh, Mukund Singh, Kartar Singh and Lal Singh were armed with 12 bore guns, while and Smt. Harnam Kaur arrived there and gave the information that Poor Singh and his three sons were irrigating that part of the field which abutted on the cart road leading to Mahal Khurd. They said that it was an opportune time to do away with them and undertook to bear all the expenses. Mukund Singh, Malkiat Singh, Kartar Singh, Hari Singh, Preet Singh, Kala Ram and Lal Singh then went in the trolley of the tractor of Darshan Singh to village Kurrar and reached there at about 4 p.m. It is alleged that Darshan Singh detached the trolley from the tractor and raced the tractor in field khasra No. 61/24 which was a part of the land which had been purchased by Roor Singh from the Sadhs. All the other accused followed the tractor. They found that Roor Singh was irrigating the adjoining field (Khasra No. 61/25) from his tubewell. His sons Gurbux Singh, Mansha Singh (PW 2), and Surjeet Singh (PW 4) were also there and so also his daughter Smt. Jeet Kaur who had come to serve tea to her father and brothers in the field. It is alleged that Roor Singh and Gurbux Singh asked the accused to remove the tractor from their field and to clear out, but to no avail. Roor Singh and Gurbux Singh then rushed towards the accused with their "dhangi" and "kirpan" and hit Kala Ram accused. Accused Malkiat Singh and Kartar Singh fired their guns at Roor Singh, Gurbux Singh aimed a blow with his kirpan at Mukund Singh, but it fell on his gun and a splinter fell out from it. Lal Singh, Mukund Singh and Darshan Singh fired at Gurbux Singh who fell down. Smt. Jeet Kaur raised an alarm and stepped towards her father. Lal Singh and Kartar Singh accused fired at her. Mansha Singh (PW 2) and Surjeet Singh (PW 4), the other sons of Roor Singh, did not venture to rescue their father, brother and sister, but raised an alarm. Malkiat Singh then told his companions that they should leave as they had succeeded in killing Roor Singh, his son and daughter, and all the accused left in Darshan Singh's tractor-trolley.

4. Mansha Singh (PW 2) and Surjeet Singh (PW 4) went near their father, brother and sister, and found that they were dead. Mansha Singh went to the village and informed Yogendra Singh (PW 6) and Thakur Singh about the incident. They accompanied him to the place of occurrence where some other persons had arrived in the meantime. Mansha Singh (PW 2) went to police station Mahal Kalan which was at a distance of six miles and lodged the first information report (Ex. 10) there at 6.15 p.m. It is alleged that within a few minutes of doing so a supplementary statement (Ex. DH) was recorded by Mansha Singh (PW 2) giving some more details. Sub-Inspector Chand Singh accompanied Mansha Singh to the place of occurrence and reached there at about 9 p.m. He prepared the inquest reports. He again went to the place of occurrence next morning. He found eleven 12 bore fired cartridge cases lying there. He also found 2 brass fired cartridge cases and the splinter which had fallen from the gun. Some other articles like a bloodstained "gandasa" "kirpan" and "dhangi" were found lying in the field, as also a kettle and cups etc. All those articles were taken in police custody. The dead bodies were examined by Dr. Jagjeet Singh (PW 1) on December 31, 1971. All the 13 fired cartridge cases were sealed by the Sub-Inspector and reached the Forensic Science Laboratory, Chandigarh, on January 3, 1972.

5. Accused Malkiat Singh and Mukund Singh were arrested by Sub-Inspector Hazura Singh (PW 17) on January 6, 1972. It is alleged that at that time Malkiat Singh was carrying double-barrel 12 bore gun Ex.P. 23, while Mukund Singh had a single-barrel 12 bore gun Ex.P. 22 with him. Both the guns were taken in police custody and were sealed. Accused Kartar Singh, Hari Singh, Preet Singh and Kala Ram were arrested from village Sanghera by Sub-Inspector Chand Singh (PW 19) on January 7, 1972. A of accused Kartar Singh of which he held a licence. The injuries of Kala Ram accused were examined by a medical officer, and some test identification parades were also held. On January 10, 1972, Sub-Inspector Gur Chetan Singh (PW 18) arrested Darshan Singh from village Tappa and recovered a 315 bore rifle (Ex.P. 18) from his possession for which he had a licence.

