

Ajmer Singh and Others

Vs

The State of Punjab

Criminal Appeal No. 206 of 1976

(P.N. Bhagwati, A.C. Gupta, P.N. Shinghal JJ)

16.12.1976

JUDGMENT

SHINGHAL, J. –

1. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court dated October 24, 1975, upholding the judgment of the Sessions Judge of Patiala dated October 28, 1974. The High Court has thereby upheld the conviction of appellant Ajmer Singh of an offence under Section 302, I.P.C. for committing the murder of Dev Singh, and has confirmed the sentence of death. It has also upheld the conviction of the other appellants, Mehar Singh, Bachan Singh, Chanan Singh, Jarnail Singh, Ujagar Singh, Sardara Singh and Surjit Singh of an offence under Section 302/149, I.P.C. and the sentence of imprisonment for life for Dev Singh's murder. Ajmer Singh, Mehar Singh, Bachan Singh, Chanan Singh, Jarnail Singh, Ujagar Singh, Sardara Singh and Surjit Singh have been convicted of offences under 302/149 I.P.C. for committing the murder of Nikka Singh and Gurdev Singh, and they have been sentenced to imprisonment for life for those offences also. Ujagar Singh has been convicted of an offence under Section 307 I.P.C. for attempting to commit the murder of Mehar Singh PW 4, and he has been sentenced to rigorous imprisonment for three years while the remaining seven appellants have been convicted under Section 307/149 I.P.C. and sentenced to rigorous imprisonment for three years. Appellant Chanan Singh has been convicted of an offence under Section 324 I.P.C. for causing injury with an incisive weapon to Mehar Singh PW 4, and sentenced to rigorous imprisonment for six months and the other seven appellants have been convicted under Section 324/149 I.P.C. and sentenced to rigorous imprisonment for four months. All the eight appellants have been convicted of an offence under Section 148 I.P.C. and sentenced to rigorous imprisonment for one year. All the sentences, except the sentence of death awarded to Ajmer Singh, have been ordered to run concurrently. Anup Singh, Niranjana Singh, Jogender Singh, Amar Singh and Ralla Singh, who were the other accused in the case, have been acquitted.

2. The unfortunate incident, which resulted in the death of Nikka Singh, Dev Singh and Gurdev Singh on October 21, 1972 at about 5 p.m., was the result of enmity and litigation regarding the land of one Sampuran Singh of village Salempur. We shall refer to it when we examine the argument of the counsel for the appellants on the question of possession of Sampuran Singh's land on the date of the incident. It has been alleged by the prosecution that Nikka Singh (deceased) and Amar Singh, father of Dev Singh (deceased), were married to the sisters of Sampuran Singh's son-in-law and that after Sampuran Singh's death they, along with their brother Mehar Singh PW 4, started living at Salempur with Sampuran Singh's daughter Smt. Siri Kaur PW 10 and looked after the cultivation of the land of Sampuran Singh which had been inherited by Smt. Siri Kaur and was being cultivated by her tenants Bachan Singh, Sunder Singh and Nikka Singh. It has further been

