

SUPREME COURT OF INDIA

Amar Singh Randhawa

Vs.

State of Punjab

Crl.A.No.100 of 1973

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

17.12.1976

JUDGEMENT

GUPTA, J.:-

1. On March 20, 1971 three persons were murdered and three others injured in an incident in village, Chalela in District Patiala. The names of the persons murdered are Bakhtawar Singh, Amar Singh who was Sarpanch of the village, and Gurdev Singh. Those who were injured are Harnek Singh (P. W. 7), Amrik Singh (P. W. 2) and Ujjagar Singh (P. W. 6). Ten persons including the seven appellants before us were arrested in connection with the crime and tried by the Additional Sessions Judge, Patiala, and convicted as follows:

1. Amar Singh Randhawa was convicted under Section 302 of the Indian Penal Code on three counts and was sentenced to death on each count.

2. Gurmit Singh accused was convicted under Section 302 of the Indian Penal Code on two counts and was sentenced to death on each count. He was also convicted under S. 302/149 and was sentenced to imprisonment for life. The remaining eight accused were convicted under Section 302/149 of the Indian Penal Code on three counts and were sentenced to imprisonment for life on each count.

3. Santa Singh and Nasib Singh were convicted under Section 307 of the Indian Penal Code and were sentenced to rigorous imprisonment for five years each which the remaining eight accused were convicted under Section 307/149 of the Indian penal Code and were sentenced to five years rigorous imprisonment. Kaka Singh and Mewa Singh were also separately convicted under Sec. 307 of the Indian Penal Code and were sentenced to five years rigorous imprisonment each and the remaining eight accused were convicted under Section 307/149 of the Indian penal Code and were sentenced to five years rigorous imprisonment.

4. Amar Singh Randhawa, Gurmit Singh and Gurdial Singh were convicted under Section 307 and were sentenced to five years rigorous imprisonment each while the remaining seven accused were convicted under Section 307/149 of the Indian Penal Code and were sentenced to five years rigorous imprisonment.

5. All the accused were also convicted under Section 148 of the Indian Penal Code and were sentenced to two years rigorous imprisonment each.

The sentences were ordered to run concurrently.

2. The Punjab and Haryana High Court at Chandigarh hearing the appeal preferred by the accused and the reference for confirmation of the sentence of death passed on Amar Singh Randhawa and Gurmit Singh, Acquitted three of the accused, namely, Dharampal Singh, Gurnam Singh and Rattan Singh. The High Court held that the others were rightly convicted and dismissed their appeals but reduced the sentence of death both in the case of Amar Singh Randhawa and Gurmit Singh to imprisonment for life. The seven accused whose conviction was affirmed by the High Court are the appellants before us.

3. Before we proceed to state the prosecution case, it would be convenient to refer to the injuries found on post-mortem examination on the bodies of Bakhtawar Singh, Amar Singh Sarpanch and Gurdev Singh and also on the person of the three who were injured. Dr. Tuli (P. W. 5) who on March 21, performed autopsy found seven injuries on the body of Bakhtawar Singh including two incised wounds on the scalp and fracture of the skull bones. Death, according to the doctor, had resulted from the fracture of the skull bone and consequent injury to the brain. Amar Singh Sarpanch had nine injuries on his body including three incised wounds on the scalp fracture of the skull bone and an incised wound on the left leg which is described as follows: "1/2" x 1/4" incised

wound in front of left leg in lower third gun shot". According to the doctor death in this case resulted from the fracture of the skull bones and haemorrhage due to the injuries on the head. On Gurdev Singh were found several incised wounds on different parts of the body, and fractures including fracture of the skull bones caused by some blunt weapons. The injuries on the legs are described as follows: "1/2" x "1/4" incised wound 1" above the left ankle with fracture of left fibula gun shot" and "1/2" x 1/4" 2 wounds in the front right leg at a distance of 2" from each other gun shot". In the opinion of the doctor the fracture of the skull bones and injuries to blood vessels were the cause of death.

4. Injured Ujjagar Singh (P. W. 6), Amrik Singh (P. W. 2), and Harnek Singh (P. W. 7) were examined by Dr. Jagdish Raj (P. W. 4) between 8.20 P. M. and 9.15 P. M. on the date of occurrence, namely March 20, 1971. Ujjagar Singh had three incised wounds and two lacerated wounds. Some of these injuries were found to be grievous in nature. X-ray examinations of Ujjagar Singh did not disclose any radio opaque foreign body in him. On April 22, 1971 another injury on his chin was detected which Dr. Jagdish Raj did not notice when he had examined Ujjagar Singh on March 20. X-ray photograph of the injury on the chin taken on March 29 disclosed fracture of the mandible and it was declared grievous. The injuries of Amrik Singh included lacerated wounds on the head and punctured wounds on the right arm and the right leg and incised wounds on the back.

