

Baldev Singh

Vs

State of Punjab

Criminal Appeal No. 75 of 1972

(A. D. Koshal, Jaswamt Singh P.S. Kailasam JJ)

29.09.1978

JUDGMENT

KOSHAL, J. -

1. For the abduction and murder of Inder Singh, a resident of village Lataur in police station Mulepur of district Patiala, and for doing away with his dead body, three other residents of the same village, namely, Gurbachan Singh aged 55, his son Baldev Singh aged 30, and the latter's brother Hardev Singh aged 27, were tried by Shri Jagwant Singh, Additional Sessions Judge, Patiala, for offences under Section 364, Section 302 read with Section 34, Section 120-B read with Section 302 and Section 201, of the Indian Penal Code. Two of the accused, namely, Hardev Singh and his father were acquitted of all the charges. Their co-accused Baldev Singh was, however, found guilty of murdering Inder Singh in furtherance of the common intention of himself and others and was convicted of an offence under Section 302 read with Section 34 of the Indian Penal Code. The charges under Section 364 and Section 201 of the Code were also found proved against him and he was convicted thereof. The sentences awarded to him were life imprisonment on the first count, rigorous imprisonment for five years on the second and rigorous imprisonment for three years on the third, all of them having been directed to run concurrently. His appeal was rejected by a judgment dated October 8, 1971, of a Division Bench of the High Court of Punjab and Haryana and it is that judgment which is challenged before us in the present appeal.

2. The prosecution case may be stated thus. About a decade prior to July 21, 1969 when Inder Singh is said to have been murdered, one Harbans Kaur started living with him along with her two sons Kashmir Singh and Chanan Singh and a daughter named Gurmit Kaur (PW 6), the father of these three children being a deserted husband. Soon afterwards she contracted a Karewa marriage with the deceased who in turn made over possession of his land measuring about 125 bighas to her two sons who started cultivating the same.

3. Some time in the year 1967 the deceased fell out with Harbans Kaur and her sons and shifted his residence to the house of Gurbachan Singh, accused, who was his distant collateral. On December 12, 1967 the deceased executed a will bequeathing his property to Gurbachan Singh accused and had the same registered. He also filed a suit for possession of his land against Kashmir Singh and Chanan Singh which was decreed on February 27, 1969 by the trial Court and on March 23, 1969 by the appellate Court. He obtained actual possession of the land on July 6, 1969 (vide Ex. D-5).

4. A couple of days later Gurbachan Singh accused arranged a liquor party to celebrate the happy occasion of recovery of possession of the land by the deceased from his step-sons. The party was attended by the three accused as well as by Gurmel Singh (PW 8) who was on visiting terms with

them. On that day the three accused and Gurmel Singh (PW 8) hurled abuses at Gurmit Kaur (PW 6) who raised an alarm. The deceased, who happened to come on the scene, did not relish the behaviour of the accused and their friend and declared that he would cancel the will above mentioned. On the same day he shifted his residence back to his own house.

5. Three or four days later Baldev Singh accused went to village Chaurwala where Gurmel Singh (PW 8) resided and took him to his father's well where the other two accused were already present. A conspiracy was hatched to kill Inder Singh so that he would not be able to revoke the will. Gurbachan Singh accused declared that he would bear all the necessary expenses.

6. After the conspiracy was hatched, i.e., on July 21, 1969, another case filed by the deceased against his step-sons, in which he had claimed Rs. 4000 as mesne profits of the land abovementioned, was to be taken up for hearing by a court at Bassi. The deceased came out of this house to go to Bassi and found that the three accused and Gurmel Singh (PW 8) were present nearby with a tractor and a trolley which belonged to the accused and which they used to park in their cattle-shed adjoining the house of the deceased. Gurbachan Singh accused took Inder Singh to the trolley and made him sit therein. Hardev Singh accused drove the tractor which was attached to the trolley and the rest of the party gave company to the deceased. On the way Gurbachan Singh accused got down at village Sadhugarh, while the rest of the party travelled in the tractor and the trolley towards Bassi. On reaching village Bhat Majra Hardev Singh diverted the tractor towards a katcha path leading to Sirhind and after covering a short distance stopped the machine, came down from his seat and entered the trolley. At that juncture Baldev Singh accused picked up a brick which had been lying in the trolley all the time and therewith gave a blow on the left ear of the deceased whom he caught hold of by the neck and on whose chest he then jumped. Gurmel Singh (PW 8) and Hardev Singh accused caught the deceased by his legs and the latter died on the spot.

