

Kartar Singh and Others

Vs

State of Haryana

Criminal Appeal Nos. 232 and 235 of 1974

(Syed M. Fazal Ali, P. N. Shinghal JJ)

16.03.1978

JUDGMENT

SHINGHAL, J. -

1. These appeals by special leave are directed against the Judgment of the Punjab and Haryana High Court dated September 21, 1973, dismissing the appeal of all the ten appellants against their conviction for offences under Section 148 and Section 302/149, IPC on two counts, for the murder of Gurbax Singh and his wife, Smt. Pal Kaur, and under section 307/149, IPC on two counts for inflicting gun shot injuries on Chanan Singh (PW 4) and Harvinder Kaur (PW 14). The appellants have been sentenced to various terms of imprisonment including the sentence for imprisonment for life and a fine of Rs. 500 for the offences under section 302/ 149, IPC.

2. The deceased Gurbax Singh and his wife Smt. Pal Kaur used to live in their house in village Ayalki, at a distance of some 5.5 miles from police station Fatehabad, in the Hissar district. Smt. Pal Kaur's father Chanan Singh (PW 4) also used to live with them. He and Gurbax Singh had licensed guns of their own, and so also Charanjit Singh (PW 17) who was their partner in cultivation, as Gurbax Singh apprehended danger to his life.

3. It is alleged that Gurbax Singh and Smt. Pal Kaur were lying in the courtyard of their house on June 3, 1971, at about 3.30 p.m. under the shade of a tree. All of a sudden gun shots were fired from the side of the wall of the courtyard of the house of Gujar Singh which was adjoining to the house of Gurbax Singh. Several shots hit Gurbax Singh. His wife Pal Kaur tried to pacify the attackers, and then ran towards her 'kotha' in the opposite direction. She also received gun shot injuries. Meanwhile her father Chanan Singh (PW 4), who had his own licensed rifle as aforesaid and was sitting with his grandchildren Harvinder Kaur (PW 14) and Satnam Singh (PW 16) inside the 'kotha' opened fire at the assailants in self-defence. He also received gunshot injuries. The appellants ran away after killing Gurbax Singh and Smt. Pal Kaur because of Chanan Singh's firing. Chanan Singh went and lodged the first information report at 5.15 p.m. He narrated the incident in that report, named all the ten appellants as the accused, as also their respective weapons. He also stated that the incident was seen by him, his grand daughter Harvinder Kaur (PW 14), his grandson Satnam Singh (PW 16) and his 'siri' Charanjit Singh (PW 17).

4. Investigation of the case was taken up by the police, and the trial court and the High Court have made a mention of the irregularities and the peculiar features of that investigation. It would be sufficient to say that the police challaned only five accused. Of these, Kartar Singh and Gurdip Singh son of Shinghara Singh were two of the ten accused who were named in the first information report while the three others, namely, Tara Singh, Jeet Singh and Kashmir Singh, were introduced

by the Police as the other co-accused on the basis of their own investigation. The Police in fact went to the extent of releasing appellant Rattan Singh on bail of its own accord, without even arresting him. He was neither challaned, nor shown in column 2 of the report under Section 173, Cr. P.C. The remaining appellants, Chanan Singh, Narinder Singh, Balbir Singh alias Raghubir Singh, Mukhtiar Singh, Karam Singh and Girdhari Lal were stated to be innocent, and a prayer was made for the discharge of appellant Gurdip Singh son of Wazir Singh on the ground that he was innocent. Chanan Singh (PW 4) thereupon filed a complaint against the eight appellants who were let off by the Police. The committing Magistrate consolidated the challan and the complaint, and committing all the ten appellants, and the three others who were charge-sheeted by the Police, to the Court of Session. As Tara Singh, Jeet Singh and Kashmir Singh were not named in the first information report which was lodged by an eyewitness, and as they were not named as the assailants by any of any of the four eyewitnesses, it was only natural that they should have been acquitted by the trial Court. The remaining ten accused who were named in the first information report as the perpetrators of the crime, as also by the four eye-witnesses, were convicted and sentenced as aforesaid.

5. There is ample evidence on the record to show that Gurbax Singh and his wife Smt. Pal Kaur died of violence on June 3, 1971, at about 3.30 p.m. Their died bodies were examined, and numerous gun shot injuries were found on them. The death of Gurbax Singh and Smt Pal Kaur by violence has in fact not been challenged by counsel for the appellants. It has however been argued that Gurbax Singh had several enemies and the possibility that the murders were committed by someone else cannot be ruled out. It has been pointed out that even though Gurbax Singh had sent a telegram that he apprehended danger to his life, he was not able to mention the names of those who were likely to do so. It has been urged that no tangible proof of enmity against the appellants has been brought on the record and the High Court erred in taking a contrary view.