5. The prosecution case is that Amar Singh, Sarpanch of village chalela, had instituted proceedings for eviction of persons in unlawful possession of some land which vested in the panchayat. Some of the accused persons were among those against whom such proceedings had been started. This led to bitterness between the two groups, one of Amar Singh Sarpanch and the other of the unlawful occupants. All the ten accused persons belonged to the faction opposed to Amar Singh Sarpanch. The dispute between the two groups led to the initiation of security proceedings against both parties about a year before the occurrence giving rise to the present appeal. The security proceedings ended in a compromise, but due to the persistent efforts of the Sarpanch to recover possession of the land the accused harboured a grudge against him. What happened on March 20, 1971 appears from the evidence of the witnesses who had sustained injuries and the other eye-witnesses. At about three or four in the afternoon, Amar Singh Sarpanch, Gurdev Singh, Bakhtawar Singh, Harnek Singh, Amrik Singh and Ujjagar Singh were returning to their village along a pathway which joins village Chalela with village Bhaganmajra. Karnail Singh (P. W. 1) and Nasib Singh were also returning at the same time from village Bhaganmajra and they were a little behind Amar Singh Sarpanch and his companions. When Amar Singh Sarpanch and his companions came near a field belonging to one Karta Ram the ten accused persons, variously armed, suddenly emerged from the northern side of the field. Amar Singh Randhawa, Gurmit Singh, Santa Singh and Nasib Singh son of Basakhi Singh, had gandasis. Rattan Singh and Gurnam Singh had guns. Kaka Singh and Gurdial Singh carried spears. Dharampal Singh had pistol and Mewa Singh was armed with a lathi Rattan Singh started the assault by firing from his gun at Bakhtawar Singh who fell down and Amar Singh Randhawa struck him with gandasi. Amar Singh Sarpanch, Gurdev Singh and Amrik Singh, who tried to escape were given a chase by Gurnam Singh, Gurmit Singh, Gurdial Singh and Amar Singh Randhawa. To prevent their escape Gurnam Singh accused fired twice from his gun hitting Amar Singh Sarpanch and Gurdev Singh. Gurmit Singh, Amar Singh Randhawa and Gurdial Singh then overtook Amar Singh Sarpanch, Gurdev Singh and Amrik Singh and injured them with the weapons the accused were carrying. Ujjagar Singh who also tried to run away received several injuries at the

hands of Santa Singh and Nasib Singh. Harnek Singh was assaulted by Kaka Singh and Mewa Singh. In the meantime Dharampal Singh standing on the pathway started firing from his pistol to scare away people who might come in aid of the Sarpanch and his companions. Karnal Singh (P. W. 1) and Nasib Singh who watched the incident from a distance came forward after the accused had left and found Bakhtawar Singh, Amar Singh Sarpanch and Gurdev Singh dead and Harnek Singh, Ujjagar Singh and Amrik Singh seriously injured. Hearing of the incident Lal Singh, Sarup Singh (P. W. 10) and Baru chowkidar came to the place of occurrence. After their arrival Karnail Singh (P. W. 1) left for police station Mulepur and reaching there at 5.30 P. M. had the first information report recorded by Assistant Sub-Inspector Lal Singh (P. W. 18). The police party with Karnail Singh then left for the place of occurrence and they were joined on the way by Sub-Inspector Doongar Singh at village Jakhwali. Karnail Singh (P. W. 1) separated from them at Jakhwali and started for Rajendra Hospital at Patiala where the injured had been removed in the meantime. On reaching village Chalela the police party found the dead bodies of Amar Singh Sarpanch, Bakhtawar Singh and Gurdev Singh being guarded by Lal Singh, Sarup Singh and Baru chowkidar.

6. The trial Court accepted the prosecution case in its entirety and convicted the ten accused persons as already stated. The High Court acquitted three of the accused, namely, Dharampal Singh, Gurnam Singh and Rattan Singh on the ground that the case against them had not been proved beyond reasonable doubt and maintained the conviction of the rest while reducing sentence as mentioned above in the case of Amar Singh Randhawa and Gurmit Singh.