Accused Lal Singh was arrested from Barnala along with gun Ex.P. 21. The four recovered guns and rifle were sent to the Forensic Science Laboratory, Chandigarh, and reached there on February 3, 1972. It was found that the recovered fired cartridge cases, except one which had insufficient marks, had been fired from the one or the other of the recovered firearms. Darshan Singh applied for being made an approver and his statement was recorded on March 2, 1972. The police filed a chargesheet against all the accused. Smt. Harnam Kaur and Smt. Surjeet Kaur were charged of abetting the murders, while the other accused were charged of committing the substantive offences.

6. The Additional Sessions Judge of Barnala acquitted Lal Singh, Smt. Harnam Kaur and Smt. Surjeet Kaur of the offences of which they were charged, and convicted the remaining accused of offenses under Sections 148 and 302/149 I.P.C. He sentenced Mukund Singh, Malkiat Singh and Kartar Singh to death, and Hari Singh, Preet Singh and Kala Ram to rigorous imprisonment for life, for the murder of Roor Singh, Gurbux Singh and Smt. Jeet Kaur. They were also convicted of the offence under Section 148 I.P.C. and were sentenced to rigorous imprisonment for one year. Three appeals were filed in the High Court, and there was a reference for confirmation of the death sentence. The High Court acquitted Hari Singh, Preet Singh and Kala Ram, but upheld the conviction of the present appellants Mukund Singh, Kartar Singh, and petitioner Malkiat Singh, and confirmed their death sentence. Appeal No. 159 of 1975 has been filed by Kartar Singh while appeal No. 382 of 1975 has been filed by Mukund Singh, by special leave. Malkiat Singh also filed a petition for special leave, but it was dismissed on May 1, 1975. He has therefore filed a Review Petition No. 51 of 1975. We shall dispose of the two appeals and the review petition by this judgment.

7. It has been argued by Counsel, for the appellants that although the first information report Ex. PO was lodged by Mansha Singh (PW 2) within a very short time, it discredited the testimony of its maker Mansha Singh because while the report stated that the offence was committed by Mukund Singh and Malkiat Singh who were armed with 12 bore guns, two unknown persons who were also armed with guns and two unknown persons who were armed with 'gandasas', Mansha Singh stated in the trial Court that the crime was committed by eight persons, four of whom were armed with 12 bore guns, one with a rifle and three with 'gandasas'. It has been urged that the version given by Mansha Singh that after report Ex. PO was read out to him and he affixed his thumb impression on it, he realised that due to the confused state of his mind he had omitted to name two of the culprits, and made a supplementary statement then and there, at the police station, is not reliable and should have been rejected as an afterthought. It has also been argued that Mansha Singh's statement that Darshan Singh (PW 3) was driving the tractor and that he fired two shots from his rifle was equally unreliable. We find from the first information report Ex. PO that Mansha Singh clearly stated that Mukund Singh and Malkiat Singh came in the tractor "along with 4/5 other persons whose names and villages to which they belonged" were not known to him. It cannot therefore be said that the first information report made a mention of accused Mukund Singh, Malkiat Singh, and only four others, for the informant was not sure whether the number of the persons who were with Mukund Singh and Malkiat Singh was 4 or 5. As it was stated in the report that the accused came to the place of occurrence in a tractor, and as it was not stated in it that the number of accused given by Mansha Singh included the driver of the tractor, it appears that there is justification for the argument of Mr. O. P. Sharma that even according to first information report Ex. PO the number of the accused, including the tractor driver, was seven or eight. The evidence of the prosecution shows that Darshan Singh, who was the driver of the tractor, remained on the driver's seat all through, and that appears to be the reason why he was not counted when Mansha Singh stated the number of the assailants in the first information report. As has been stated, the first information report was made very soon after the incident, and there is not justification for the argument that it discredits the statement of its

market Mansha Singh (PW 2) in the trial Court.