alleged by the prosecution that on October 21, 1972, at about 5 p.m., Nikka Singh (deceased), Dev Singh (deceased), Mehar Singh PW 4 and Balbir Singh PW 5 (son of Nikka Singh deceased) were cutting fodder from Smt. Siri Kaur's field. Gurdev Singh (deceased) and his brother Bachan Singh PW 3, were cutting fodder in Gurdev Singh's field nearby. Appellants Chanan Singh and Jarnail Singh armed with spears, and appellants Mehar Singh, Bachan Singh, Surjit Singh and Sardara Singh armed with 'gandasas' came from the side of the well of Amar Singh, to the place of occurrence, and raised a 'lalkara' warning Nikka Singh and others that they would not be spared. Nikka Singh, Dev Singh, Mehar Singh and Balbir Singh thereupon left the field and ran towards the village. They were however confronted by appellants Ajmer Singh and Ujagar Singh who were armed with guns, and Jogender Singh, Amar Singh and Ralla Singh who were armed with 'gandasas', and came from the other side. The gun with Ajmer Singh was said to belong to Anup Singh who had a licence for it. The gun held by Ujagar Singh belonged to Niranjan Singh who also had a licence for it. Balbir Singh PW 5, son of Nikka Singh, escaped into the nearby sugarcane field to save himself and sat down there. It is alleged that the appellants encircled Nikka Singh, Dev Singh and Mehar Singh. Appellant Bachan Singh opened the attack and gave a 'gandasas' blow on the head of Nikka Singh and he fell down. Chanan Singh and Jarnail Singh gave blows with their spears on Nikka Singh's head while he was lying on the ground and Mehar Singh, Bachan Singh, Surjit Singh, Sardara Singh, Jogender Singh, Amar Singh and Ralla Singh inflicted injuries on Nikka Singh's person with 'gandasas'. Nikka Singh succumbed to the injuries and died on the spot. Ajmer Singh fired a gun shot at Dev Singh son of Amar Singh as a result of which Dev Singh fell down and died immediately. Ujagar Singh fired a fun shot at Mehar Singh PW 4 but he ducked. Appellant Chanan Singh then gave a 'barchha' blow on the left front side of Mehar Singh's chest as a result of which he fell down. In the mean time Gurdev Singh and his brother Bachan Singh PW 3, who were cutting fodder in Gurdev Singh's field in the vicinity, rushed to the place of occurrence and entreated the accused to stop the beating. Ralla Singh gave a 'gandasa' blow on Gurdev Singh's head while Jogender Singh inflicted a 'gandasa' blow on his left foot and Amar Singh a 'gandasa' blow on his left ankle. The other accused also gave 'gandasa' blows on the head and neck of Gurdev Singh. He fell down and died a little later while on his way to the hospital. A report (Exhibit P.A.) of the incident was lodged by Bachan Singh PW 3 at 6 p.m. at police station Channaur, at a distance of about 3 miles. Inspector Gurdev Singh PW 21 reached the place of occurrence at 7.30 p.m. and the copy of the first information report reached the Magistrate at 3 a.m. the same night. The dead bodies of Nikka Singh, Dev Singh and Gurdev Singh were sent for post mortem examination. It is not in controversy that those reports are in conformity with the allegation of the prosecution in regard to the infliction of the injuries on the deceased. The injury of Mehar Singh PW 4 was also examined by the medical officer and we shall have occasion to refer to it when we deal with the criticism which has been levelled against his credibility. The investigating officer took some "empties" in his possession and recovered some 'gandasas' and spears at the instances of the appellants. The police traced out Anup Singh and Niranjan Singh, who were said to be the licence-holders of the guns used by Ajmer Singh and Ujagar Singh, and challenged them also for abetting the commission of the offences. In all 13 persons were committed for trial to the Court of Session. The public prosecutor did not place reliance on the recoveries of the spears and the guns, and concealed that they did not inspire confidence. The trial court found that no case had been made out against Anup Singh and Niranjan Singh and acquitted them. It gave the benefit of doubt to Jogender Singh, Amar Singh and Ralla Singh accused and acquitted them of all the charges. The remaining eight accused have been convicted and sentenced as aforesaid. They have therefore come up in appeal to this Court.

3. As the incident which resulted in the death of the aforesaid three persons took place because of

the controversy regarding possession of the land of Sampuran Singh, it will be desirable to examine that aspect of the matter, for counsel for the appellants has strenuously argued that the land of Sampuran Singh was in the peaceful possession of the appellants Ujagar Singh, Jarnail Singh and Surjit Singh, and that it were Nikka Singh, Dev Singh and Gurdev Singh deceased who went to the place of occurrence to forcibly dispossess them on the date and the time of the incident and were therefore the aggressors. It has been argued that because of that aggression there was a free fight which resulted in the death of Nikka Singh, Dev Singh and Gurdev Singh and that there was no justification for blaming the appellants who only protected themselves against the aggression.

