

Dalip Singh and Others

Vs

State of Punjab

Criminal Appeal No. 13 of 1978

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

12.01.1979

JUDGMENT

UNTWALIA, J. -

1. This is an appeal by special leave from the judgment of the Punjab and Haryana High Court confirming the death sentence imposed upon each of the three appellants under Section 302 read with Section 34 of the Penal Code for the murder of five persons belonging to one family. Because of the family disputes and rivalry, a serious occurrence took place at about sunset time on December 2, 1975 resulting in the death of five members of the same family. The appellants are also very close agnatic relations of the deceased.

2. Jetha Singh, Teja Singh and Veer Singh were brothers. Jetha Singh was unmarried and used to live with Teja Singh. The three brothers had divided their properties at a private partition. Appellants Dalip Singh and Kundan Singh are sons of Veer Singh who is dead. Appellant Balvinder Singh and his brother Baldev Singh (since acquitted) are the sons of appellant Dalip Singh. Teja's wife was Pal Kaur. They had three sons and a daughter, their names being Ram Singh, Sucha Singh, Anup Singh and Darsho. A few months before the occurrence, Jetha Singh raised a sum of Rs. 3000 at the instance of his brother Teja Singh mortgaging four Kanals of his land. Appellants Dalip Singh and Kundan Singh wanted a share in that money as they could not reconcile themselves with the fact that the branch of Teja Singh alone should enjoy the property or the money of Jetha Singh. They being the sons of another brother of Jetha wanted to lay a claim on the property and money of Jetha Singh. It appears that it was not known to the prosecution as to how and to what extent the family disputes and rivalry went on gradually aggravating and what was the immediate cause of the occurrence. The two brothers namely Jetha Singh and Teja Singh who could throw light on this aspect of the matter were both killed in the occurrence. But that is of no consequence in this case.

3. According to the prosecution case on the day and at the time of the occurrence the four accused went to the house of Teja Singh armed with deadly weapons. Dalip Singh had a spear and the other three had Kirpans. The three appellants attacked Teja Singh with their respective weapons while he was sitting in a room in his house. Baldev Singh (since acquitted) was standing at the door as a guard. Sucha Singh tried to escape but Baldev Singh stopped him by injuring him on the left shoulder with his Kirpan. The others also attacked him and he fell down. Pal Kaur, Anup Singh and Darsho ran out of the house. They were chased. Darsho was given a Kirpan injury on the head by Baldev Singh and she fell down. All the accused surrounded Pat Kaur and Anup Singh and caused injuries to them. They fell down. The accused raised a Lalkara saying that Jetha Singh and Ram Singh should also be done away with. Saying so they went towards a well and the fields of Teja Singh where Jetha Singh and Ram Singh were. There they are said to have attacked, with their

respective weapons, Jetha Singh and Ram Singh.

4. Balbir Singh, PW 6, a close neighbour of Teja Singh, could see only a part of the occurrence and in the company of Sarpanch Surti Singh (not examined) he rushed to the Police Post at Chheharta and gave a report Ex. P/EE to Jarnail Singh, PW 28, the Assistant Sub-Inspector of Police, incharge of the outpost. Since Balbir Singh did not notice as to whether any person was dead or alive and himself had seen the attack on Pal Kaur only, in the report which he lodged he mentioned only that part of the occurrence which he had seen with his own eyes. On that report a case under Section 307 of the Penal Code was instituted at the Police Station Sadar. The report was lodged at the Police Post at 6.45 p.m. the same day i.e. December 2, 1975 and it was registered in the police station at 7.20 p.m. PW 28 proceeded to the village of occurrence with a Head Constable and two Constables. They learnt there that Sucha Singh and Jetha Singh had died and Teja Singh was lying unconscious in the house and that Ram Singh, Pal Kaur and Anup Singh and Darsho had been taken to the hospital at Amritsar. Teja Singh died on the way when he was being removed to the hospital sometime later. Pal Kaur died in the hospital on December 11, 1975 and Ram Singh died there on December 13.