6. It may be mentioned that even in the first information report which was lodged without loss of any time, it was categorically stated by Chanan Singh (PW 4) that there was a dispute between his son-in-law Gurbax Singh and appellant Rattan Singh son of Shinghara Singh but somehow a compromise was arrived at through the good offices of Govind Rai Batra (PW 6) and one Devi Ram. Then it was stated that there was a dispute between Rattan Singh's brother Gurdip Singh and the Rai Sikhs in village Bhirana on April 12, 1971, when some shots were fired at Gurdip Singh's party who suspected that the deceased had instigated the incident. Thus the enmity with appellant Rattan Singh and his brother Gurdip Singh was mentioned right from the beginning and that fact corroborates the evidence of the maker of the first information report Chanan Singh. The High Court has gone through the other relevant evidence also and has given its reasons for the conclusion that while the deceased headed one party, appellant Rattan Singh headed the other. The High Court has also made a reference murder case of Karnoli for which the deceased Gurbax Singh was challaned and in which some of the appellants were cited as witnesses. In fact the deceased was so apprehensive that he obtained his release on bail in that case, by an order of the High Court. Moreover he sent a telegram on May 30, 1971, in which he asked for protection, but nothing came out of it and he was murdered in broad day light soon after.

7. A reference to the statements of the appellants also shows that even according to them there was enmity with the deceased. All the appellants, except Girdhari Lal and Karam Singh, are related in the manner stated by the High Court, and counsel for the appellants have not been able to show how the finding of the High Court that the other appellants were inimical to the deceased and there was "deep-rooted" enmity with him could be said to suffer from any such error as to require reconsideration in this Court.

8. It has next been argued that the High Court went wrong in taking the view that a powerful influence was exercised on the investigating agency, and even on the prosecuting agency and that it kept on working with a view to "falsify the eyewitnesses' account of the occurrence". The High Court has stated all the facts on which it has based its conclusion to that effect, and Counsel for the appellants have not been able to show how the evidence on the record could be said to have misread in arriving at that conclusion. The deceased made bold to file a complaint against Shri K. K. Zutshi, Superintendent of Police, Hissar, in the Court of Chief Judicial Magistrate, Hissar, but it was dismissed on May 21, 1971, on the ground that the case could not proceed without proper sanction. The deceased filed a revision petition on June 1, 1971, which came up for hearing before the Additional Sessions Judge on June 2, 1971, when notice was ordered to be issued to Shri Zutshi fixing June 22, 1971, as the date of hearing. These facts are not in dispute before us, and it is also not disputed that although Ch. Jai Singh was then posted as Deputy Superintendent of Police, Fatehabad, and it was his duty to supervise the investigation in the present case, one O. P. Pandit, Deputy Superintendent of Police, Hissar, was specially asked to undertake the supervision. It will be recalled that the deceased felt apprehensive that he telegraphically asked for protection just before his death, but to no avail. It has not been disputed before us that Nazir Singh, father of deceased Gurbax Singh, complained to the higher police authorities against the conduct of the investigating officers, and ultimately filed a complaint in the court of the Magistrate when he found that eight of the accused were left out in the police charge-sheet and three other persons were unnecessarily involved in it. As has been stated, the Magistrate committed those eight persons also to the Court of Session. Shri R. S. Yadav, Superintendent of Police, C.I.D. (Crime Branch) was ultimately sent to inquire into the complaint against the investigation agency. The trial Judge summoned the file of Shri Yadav's investigation, but it was not made available to him, and the Public Prosecutor gave him up as an unnecessary witness on the ground that the record of his investigation was with the State Government and he was unable to bring it. It is unfortunate that this should have been so. The High Court has also referred to the fact that even though appellant Rattan Singh was named as one of the principal accused in the first information report and in the statements of its maker and by Charanjit Singh (PW 17) he was not arrested even on June 9, 1971, when he was admittedly present before the investigating officer who recorded his statement on that date, although there was no evidence till then in support of his plea of alibi. It is also surprising that the investigating officer released him on bail on his own authority in such a serious case. For all these reasons the trial Judge and the High Court were justified in taking the view that the investigation was not satisfactory and was in fact quite suspicious.

9. But apart from it, the High Court has made a proper assessment of the evidence on the record. We have ourselves gone through the entire evidence without regard to the criticism which has been made against the investigation, and we find that it has been properly evaluated by the High Court. As has been stated, the incident was reported by Chanan Singh (PW 4) within the shortest possible time, with sufficient details. The names of all the appellants and their weapons were mentioned in the report, along with the names of the four eyewitnesses. It cannot be doubted that Chanan Singh (PW 4) witnessed the incident, which occurred in broad day light, as he himself received several injuries by gun shots as deposed by the medical officer who examined him soon after the incident. Some of the injuries were on his left forearm and chest, and it cannot be doubted that he received them while he was facing his assailants. No effective criticism has been levelled against the testimony of Chanan Singh and we find that both the courts have placed reliance on what he has stated.