4. It is not in dispute that the land in question belonged to Sampuran Singh. Smt. Siri Kaur PW 10 was Sampuran Singh's only child and was married to Ajmer Singh of village Kurari who died some 10 years after the marriage. Smt. Siri Kaur was issueless and started living with her father Sampuran Singh after her husband's death. Sampuran Singh had 115 bighas of land. He died three years before the date of occurrence. Smt. Siri Kaur claimed that she had inherited her father's land. Appellants Ujagar Singh, Jarnail Singh and Surjit Singh, who are brothers, claimed the land for themselves as Sampuran Singh's collaterals and under his alleged will. That gave rise to litigation, including a dispute regarding the correction of the 'girdavari' entries for the "kharif" crop of 1969 and "rabi" crop of 1970. Exhibit P. QQ (at page 78 of the High Court paper book) is a copy of the order of the Financial Commissioner Revenue dated April 20, 1972, in a revision petition filed by the present appellant Ujagar Singh against Smt. Siri Kaur and her tenants Bachan Singh, Nikka Singh (son of Bishan) and Sunder. The Financial Commissioner took note of Ujagar Singh's own affidavit in which he had stated in clear terms that he had voluntarily relinquished possession of the land. He also noticed the further facts that the civil court had not given a finding that Ujagar Singh was in possession of the land and his name did not figure in the 'girdavari' entries maintained by the Irrigation Department. He therefore dismissed Ujagar Singh's revision petition. Then there is the judgment (Ex. P. RR) of Sub-Judge, First Class, Rajpura, dated June 29, 1972, in a suit filed by Smt. Siri Kaur for declaration of her ownership of the land of her father measuring about 115 bighas and for a permanent injunction restraining defendants Ujagar Singh, Surjit Singh and Jarnail Singh (present appellants) from interfering with her possession. The Sub-Judge held that Smt. Siri Kaur was in possession of the land through her tenants. He granted a decree declaring that she was the owner in possession of the land and restrained the defendants from interfering with her possession. In these facts and circumstances, it is futile for the counsel for the appellants to contend that this was not so and that it were appellants Jarnail Singh, Ujagar Singh and Surjit Singh who were in possession of the land of Sampuran Singh. It has thus been fully established as aforesaid that the land belonged to, and was in the possession of, Smt. Siri Kaur upto June 29, 1972, and that all efforts of appellants Jarnail Singh, Ujagar Singh and Surjit Singh to obtain possession thereof on the basis of an alleged will of Sampuran Singh proved futile. That in fact appears to be the reason why Ujagar Singh and others decided to take revenge and to take forcible possession of the land and went for that purpose to the place of occurrence on the date and at the time of the incident. There is no force in the argument to the contrary, and we find no justification for interfering with the finding of the trial court in this connection which has been upheld by the High Court.

5. It has thus been established by satisfactory evidence that Smt. Siri Kaur was in possession of the land of her father Sampuran Singh through her tenants Bachan Singh, Sunder Singh and Nikka Singh and that after her father's death she asked Nikka Singh and Amar Singh, who were married to the sisters of her husband Ajmer Singh, to live with her at Salempur and look after the cultivation of the land. Nikka Singh, Amar Singh and Mehar Singh were brothers, and they all therefore shifted from Sarala to village Salempur, which was at a distance of only 4 miles. That explains why Nikka Singh (deceased) and Mehar Singh PW 4, were present in the field of Smt. Siri Kaur along with

Amar Singh's son Dev Singh (deceased) at the date and time of the incident.

6. Bachan Singh PW 3 who lodged the first information report (Ex P.A.), Mehar Singh PW 4 who received a penetrating incised wound by a sharp-edged weapon on the left side of the upper part of the chest, and Balbir Singh PW 5 son of Nikka Singh (deceased) have been examined as eyewitnesses of the incident. Counsel for the appellants has criticised the evidence of these witnesses, but it is not for this Court to reassess their evidence merely because some discrepancies have been pointed out in their evidence. The trial court was alive to the criticism which has been made against the evidence of these witnesses, but it took the view that while it was possible to say that they "exaggerated some facts in order to involve the maximum numbers of the accused persons", that only required that their statements should be scrutinised carefully. The trial court undertook that scrutiny, and acquitted five of the accused as mentioned above, giving the benefit of doubt to three of them. The High Court also examined the discrepancies in the statement of Bachan Singh, but reached the conclusion that it did not "lead to the conclusion that Bachan Singh was not present at the spot or that his entire statement was liable to be rejected as unreliable". The High Court placed reliance on Bachan Singh's statement and found support for its view by the further fact that he left for the police station within a few minutes, reached there without loss of time and lodged the first information report at 6 p.m. The High Court also examined the statement of Mehar Singh PW 4 carefully, and held him to be a reliable witness because the injury on his person left no room for doubt that he was present at the time of the incident and was an eyewitness. The High Court therefore held his evidence to be "convincing" and took the view that "it would be safe to rely on his testimony so far as the participation of the appellants is concerned". The statement of Balbir Singh PW 5 was also held by the High Court to be "consistent and reliable". While taking this view of the evidence of the aforesaid three witnesses, the High Court observed that the trial court had also subjected their testimony to a close scrutiny and "as a matter of abundant caution gave the benefit of doubt to some of the accused". The High Court also took into consideration the evidence bearing on the possession of Smt. Siri Kaur on the land of her father Sampuran Singh, the litigation started by Ujagar Singh and his brothers in that connection, the motive why Ujagar Singh decided to arm himself and his party with deadly weapons to take revenge and to take forcible possession of the land and the corroboration of the oral testimony by the medical evidence.

