

Surat Singh and Another

Vs

State of Punjab

Criminal Appeal No. 130 of 1972

(P.N. Bhagwati, N.L. Untwalia, Syed M. Fazal Ali JJ)

13.08.1976

JUDGMENT

UNTWALIA, J. -

1. This is an appeal under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, by two persons who have been convicted by the High Court of Punjab and Haryana under Section 302, read with Section 34 of the Indian Penal Code, after setting aside their acquittal recorded by the trial Court. Each has been sentenced to undergo imprisonment for life.
2. The facts of the case are in a narrow compass. And the points urged by Mr. Kohli in support of the appeal, do not necessitate mentioning of all the facts in any detail.
3. In the month of February, 1969 there was an election held for electing members to the Punjab Legislative Assembly. From the constituency of the appellants and the deceased there were three contesting candidates in the field, namely : Pritam Singh, Joginder Singh and Gurmit Singh. The first two were contesting the election as independent candidates and Gurmit Singh was an Akali candidate. Shingara Singh, father of appellant Chain Singh, was helping Pritam Singh in the election while Khazan Singh, the deceased, who was killed in the occurrence, was on the side of Joginder Singh. Eventually, Gurmit Singh was elected. But according to the prosecution case the family of Shingara Singh continued to bear a grudge against Khazan Singh.
4. On February 28, 1969 at about 8.00 p.m. Shingara Singh, Chain Singh and Surat Singh are said to have gone in front of the house of Khazan Singh in village Dhalwali Dhab. Shingara Singh raised a Lalkara and instigated Chain Singh to kill Khazan Singh. Thereupon, Chain Singh is said to have given a spear blow on the left side of the chest of Khazan Singh. On receiving that blow he fell down. Appellant Surat Singh then gave two takwa (hatchet) blows on the left arm of Khazan Singh, causing simple injuries. All the three were put up on trial for causing the murder of Khazan Singh. The trial Judge acquitted them on appeal, the High Court giving benefit of doubt to Shingara Singh maintained his acquittal but convicted and sentenced the two appellants as stated above.
5. The High Court has rested the conviction of the two appellants chiefly on the dying declaration, Exhibit P-2 and the evidence of the three eyewitnesses PW 3 Smt. Palo, wife of Khazan Singh PW 4 Smt. Jogindro, daughter of Khazan Singh and PW 5 Piara Singh, who is also a relation of Khazan Singh. The trial Court doubted the authenticity and the correctness of the dying declaration, did not place reliance on the evidence of eyewitnesses and acquitted the accused.
6. We have heard learned Counsel for the appellant with care. We have given our due consideration

to the judgment of the High Court to see whether within the well established principles of law as laid down by this Court in several decisions, the High Court was justified in reversing the order of acquittal recorded in favour of the appellants by the trial Court. And we have come to the conclusion that the judgment of the High court is right and does not call for any interference except in regard to the nature or conviction of Surat Singh.

7. After Kazan Singh was injured he was taken to Malout hospital which was a distance of about 4 1/2 miles from the place of occurrence. He reached there round about the midnight. Dr. Bansal attended on him. He, however, was careful enough to record his statement at 12.40 a.m. on March 1, 1969 before examining his injuries in detail. The statement recorded by him has been proved as Exhibit P-2 as the first dying declaration of Khazan Singh. This dying declaration is a very short one and reads as follows :

On Friday, at about 7 or 8 a.m. 1, Khazan Singh son of Ghula Singh, Harijan by caste, resident of village Dhalwali Dhab, came out of my house when Charan Singh son of Shingara Singh was hurling abuses while standing in front of my door. Chain Singh gave a barchha blow in my abdomen and I fell down. Surat son of Asa Singh gave a takwa blow on my arm while I was lying fallen. Thereafter my wife and my daughters, etc. placed me on a cot and then they took me to Malout in a cart.

Note - a.m. is a mistake for P. M. and Charan Singh is Chain Singh, as admitted by all.