7. Before us Mr. D. Mookherjee appearing for the appellants laid great stress on two circumstances which according to him proved that the case against the accused was not true. The first circumstance to which counsel referred is the late delivery of the special report to the Ilaqa Magistrate. The F. I. R. was lodged at 5.30 P. M. on March 20. The said report was given at 6.15 P. M. to constable Lachhman Singh (P. W. 14) to be delivered to the Magistrate at Bassi. From the police station to Bassi is about 18 or 20 miles. Constable Lachhman Singh started on a cycle for village Jakhwali to catch a bus from there to Bassi. His evidence is that his cycle tyre was punctured on way to Jakhwali and from there he went on foot about four furlongs to Jakhwali carrying the cycle with him. The bus had by then gone. Lachhman Singh had the punctured tyre repaired at Jakhwali and started for Bassi on the cycle. After he had covered about four miles and was near village Kharera, he developed stomach pain which compelled him to take rest for about four or five hours at that place. At about 3.30 or 4 A. M. on March 21, he felt better and left on cycle for Bassi, which was still twelve miles away, reaching the residence of the Ilaqa Magistrate at about 6.30 A.M., and delivered the report to him. The trial Court believed the explanation given by Lachhman Singh for the delay. Counsel for the appellants submitted that the story of stomach pain coming in the wake of the punctured cycle tyre was not believable, and he argued that the late delivery of the report to the Magistrate indicated that it was not despatched at 6.15 P. M. but much later. It was submitted that the only reasonable conclusion to be drawn from these circumstances was that the F. I. R. was not recorded at the stated hour but long thereafter, very likely after the nature of the injuries inflicted was ascertained to make the F. I. R. consistent with the medical report. This submission would be valid if the evidence that the special report was made over to constable Lachhman Singh at 6.15 P. M. is disbelieved. The High Court held that even if Lachhman Singh's story of his cycle tyre being punctured or that about his stomach pain was not true, "it would not necessarily follow that the copy of the special report had not been entrusted to him at 6.15 P. M.". According to the High Court, for

Lachhman Singh's dereliction of duty the statement of Karnail Singh could not be viewed with suspicion. We agree that unless Karnail Singh (P. W. 1) is found to be a false witness, it is not possible to infer from what Lachhman Singh did that Karnail Singh did not lodge the F. I. R. at 5.30 P. M. To show that Karnail Singh was not a witness of truth our attention was drawn to his statement that he parted company with the police party after they reached Jakhwali to go to Patiala to see the injured at Rajendra Hospital. It was submitted that Karnail Singh who was with the police party all along until they reached Jakhwali could not possibly know that the injured had in the meantime been removed to Rajendra Hospital at Patiala. Of course it does not appear from the evidence on record how Karnail Singh knew that the injured were in the hospital at Patiala, but no question was put to him on this point, and we do not therefore think that any inference can be made that Karnail Singh was not speaking the truth. Had he been asked, he might have explained how he got the information.

8. The other circumstance on which counsel for the appellants laid great stress is the story of firing which the High Court did not accept. It was argued that the case of firing was an integral part of the prosecution case and that if this failed, the rest of the story could not stand. The High Court found that the case of firing had not been proved beyond reasonable doubt, but there is no affirmative finding that this part of the case was false. The evidence of Dr. Tuli (P. W. 5) and Dr. Cheema who was examined in the High Court as a court witness, suggests that though the prosecution case on this point may not be correct in all details, the possibility that there was firing by some among the assailants cannot be altogether ruled out. The fact that no empties were found is not conclusive. Karnail Singh said that Bakhtawar Singh fell down on being hit by the shot fired at him by Rattan Singh when some of the other accused dealt him gandas blows. It is possible that a shot was fired and Bakhtawar Singh, though not hit, slipped and fell, and in the hurry and excitement of the moment the witness imagined a connection between the two. Dharampal Singh, Rattan Singh and Gurnam Singh were acquitted not because the High Court thought that the story of firing was false but because it had not been proved beyond reasonable doubt. The High Court has said:

"It may be appropriate to add here that while coming to the conclusion that the participation of Dharampal Singh, Rattan Singh and Gurnam Singh Accused in the attack on the deceased has not been established beyond doubt, we are not viewing the evidence of the four eye-witnesses with suspicion and it is not being implied that these witnesses have falsely introduced the names of these three accused".

Also, it is not clear why the witnesses for the prosecution should invent the story of firing when this was absolutely unnecessary, if they thought of implicating the appellants, the injuries inflicted on the victims by the other weapons were sufficient for their purpose. The fact that all the eye-witnesses repeated the story of firing is a circumstance that suggests that the story might after all be true though none possibly received gun shot injury. The High Court also thought that the accused may have used the fire-arms but it is open to considerable doubt whether any injury had been caused by firearm". We find no reason to take a different view.

9. The appeal is accordingly dismissed.

Appeal dismissed.