

Joginder Singh and Another

Vs

State of Punjab

Criminal Appeal No. 226 of 1978

(R.S. Sarkaria, D.A. Desai JJ)

17.08.1979

JUDGMENT

CHINNAPPA REDDY, J. –

1. Joginder Singh and Balwinder Singh who along with their father Kishan Singh were tried for the murders of Kuldip Singh and Rupinder Singh, are the appellants in this appeal by special leave. The Sessions Judge convicted Joginder Singh under Section 302, Indian Penal Code and Kishan Singh and Balwinder Singh under Section 302 read with Section 34, Indian Penal Code for the murder of Kuldip Singh. Joginder Singh and Balwinder Singh were also convicted under Section 302 read with Section 34 for the murder of Rupinder Singh. On appeal the High Court of Punjab and Haryana acquitted Kishan Singh and Balwinder Singh of the murder of Kuldip Singh but confirmed the other convictions.

2. The case of the prosecution was as follows :

3. On February 24, 1974, Rupinder Singh had teased Pammi the daughter of Kishan Singh, while she was in the field. Coming to know of it, Kishan Singh and Balwinder Singh gave him a beating. Next day at about 2 p.m. Chanchal Singh, his wife Pritam Kaur, his son Rupinder Singh and his daughters were present in their house when Kishan Singh and his two sons Joginder Singh and Balwinder Singh came there abusing them. Joginder Singh was armed with a small kirpan, Kishan Singh with a gandasi and Balwinder Singh with a stick. They said that they would take away the daughter of Chanchal Singh and that she should be brought out. The womenfolk got frightened. Pritam Kaur took her daughters inside the house and bolted the door. Hearing the noise Kuldip Singh and Surinder Singh, nephews of Chanchal Singh, who live above 50 karms away came to the house of Chanchal Singh. Kuldip Singh went forward with folded hands and requested the accused to pardon them. Joginder Singh immediately gave a blow on the neck of Kuldip Singh with the kirpan in his hands. Kuldip Singh fell down. Kishan Singh was also attempting to give a gandasi blow to Kuldip Singh when Surinder Singh picked up a gandasi which was there and dealt a blow on the head of Kishan Singh. Meanwhile Rupinder Singh started running towards the fields. Joginder Singh and Balwinder Singh chased him abusing. Rupinder Singh jumped into a well in order to save himself. The three accused persons then ran away from the scene. Surinder Singh and Chanchal Singh went near the well. Rupinder Singh was not to be seen. Surinder Singh then went to the Police Station, Saddar, Patiala, about thirteen miles from the village and gave the report at 4.15 p.m. Thereafter PW 14, the Sub-Inspector proceeded with the investigation. The dead body of Rupinder Singh was taken out of the well and both the dead bodies were sent for post-mortem examination. Blood-stained earth was seized from the place where Kuldip Singh was found lying dead. Autopsy on the body of Kuldip Singh revealed an incised wound on the left side of the neck

starting from midline 2 inches above clavicular fossa, going down towards the left side 2 and a half inches in length and slanting. Muscles of the neck were cut. Trachea was cut open. Muscles on the right side of the neck and the carotid vessels on the right side of the neck were cut causing extensive haemorrhage and shock. The doctor opined that the injury was sufficient in the ordinary course of nature to cause death and that death must have been instantaneous. On the body of Rupinder Singh there were multiple bruises on the back, right scapular region and left arm. Those on the right scapular region and back were found to be more than 24 hours old, whereas the bruises on the back appeared to be fresh. There was swelling over the left temporal region, with extravasation of blood. The pleura was congested. There was fine frothy blood-stained fluid on the larynx. Blood-stained fluid was present in the right lung which was congested. So was the left lung. The right chamber of the heart was full of blood while the left chamber was empty. Blood-stained froth was found in the mouth. The doctor opined that the head injury rendered Rupinder Singh unconscious and thereafter he died of asphyxia due to drowning. The accused were arrested and Kishan Singh was sent to the hospital for medical examination. It was found that he had an incised wound with sharp margins over the left parietal region 3 1/2 cms x 1 cm x 3/4 cm. The underlying bone had been cut to a depth of 2 and a half cms. The wound was found to be fresh. The blood-stained earth which was seized from the place where Kuldip Singh's body was found, was sent to the Chemical Examiner and Serologist. The earth was found to be stained with blood but the Serologist was unable to say whether it was human as it had disintegrated by that time.