8. An ancillary argument has been made that the number of the accused was increased from 6 to 8 for the purpose of inducting Darshan Singh (PW 3) as an approver as it was found during the course of the investigation that the on January 10, 1972. He made an application for being made an approver on February 1, 1972 and his application was allowed on March 3, 1972. The aforesaid supplementary report of Mansha Singh had, however, been made by Mansha Singh at the police station long ago and his statement, along with the statements of the other witnesses, had been recorded by the investigating officer. It was therefore not possible to imagine, at the time when the supplementary report was made and the statements of the witnesses were recorded, that it would be desirable to raise the number of accused from 6 to 8 as Darshan Singh would be arrested for his complicity in the crime, he would make an application for being made an approver and that application would be allowed. The argument that the number of the accused was increased from 6 to 8 for the purpose of inducting Darshan Singh as an approver is therefore far-fetched and we have no hesitation in rejecting it.

9. It has next been argued that when it was alleged against the accused that they had come to the place of occurrence with the avowed intention of killing Roor Singh and all his sons, there was no reason why they would have spared Mansha Singh and Surjeet Singh. This argument has been advanced to show that Mansha Singh and Surjeet Singh were not in fact present at the time of the incident and were not eyewitnesses at all. We have gone through their statements. Mansha Singh (PW 2) has stated that the whole incident was over in 4 or 5 minutes and throughout that period he and Surjeet Singh kept standing at a distance of 30 or 40 "karams". Surjeet Singh has stated much to the same effect. A reference to siteplan Ex. PAA also shows that the distance between the place of firing (which was near the place where Roor Singh was shot) and the place where Mansha Singh and Surjeet Singh were standing was 40 to 50 "karams". Thus the distance was nearly 220 ft. The field in which the incident took place was of 6 bighas. The accused were armed with 12 bore guns and did not find it possible to murder Mansha Singh and Surjeet Singh. They had succeeded in killing not only Roor Singh, but his son Gurbux Singh and daughter Smt. Jeet Kaur, and it may be that, as has been stated by Darshan Singh (PW 3), Malkiat Singh self satisfied and exhausted their ammunition and there was the possibility of villagers coming to the place of occurrence in a short while. We are therefore unable to think that we should reject the evidence of the eyewitnesses merely because the accused did not kill Poor Singh's sons Mansha Singh and Surjeet Singh.

10. It has been argued that there was no justification for holding that Darshan Singh participated in the crime because his name did not appear in the first information report and he was not of the description of the four unknown accused mentioned in that report. We do not however, find it possible to appreciate this argument because Darshan Singh is not before us at the hearing. If the accused had reason to think that he had not been described in the first information report, the proper course was to have cross examined Mansha Singh in that regard and to have made that argument in the trial Court so that it could be an after thought. Darshan Singh was the owner of the tractor and was driving it. He remained sitting on the driver's seat all through, and was not known to Mansha Singh. That appears to be the reason why his name was left out from the first information report. Moreover, learned Counsel have not found it possible to refer us to any evidence which could show that Darshan Singh was friendly to Mansha Singh or was inimical to the accused so as to implicate them falsely. It cannot therefore be said that he was inducted for any improper reason. But even if the evidence of Darshan Singh is left out of consideration, we find that the remaining evidence on the record is quite sufficient to justify the conviction of the appellants.

11. There can be no doubt that Mansha Singh (PW 2) was an eyewitness of the incident, for he lodged the report at the police station promptly, with all the necessary details and his version has been substantiated by the evidence which was led at the trial. His statement has been corroborated by his brother Surjit Singh (PW 4) and nothing has been elicited in their cross examination to discredit or disprove what they have stated.

12. It has next been argued that the evidence regarding the recovery of the fired cartridge cases from the place of occurrence is unreliable because while two separate memoranda were prepared, one for the 11 fired cartridge cases of 12 bore gun and another for the two brass fired cartridge cases of the rifle, only one parcel was sent to the ballistic expert so that the parcels and their contents were tampered with. Our attention has also been invited to some overwriting in the police register in regard to the second parcel and it has been urged that the evidence regarding the recovery of the fired cartridge cases should be rejected as unreliable.