5. The learnt Additional Sessions Judge, Amritsar, who tried the four accused for the ghastly murder of five persons and for causing injuries to Darsho, PW 8 and Anup Singh, PW 9 acquitted Baldev Singh as his name was not mentioned in the first information report as also for some other reasons. He, however, convicted the three appellants under Section 302 read with Section 34 of the Penal Code imposing death sentence on each of them as also a fine of Rs. 2000 separately for each of the five murders. They were also convicted under Section 324 of the Penal Code for causing hurt to Anup Singh and Darsho. The High Court dismissed their appeal accepted the death reference and confirmed the death sentence.

6. Mr. Frank Anthony, learned Counsel for the appellants, made several submissions to persuade us to acquit them or in any event to commute the death sentence imposed upon each of them. We have considered all the submissions made, many of them were of such a nature that we had no hesitation in rejecting them outright. They do not merit any detailed discussion in our judgment as in an appeal on grant of special leave under Article 136 it is not necessary to deal with all of them. We shall, however, proceed to deal with some of them.

7. At the outset it may be mentioned that the prosecution had also led evidence of recoveries of certain articles said to have been made at the instance of the accused. But finding infirmities in that evidence the trial Court did not rely upon them. Apart from the fact that accused Baldev Singh was a lad of about 12 years of age at the time of the occurrence, the evidence against him was not free from doubt. He was, therefore, acquitted. The three appellants were convicted for the murder of Teja Singh, Sucha Singh and Pal Kaur chiefly upon the evidence of Darsho, PW 8, Anup Singh PW 9 and partly upon the evidence of Balbir Singh, PW 6. Mr. Anthony asked us to reject the evidence of Darsho and Anup in its totality because they had implicated Baldev Singh also. On the facts and in the circumstances of this case we find no substance in this argument. The two courts of fact have rightly believed their evidence. The other criticism was that Sarpanch Surti Singh and another Sarpanch named Jarnail Singh to whom one of the prosecution witnesses had gone were not examined. They were not eyewitnesses and it is not possible for us to take the view that their non-examination in any way affected the prosecution case. The third criticism against the evidence of these two witnesses was that they were tutored witnesses and had given the prosecution version parrot-like. Both of them were teenaged children of Teja Singh and their version was so truthful that it was rightly believed by the courts below.

8. There were two dying declarations of Ram Singh - one oral and the others written - which was recorded by the Assistant Sub-Inspector of Police, PW 28 on December 12, 1975. The oral dying declaration was made to PW 11 Tara Singh. Neither of the dying declarations was relied upon by the High Court because he had named Baldev Singh also. We may also add that although a dying declaration recorded by a police officer during the course of investigation is admissible under Section 32 of the Indian Evidence Act in view of the exception provided in sub-section (2) of Section 162 of the Code of Criminal Procedure, 1973, it is better to leave such dying declaration out of consideration until and unless the prosecution satisfies the court as to why it was not recorded by a magistrate or by a doctor. As observed by this Court in *Munnu Raja v. State of M. P.* ((1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764) the practice of the Investigating Officer himself recording a dying declaration during the course of investigation ought not to be encouraged. We do not mean to suggest that such dying declarations are always untrustworthy, but what we want to emphasize is that better and more reliable methods of recording a dying declaration of an injured person should be taken recourse to and the one recorded by the police officer may be relied upon if there was no time or facility available to the prosecution for adopting any better method.