7. There can be no doubt that Mehar Singh PW 4 was an eyewitness of the incident. It is true that in the first information report Ex P.A. it was stated by Bachan Singh PW 3 that appellant Ujagar Singh fired a gun shot at Mehar Singh which hit him on the left side of his chest near the shoulder, but he stated in the trial court that Mehar Singh ducked and the shot missed him, and that appellant Chanan Singh gave a spear blow on the left front side of his side. Counsel for the appellants has tried to make much out of this difference in the version given in the first information report and the evidence during the course of the trial, and has urged that the Investigating Officer also recorded that the chest injury of Mehar Singh was a gun-shot injury. It has been argued that this must have been done after questioning Mehar Singh about the nature of the injury and that the discrepancy discredits the evidence of Mehar Singh. We are not impressed by this argument. The first information report was made by Bachan Singh PW 3, and it could not be utilised for the purpose of discrediting the statement of Mehar Singh. Moreover nothing has been elicited in the cross-examination of the investigating Officer to show that he had questioned Mehar Singh before recording that his injury had been caused by a gun-shot. It has to be appreciated that Bachan Singh left for the police station within a few minutes of the occurrence and if he or the investigating Officer had really questioned Mehar Singh about the nature of his injury, he would not have falsely stated that it was a gun-shot injury when it was really a spear injury of the same magnitude. There is therefore no occasion for us to reassess the evidentiary value of Mehar Singh's statement when, as

has been stated, the High Court has held it to be convincing and has taken the view that it would be safe to rely on it in so far as the participation of the appellants in the crime is concerned.

8. We find however that there is justification for the argument of Mr. Jagjit Singh, counsel the appellants, that the High Court misread the evidence in holding that Nikka Singh who cultivated Smt. Siri Kaur's land along with Bachan Singh and Sunder Singh, "was helped in cultivation by his brothers Mehar Singh and Amar Singh" because Nikka Singh who cultivated the land under Smt. Siri Kaur along with Bachan Singh and Sunder Singh was a Jhivar, and he was not the brother of Mehar Singh and Amar Singh. As has been stated, Nikka Singh who was the brother of Mehar Singh and Amar Singh was married to the sister of Smt. Siri Kaur's husband, and started living with his brothers with Smt. Siri Kaur at Salempur after Sampuran Singh's death and they all looked after the cultivation of her land at her request.

9. Another mistake which has occurred in the judgments of both the courts below is that they have not examined the statement of Mehar Singh PW 4 in the trial court with reference to his statement under Section 161 Cr.P.C. in one important respect. In his police statement Mehar Singh did not ascribe the infliction of any injury to appellants Mehar Singh and Bachan Singh. In fact in his statement to the police he did not ascribe the infliction of any injury to any accused except Ajmer Singh, Ujagar Singh, Chanan Singh and Ralla Singh. When he was confronted with that serious discrepancy, all that Mehar Singh could state was that it was incorrect that he had not ascribed the infliction of any injury to any accused except the four accused mentioned above. It is therefore apparent that he did not find it possible to give a satisfactory explanation of the discrepancy. This infirmity in Mehar Singh's statement was not noticed by the trial court or the High Court. As it is of great importance, and as the High Court has itself taken the view that it would be safe to rely on Mehar Singh's evidence, we do not find it possible to take the view, on the basis of Mehar Singh's own statement, that it would be safe to uphold the conviction of appellants Mehar Singh, Bachan Singh, Jarnail Singh, Sardara Singh and Surjit Singh. Benefit of doubt has already been given to accused Jogender Singh, Amar Singh and Ralla Singh, and we are inclined to think that Mehar Singh, Bachan Singh, Jarnail Singh, Sardara Singh and Surjit Singh are also entitled to the benefit of doubt.