7. The dead body was covered with a tarpaulin which was lying in the trolley. Hardev Singh took the tractor and the trolley towards a rivulet known as Landra Nadi. Gurmel Singh (PW 8) and the two sons of Gurbachan Singh dug a pit in the bed of the Nadi and buried the dead body. All three of them then returned to Lataur form where Gurmel Singh (PW 8) went away to his own village.

8. Three or four days after the occurrence, the villagers took notice of the absence of Inder Singh. Gurmel Singh (PW 8) got funky and contacted Gurbachan Singh accused with a request that the latter should save him as promised. Gurbachan Singh left the village and returned a couple of hours later. He then told his two sons and Gurmel Singh (PW 8) that he had lodged a first information report at police station Mulepur against the step-sons of the deceased. Such a report actually purports to have been lodged by him on July 26, 1969 in the form of Ex. P. N.

9. In the meantime the wife of the deceased had made an application dated July 14, 1969 to the Chief Minister, Punjab, which was ultimately passed on to the Patiala police who recorded the statement of Harbans Kaur and on the basis thereof registered a case on August 1, 1969 against the three accused as well as Gurmel Singh (PW 8) for an offence under Section 302 read with Section 34 of the Indian Penal Code.

10. On coming to know that he had been named as one of the culprits Gurmel Singh (PW 8) went to police station Sirhind on August 4, 1969 and made enquiries if he was wanted for Inder Singh's murder. He was told that this was so and was arrested. His statement (Ex. D. A.) was recorded by Assistant Sub-Inspector Dalip Singh of police station Mulepur (PW 11) on the same day.

11. On August 13, 1969 Gurmel Singh accused was granted pardon and became an approver. His detailed statement (Ex. P. B.) was recorded the next day by Shri Amjad Ali Khan, Judicial Magistrate First Class, Patiala (PW 3).

12. Baldev Singh accused was arrested on August 4, 1969 from the bus stand at Sirhind and made a disclosure (Ex. PE) to the effect that he had buried the dead body of Inder Singh in the bed of Landra Nadi. The police took him to the rivulet where he dug out earth from a part of the bed and uncovered the dead body which the police secured and had photographed by Madan Gopal (PW 2).

13. The autopsy was carried out by Dr. B. N. Soni, Medical Officer, A. P. Jain Hospital, Rajpura (PW 1) on August 4, 1969 from 5.30 p.m. onwards. The visible injuries were two in number which the doctor has described thus :

1. The pinna of the left ear was contused and lacerated and the left side of the face showed some bluish marks.

2. The left side of the front of the chest showed bluish marks in an area of 6 inches x 5 inches; on dissection there were signs of effused blood into the subcutaneous tissues and muscle fibres.

Decomposition had set in. The left mandible was found fractured and so were five ribs on each side. In the opinion of the doctor, death had resulted from shock produced by the multiple fractures. According to him, the time gap between the injuries and the death was unascertainable while that between the death and the autopsy was about two weeks.

14. Fourteen witnesses were examined in support of the prosecution case. Gurmit Kaur (PW 6) testified to having seen her father being taken away by the accused and Gurmel Singh (PW 8) in a tractor and a trolley on the morning of July 21, 1969. Fauja Singh (PW 10) also stated that at the bus stand at village Sadhugarh, Gurbachan Singh accused had got down from the trolley in which the other travellers were Baldev Singh, Gurmel Singh (PW 8) and the deceased and which was being towed by a tractor driven by Hardev Singh accused. The main evidence against the accused, however, consisted of the testimony of the approver, namely, Gurmel Singh (PW 8), and of the circumstance of the recovery of the dead body at the instance of Baldev Singh accused.

15. The defence consisted of a total denial of the allegations made against the accused by the prosecution. They claimed that they had been falsely implicated by Chanan Singh, Kashmir Singh, Gurmit Kaur and their mother Harbans Kaur and that the dead body had been recovered at the instance of Gurmel Singh (PW 8).

16. The learned Sessions Judge was of the opinion that although the deposition of the approver was corroborated in material particulars insofar as Baldev Singh accused was concerned, such corroboration was lacking in the case of the other two accused, who, in fact, had really not played any prominent part in the alleged abduction and murder. He noted the fact that the medical evidence conformed to the story given by the approver and attached importance to the recovery of the dead body which was found to have resulted from the disclosure made by Baldev Singh accused. Similar were the views expressed by the High Court who considered the story given by the approver to be reliable insofar as Baldev Singh accused was concerned.