13. A reading of the statement of J. K. Sinha (PW 14), who was the Assistant Director of the Forensic Science Laboratory, Chandigarh, shows that one sealed parcel was received in the laboratory on January 3, 1972, through constable Ujagar Singh, and it contained eleven 12 bore fired cartridge cases and two 315 fired cartridge cases. The statement of the witness in regard to delivery of the sealed parcel in the laboratory on January 3, 1972 has not been challenged before us, and there is no doubt that all the 13 fired cartridge cases reached the Forensic Science Laboratory on January 3, 1972. As none of the accused had been arrested by that time and as no firearm had been recovered till then the investigating officer had nothing to gain by tampering with the fired cartridge cases for he was not in possession of the firearms with reference to which they were to be tested in the laboratory. For the same reason, the prosecution had nothing to gain by falsely showing the recovery of the brass fired cartridge cases, for it was found in the forensic laboratory that they had been fired from Darshan Singh's rifle Ex.P. 18 which was recovered only on January 10, 1972. It was therefore not possible for the prosecution to plant them at the scene of occurrence on December 31, 1971 when it had no reason to think that Darshan Singh would be arrested some 10 days later with the rifle form which those cartridges had been fired.

14. Our attention has been invited to the evidence regarding the recovery of the firearms, and we have examined it carefully. It has not been disputed that Mukund Singh was arrested on January 6, 1972, and was found in possession of single-barrel 12 bore gun Ex.P. 22. Malkiat Singh was arrested the same day, and was found in possession of double-barrel 12 bore gun Ex.P. 23 for which he held a licence. Appellant Kartar Singh was arrested on January 7, 1972 and he was then in possession of double-barrel 12 bore gun Ex.P. 20 for which he held a licence. Darshan Singh (PW 3) was arrested on January 10, 1972 and was found in possession of rifle Ex.P. 18 for which he held a licence. The aforesaid guns Exs.P. 23, P. 22, P. 20 and P. 18 were seized by the investigating officer, and were sealed, They were delivered at the Forensic Science Laboratory, Chandigarh, on February 3, 1972. J. K. Sinha (PW 14) Assistant Director of the Forensic Science Laboratory, Chandigarh, has stated that after firing test cartridges through the guns it was found that one of the recovered fired cartridge cases had been fired from Mukund Singh's gun Ex.P. 22, four from Malkiat Singh's gun Ex.P. 23 and four from Kartar Singh's gun Ex.P. 20. He has also stated that the two brass fired cartridge cases has been fired from Darshan Singh's gun Ex.P. 18. The witness has stated further that he came to the conclusion that they could not have been fired through any other firearm because every firing pin, firing pin scrape and breach face mark has its own individuality. The counsel for the appellants have not been able to make any substantial argument against the aforesaid recoveries of the fired cartridge cases and the firearms, and the evidence of J. K. Sinha (PW 14), which corroborate the testimony of the eyewitnesses in regard to the guilt of the appellants and petitioner Malkiat Singh.

15. Mr. Kohli has tried to distinguish the case of Kartar Singh from that of Mukund Singh and Malkiat Singh by pointing out that he had not been named or described in the first information report even though it contained a detailed description of the incident. He has urged that the description of the four accused given in the first information report does not tally with Kartar Singh, and that the evidence of Mansha Singh (PW 2) and Surjeet Singh (PW 4) should be rejected as unreliable. We have gone through the evidence on the record, and we find that there is nothing to show that Mansha Singh (PW 2) was acquainted with Kartar Singh and was in a position to mention his name in the first information report but failed to do so. In so far as the description in the first information report is concerned, it would be sufficient to say that we are not in a position to appreciate the argument whether it could be said to tally with appellant; Kartar Singh. IF the argument was meant to be effective, it should have been made in the trial Court of the High Court. As it is, Mr. Kohli has not been able to show why Mansha Singh and Surjeet Singh or for the matter of that Darshan Singh (PW 3) should have falsely implicated Kartar Singh in such a heinous crime. On the other hand, the evidence of the eyewitnesses against him has been substantially corroborated by the fact that when Kartar Singh was arrested on January 7, 1972, double-barrel 12 bore gun Ex.P. 20 was found in his possession. It is not disputed that it was a gun for which he held a licence. Out of the eleven 12 bore fired cartridge cases which were recovered from the place of occurrence soon after the incident, four were found to have been fired from Kartar Singh's gun and from no other gun.

16. Lastly, it has been argued that the sentence should be reduced to imprisonment for life. We find no force in this argument also, but if there are any mitigating circumstances which have not been brought on the record, the proper course is to bring them to the notice of the appropriate government.

17. There is thus no force in the two appeals and they are dismissed. In this view of the matter, there is no occasion to review this Court's order dated May 1, 1975, by which Malkiat Singh's petition for special leave was dismissed summarily, and the review petition is also dismissed.

</html