8. From Malout the injured was taken to Bhatinda hospital. PW 8, Sub-Inspector Bakshish Singh recorded his statement as the Bhatinda hospital at 5.40 p.m. on March 1, 1969. This statement as the Bhatinda hospital at 5.40 p.m. on March 1, 1969. This statement is Exh. P-16. The formal first information report was drawn up on the basis of this statement which has also been treated as a second dying declaration. Exh. P-16 gives the full version of the prosecution case, mentions the name of Shingara Singh also. It gives details of the occurrence and the names of the eyewitnesses. Mr. Kohli, learned Counsel for the appellants, very strongly attacked the veracity and genuineness of Exh. P-16. He said this could never be the version of Khazan Singh. If that be so, counsel submitted that no reliance could be placed on the first dying declaration, Exh. P-2. We are of the opinion that Exh. P-2 is a short version of the occurrence given by the injured who must have been under great pain and agony when he gave his statement a few minutes after his arrival at Malout hospital. Whatever is contained therein is nothing but truth. Intrinsically, the details given in P-16 show that all those details perhaps must no have been given by Khazan Singh himself. But that in our views does not detract in the least from the veracity and truthfulness of the statement of the deceased contained in Exh. P-2. In this short statement Khazan Singh did state that a spear blow was given by Chain Singh in his abdomen (very near the chest) and he fell down. Thereafter, Surat Singh gave him takwa blows. Although, his wife and daughters have not been stated to be the witness who saw the occurrence, the last sentence in the statement clearly shows that they were present at the time of the occurrence. Naturally, in the short statement the attention of Khazan Singh was focused on the question as to who were the assailants and what happened after he was assaulted. In our opinion, non-mention of the wife and daughters of Khazan Singh to be eyewitnesses of the occurrence in Exh. P-2 does not diminish the value of the testimony of the eyewitnesses.

9. We have seen the evidence of three eyewitness. The trial Judge rejected their evidence on flimsy grounds. The view taken by him was not reasonably probable to be taken. The High Court has rightly remarked that on the trifling contradictions their evidence could not be rejected.

10. We have also considered the evidence of the two court witnesses - CW 1 and CW 2. Because of the evidence of CW 2 High Court was compelled to reject the prosecution version of recovery of some weapons at the instance of the appellants. But the High Court was right in remarking that the other alleged eyewitness, Santa Singh, CW 1 was out to favour the accused, and, therefore, the prosecution could not suffer on that account.

11. We hold that the occurrence did take place in the manner as found by the High Court. Both the appellants took part in the occurrence. But we think that the High Court is not right in convicting the two appellants under Section 302 of the Indian Penal Code with the aid of Section 34. After acquittal of Shingara Singh the words said to have been spoken of by him could not be made use of and have not been used by the High Court for finding the element of common intention. The only fact then remains that Chain Singh gave a spear blow near the chest of Khazan Singh. The injury caused by this blow in the opinion of the doctor who held the postmortem examination on the dead body of Khazan Singh was sufficient in the ordinary course of nature to cause his death. Appellant Surat Singh gave two blows with a takwa on his left arm causing only simple injuries. The High Court says : "These facts admit of no doubt that the injuries. The caused by both the accused in furtherance of their common intention." It did not say that the common intention was to cause death or to cause such injuries which on objective test were found to be sufficient in the ordinary course of nature to cause death. The fact that appellant Surat Singh caused only two simple injuries on the arm of Khazan Singh and did not give any blow on any vital part of the body goes against the view that he had shared the common intention of causing the death of Khazan Singh. But surely appellant Chain Singh was guilty of causing the death of Khazan Singh by giving the fatal blow with this spear on his chest.

12. In the result, we dismiss the appeal of appellant Chain Singh subject to changing his conviction from one under Section 302, read with Section 34 of the Indian Penal Code to one under Section 302 simpliciter. His sentence of the life imprisonment has go to be maintained. We allow the appeal of appellant Surat Singh in part, set aside his conviction and sentence under Section 302, read with Section 34 of the Indian Penal Code and instead convict him under Section 324 of the Indian Penal Code. He is sentenced to undergo rigorous imprisonment for three years under the said count. We are told that he has been in jail for much more than three years by now, and if that be so, he is directed to be released forthwith.

</html