10. An attempt was made to argue that we should disbelieve the first information report Ex. P.A. because, according to Mr. Jagjit Singh, it could not possibly be made at police station Channaur at 6 p.m. when the incident took place at 5 p.m. It has been argued that that report is in such details and is so consistent with the allegations of the prosecution that it must have been drawn up after the police had reached the place of occurrence and made some investigation. It will be sufficient to say that the High Court has rightly rejected the argument for the reason that if the Investigating Officer had done what has been imputed to him by counsel for the appellants, he would have come to know from Mehar Singh that the injury on his chest had been inflicted by accused Chanan Singh by a spear, and not by a gun-shot fired by Ujagar Singh, and the first information report would not have ascribed the injury to Ujagar Singh's gun fire.

11. It would thus appear that there can be no doubt whatsoever about the participation of appellants Ajmer Singh, Chanan Singh and Ujagar Singh in the crime. As has been stated, Ujagar Singh had a strong motive and went armed with a gun to the place of occurrence along with the associates. His associate Ajmer Singh also went armed with a gun, while appellant Chanan Singh armed himself with a spear. The criminal acts were thus done by all three of them in pursuance of a pre-arranged plan. It was their plan to go and attack and commit the murder of those found on the field of Smt. Siri Kaur and to take forcible possession thereof. That is why they went armed with deadly

weapons, gave a "lalkara" and each one of them inflicted the injuries on their victims as mentioned above resulting in the death of Nikka Singh, Dev Singh and Gurdev Singh and inflicted a penetrating incised wound on the chest of Mehar Singh PW 4. They thus committed the offences in concert, in pursuance of their pre-arranged plan and in furtherance of the common intention of all of them and we have no doubt that while Ajmer Singh is guilty of the offence under Section 302 I.P.C. for causing the death of Dev Singh, Chanan Singh and Ujagar Singh committed the offence under Section 302/34 I. P. C. Ajmer Singh, Chanan Singh and Ujagar Singh are also guilty of the offences under Section 302/34 I.P.C. for committing the murder of Nikka Singh and Gurdev Singh.

12. Nothing has been urged against the conviction of Ujagar Singh for the offence under Section 307 I.P.C., and of Chanan Singh for the offence under Section 324 I.P.C. and those convictions are maintained. But the conviction of Ajmer Singh and Chanan Singh is altered from one under Section 307/149 I.P.C. to that under Section 307/34 I.P.C. and the conviction of Ajmer Singh and Ujagar Singh is altered from Section 324/149 I.P.C. to that under Section 324/34 I.P.C.

13. We have examined the charge sheets and the nature of the evidence in the trial court, and we are satisfied that there could be no question of prejudice to the defence of the appellants because of the omission to frame charges under Section 34 I.P.C. Mr. Jagjit Singh has fairly conceded that there was no such prejudice in the facts and circumstances of this case.

14. We have also considered the argument of Mr. Jagjit Singh that there is no real justification for distinguishing the case of appellant Ajmer Singh with that of his co-appellants Chanan Singh and Ujagar Singh in the matter of the sentence for the offence of murder of Dev Singh. We find that there is justification for this argument, and we alter the sentence of Ajmer Singh for that offence to imprisonment for life.

15. The appeal is therefore allowed to the extent that appellants Mehar Singh, Bachan Singh, Jarnail Singh, Sardara Singh and Surjit Singh are acquitted of all the offences of which they have been convicted. They are in prison and shall be released if not required in any other case. The appeal fails in regard to the conviction of Ajmer Singh, Chanan Singh and Ujagar Singh except that their conviction is altered as mentioned above and the sentence of Ajmer Singh under Section 302 I.P.C. for the murder of Dev Singh is altered to imprisonment for life. Their conviction and sentence for the offence under Section 148 I.P.C. are set aside.

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