10. Charanjit Singh (PW 17) also had a licensed gun which was obtained for him by the deceased as he was apprehensive of danger to his life. His account of the version is similar to that of Chanan

Singh and it has been challenged only on the ground that he was not present inside the house at the time of the incident but was under the Shesam tree, towards north-east of the house of the deceased, at a distance of some 120 feet. Reference in this connection has been made to the site plan prepared by a draftsman at the instance of the investigating agency. We have gone through the statement of Charanjit Singh. He has stated that the 'thanedar' did inquire from him about the place where he had seen the occurrence and that he told him that he did so while taking tea near the hearth, and not under the tree. He has also stated that when the draftsman came two or three days later, he and Satnam Singh (PW 16) had shown him the place in the courtyard and the corner of the room from where they had seen the occurrence. Nothing has been elicited in the cross-examination to shake his evidence. There is thus no reason to think that Charanjit Singh was not an eyewitness of the incident or that any mistake was committed in reading the evidence in that respect.

11. Much the same is the position regarding the testimony of Harvinder Kaur (PW 14) and Satnam Singh (PW 16). Some criticism has been levelled against the statements of Harvinder Kaur (PW 14) who was 12 years old and Satnam Singh (PW 16) who was 10 years old. They are the daughter and son of the deceased and were undoubtedly present at the time of the incident. In fact Harvinder Kaur herself received a simple gun shot injury and her presence at the time of the incident has not been challenged before us. She and her brother Satnam Singh have withstood the cross-examination, and all that has been urged against them is that their version in the inquest report should be believed and those of the appellants who were not named by them there should be acquitted. As only Kartar Singh, Chanan Singh, Mukhtiar Singh, Girdhari Lal and Karam Singh were named by these witnesses in the inquest report as the perpetrators of the crime, it has also been argued that as the other were falsely implicated because of enmity. It has also been argued that as the appellants did not visit the house of the deceased for some years, the child witness could not possibly have remembered their names. Both these arguments were advanced in the High Court and we find that they have been rejected for satisfactory reasons.

12. Appellant Rattan Singh, and Gurdip Singh son of Wazir Singh, pleaded alibi, and it appears that Rattan Singh wanted to establish his plea on the basis of the documentary evidence from the Rohtak hospital record, but no evidence was led to prove the plea and no grievance can be made if it has been rejected by both the courts.

13. Mr. Kohli has particularly invited our attention to the evidence against appellants Karam Singh and Girdhari Lal and we shall now deal with their cases.

14. Karam Singh is not related to any of the appellants and it cannot be said that he had any motive for participating in the murders. It is stated that he was armed with a 'barcha', but no injury with that weapon was found on the deceased or anyone else. It also appears that his left arm was under plaster at the time of his arrest. It is therefore doubtful whether he would have participated in such serious crimes with that handicap, or that the other appellants would have taken him with them. It is also doubtful if he would have really peeped above the compound wall of Gurdev Singh's house from where the guns were fired at the deceased when he had no fire arm with him and had nothing to gain by showing his presence to the inmates of the house of the deceased. These facts were not noticed by the High Court and we are therefore inclined to give the benefit of the lingering doubt to Karam Singh.

15. As regards appellant Girdhari Lal, it was alleged against him that he belonged to the party of appellant Rattan Singh. The evidence on the record shows that he was empty handed. All that has been said against him is that he joined the other appellants in saying that they should kill the family

of Gurbax Singh. It has been contended before us by Mr. Anand that as Girdhari Lal was a resident of village Ayalki, he was taken to the place of the occurrence because of his local knowledge. There is however no evidence to that effect. Girdhari Lal is no doubt a "rehabari", but when appellant Mukhtiar Singh of the same village was already with the appellants, it is doubtful if they would have taken Girdhari Lal with them. Moreover, being unarmed, there was no reason for him to show himself from beyond the wall of the house of Gurdev Singh. These facts have not been noticed by the High Court. As the case against Girdhari Lal is not free from doubt, we are inclined to give him also the benefit of doubt.

16. In the result, while the appeals fail in so far as appellants Chanan Singh, Kartar Singh, Mukhtiar Singh, Rattan Singh, Gurdip Singh s/o Wazir Singh, Raghubir Singh, Narinder Singh and Gurdip Singh s/o Shinghara Singh are concerned, the appeal (Criminal Appeal 232 of 1974) is allowed in respect of appellants Karam Singh and Girdhari Lal, who are acquitted of the offences of which they have been convicted. Appellant Karam Singh is in prison and shall be released forthwith if not required in any other case. Appellant Girdhari Lal is on Bail and he need not surrender.

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