9. There is a dying declaration of Teja Singh, Ex. P/FF recorded by Harcharan Singh, PW 10. He was the Head Constable of the Police Post Chheharta. At the direction of the Assistant Sub-Inspector of Police, PW 28 he recorded the statement of Teja Singh at the spot. This dying declaration has been relied upon by the High Court. It could not be rejected on the ground that it was recorded by a police officer as he was in a critical condition and no other person could be available in the village to record the dying declaration of Teja Singh. But we find that there is a difficulty in relying upon this dying declaration. Jetha Singh and Ram Singh were attacked by the appellants after having raised a Lalkara at the house of Teja Singh to murder them. Nobody actually saw them murdering either of them. The place where the said two persons were murdered was about a furlong away from the house of Teja Singh. Teja Singh in his statement recorded by PW 10 Ex. P/FF which is also signed by the Assistant Sub-Inspector stated :

Dalip Singh, Kundan Singh, sons of Vir Singh and Balvinder son of Dalip Singh, who are from our brotherhood have caused injuries to me and the male and female members of my family and my family and my elder brother Jetha Singh with Kirpans, and spears on account of dispute over the property of Jetha Singh. They have murdered Jetha Singh and Sucha Singh by inflicting injuries to them.

The dying declaration seems to be otherwise truthful but for the fact that it could not be within the knowledge or vision of Teja Singh that Jetha Singh was murdered by the appellants. His saying so in the dying declaration makes his statement a bit doubtful. It is, therefore, safe to leave out of consideration this dying declaration. It is important to remember that if the dying declaration both oral and written of Ram Singh are discarded so also the dying declaration of Teja Singh, then no direct evidence remains on the record in regard to the murder of Jetha Singh and Ram Singh by the appellants. In all probability they had committed the murder of these two persons also because after having raised the Lalkara they went towards the field where Jetha Singh and Ram Singh were. But in absence of a direct evidence on the point and also for want of conclusive chain of circumstantial evidence, legally it is not possible to hold that the three appellants were responsible for committing the murder of Jetha Singh and Ram Singh.

10. We are not impressed with the argument advanced on behalf of the appellants that the occurrence did not take place at about sunset time or that the first information report was ante-timed merely because the Illaqa Magistrate received the said report late by a few hours. It is difficult to

accept the suggestion in this case that the appellants were falsely implicated and some unknown two persons had committed the murder of so many family members of Teja Singh. The evidence of the two stamped witnesses, Darsho and Anup Singh, is so truthful that absolutely there cannot be any doubt about the commission of the ghastly crime by the appellant in the murder of three of the five persons. Regarding the other two, a definite finding may not be possible to be recorded for lack of legal evidence.

11. For the reasons stated above, we maintain the conviction of all the three appellants under Section 302 read with Section 34 of the Penal Code for the murder of Teja Singh, Sucha Singh and Pal Kaur. We also maintain their other convictions. The trial Court gave an opportunity to the appellants of hearing arguments on the question of sentence. That was a sufficient compliance with the law. Argument on the question of sentence was also advanced in the High Court. There is no infirmity on that account at all. Special reasons have been given by the both the courts for imposing the extreme penalty of death on each of the three appellants. While generally agreeing with those reasons we feel persuaded to take a somewhat lenient view in the case of Balvinder Singh. We could not find with certainty for lack of legal evidence that he along with the other two appellants was responsible for causing the death of Jetha Singh and Ram Singh. Dalip Singh and Kundan Singh are nephews of Teja Singh and they had demanded a share in the sum of Rs. 3000 received by Jetha Singh on execution of the mortgage. Balvinder Singh was a young man in his twenties at the time of the occurrence. He is a grand-nephew of Teja Singh. We therefore, feel that in his case ends of justice would be met by sentencing him to life imprisonment instead of the imposition of the extreme penalty of death. We further do not feel persuaded to uphold the imposition of fine of Rs. 2000 on any of the appellants because after imposing a sentence of death it was not necessary on the facts of this case to impose any sentence of fine on any of them. In the result we uphold the conviction of all the appellants under various counts to the extent and in the manner indicated above. We uphold the sentence of death awarded to appellants Dalip Singh and Kundan Singh but set aside the imposition of fine of Rs. 2000 on each of them. We commute the sentence of death imposed upon Balvinder Singh and instead sentence him to undergo imprisonment for life. Sentence of fine of Rs. 2000 imposed upon him is also knocked down. The appeals are dismissed subject to the modification in the sentence as made above.

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