17. Before us it has been strenuously urged on behalf of the appellant that the testimony of Gurmel Singh (PW 8) not only bristles with inherent improbabilities but must also be rejected for the reason

that the approver had been changing his stand from time to time and cannot on that account be regarded as a reliable witness. After hearing learned counsel for the parties at length we find the contention, by the large, to be acceptable.

18. The very participation of the approver in the alleged conspiracy and the commission of the offences of abduction and murder is *ex facie* improbable. He is not shown to be connected with the family of the appellant by ties of blood or marriage. Besides, he belongs to a different village and it is not his case that he and the accused were so thick with each other that he would die for them and they for him. The only assertion about his relations with them, is that he was in visiting terms with them which is a state of affairs such as would not normally prompt the accused to take him into confidence about such a serious matter as a murder. Nor was he promised any remuneration. Why then would he put his neck into the noose ? The natural conduct on his part when he was asked to be a party to the murder at the time of the alleged conspiracy would be to disclaim all interest therein or in any case to keep quiet, go back home and not react favourably to any further attempt to rope him in. His stand that he was a willing party to the conspiracy as also to the abduction and murder appears highly unnatural to us.

19. And then what part did he actually take in the abduction and the murder ? He says that he was called by the accused and travelled along with them in the trolley and all that he did was that he caught hold of the legs of the deceased after the latter had received fatal injuries at the hands of the appellant. Why the legs were so caught is not stated and appears to be something really funny and incredible.

20. The third improbability in the approver's evidence consists of his visit to the police station at Sirhind. He says that he got frightened by the rumor that he had been named as one of the culprits who had abducted and murdered Inder Singh and that, therefore, he contacted the police in order to find out whether there was any truth in the rumour. This conduct on his part is wholly unnatural. The rumour would have persuaded him to make himself scarce rather than to go to the police which was the very thing he was afraid of.

21. And, then it is hard to believe that the deceased would, for the mere asking, accompany the accused in their trolley when he had expressed his abhorrence of their misconduct towards his daughter not only by declaring his intention to cancel the will but also by shifting his residence back to his own house.

22. All these improbabilities relate to important aspects of the prosecution case and cannot be ignored on the plea that they do not touch the main fabric of the story given by the approver.

23. Ex. D.A. is the statement which the approver made to Assistant Sub-Inspector Dalip Singh (PW 11) on August 4, 1969. In that statement there is no mention of the motive part of the prosecution case, the conspiracy, any part having been taken by the approver in the occurrence or of any one of the accused having jumped on the chest of the deceased. Even in Ex. P.B. which is the statement of the approver recorded by Shri Amjad Ali Khan (PW 3), the incident in which Gurmit Kaur (PW 6) was abused does not find any place, nor does a reference appear therein to Baldev Singh accused jumping on the chest of the deceased. The story in Ex. P.B. is given in a neat chronological order which appears to be the handiwork of some brain more clever than that of the approver himself. It was in his deposition before the court that the approver for the first time mentioned that on the day of the liquor party the three accused and the approver himself had hurled abuses at the girl. I may be noted that a reference to the liquor party and the fact that the approver was present thereat do find a

mention in Ex. P. B. Had the story of the abuses been correct, there is no reason why he should not have mentioned it in that document which is a detailed one. The averment that the appellant had jumped on the chest of the deceased is also disclosed by him for the first time in his deposition in court. The fact is of such vital importance that the approver could to have failed to disclose it in either of the two documents Exs. D. A. and P. B. As it is, we have a strong feeling that the approver had been improving his story from time to time in order to give support to the prosecution case and not because it was the truth. In its main features, therefore, we cannot accept the story as trustworthy even in regard to Baldev Singh who must also be treated at par with his two co-accused except in relation to the offence covered by Section 201 of the Indian Penal Code which is established against him by reason of the approver's deposition coupled with the very reliable material in proof of the recovery of the dead body at the instance of the appellant which is testified to by Pyara Singh (PW 9) and Assistant Sub-Inspector Dalip Singh (PW 11) both of whom have been believed on the point by the two courts below and for good reasons which we need not repeat.

24. In the result, the appeal succeeds in part. The judgment of the High Court is reversed insofar as it relates to the offences under Section 302 read with Section 34 and under Section 364 of the Indian Penal Code of which the appellant is acquitted, the conviction recorded against and the sentences imposed upon him in that behalf being set aside. That judgment however is confirmed and the appeal fails for the rest, so that the conviction of the appellant for an offence under Section 201 of the Code and the consequent sentence of rigorous imprisonment for three years are upheld.

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