4. Joginder Singh and Balwinder Singh denied the charges altogether but Kishan Singh stated that in connection with the teasing incident that took place on February 24, 1974, there was a Panchayat on 25th morning at which it was decided that Rupinder Singh should do to his sister whatever he had done to Pammi. Kishan Singh was going on the Phirni with his kirpan when Kuldip Singh came there with gandas. Kuldip Singh gave a gandas blow on Kishan Singh's head whereupon Kishan Singh took out his kirpan and gave a blow to Kuldip Singh. Thereafter Kuldip Singh ran away and he returned to his house.

5. The Sessions Judge rejected the defence version and accepted the prosecution case. He held that while Joginder Singh was guilty under section 302, Indian Penal Code for the murder of Kuldip Singh, Kishan Singh and Balwinder Singh were also guilty of the murder of Kuldip Singh under Section 302 read with Section 34, Indian Penal Code, as they shared with Joginder Singh the necessary common intention. In regard to the death of Rupinder Singh, the learned Sessions Judge found that Joginder Singh and Balwinder Singh alone but not Kishan Singh chased Rupinder Singh making him jump into the well. Therefore, Joginder Singh and Balwinder Singh alone were guilty of committing the murder of Rupinder Singh. The High Court held that Kishan Singh and Balwinder Singh could not be said to have shared with Joginder Singh the common intention of committing the murder of Kuldip Singh. They were entitled to be acquitted of that charge. Otherwise the convictions were confirmed.

6. Shri Frank Anthony, learned counsel for the appellants took us through the entire evidence and urged that the prosecution case was false and the defence version was true. He urged that there was no reason whatever for Joginder Singh to attack Kuldip Singh as Rupinder Singh should have been the principal target of attack. He also urged that if it was Joginder that dealt the blow on Kuldip Singh, it was Joginder and not Kishan Singh who should have been attacked. He commented upon the failure of the prosecution to call any independent witnesses and also upon the delay in giving report. He urged that the prosecution case that Joginder Singh and Balwinder Singh chased Rupinder Singh was patently false for various reasons. He pressed for our acceptance of the defence version. In any event he submitted that the death of Rupinder Singh could not be said to be

homicidal.

7. We have considered the submissions of Shri Anthony very carefully more so because the judgment of the High Court in the present case is so perfunctory as to be of no assistance to us. We are unable to agree with Shri Frank Anthony on the submissions made by him in regard to issues of fact though we agree that the death of Rupinder Singh could not be said to be homicidal.

8. As we mentioned earlier, the first information report was lodged at the police station thirteen miles away, at 4.15 p.m. When the Sub-Inspector of Police was in the witness-box there was no cross-examination directed to elicit that the report was lodged later than at 4.15 p.m. Whether the occurrence took place at about 2 p.m. as alleged by the prosecution witnesses or even a little earlier, it cannot be said that there was any appreciable delay in lodging the first information report. The essential facts of the prosecution case are set out in the first information report. The intercession by Kuldip Singh, the delivery of a blow on Kuldip Singh by Joginder Singh, the attempt of Kishan Singh to deliver another blow on Kuldip Singh and the delivery of a gandasi blow by Surinder Singh on Kishan Singh are all mentioned in the first information report. That Rupinder Singh ran towards the fields, that Joginder Singh and Balwinder Singh followed him and that Rupinder Singh jumped into the well out of fear are also mentioned therein. The informant has also mentioned that all of them went towards the well but Rupinder Singh did not come out of the well and that at that juncture he was asked by his uncle Chanchal Singh to go to the police station and lodge the report. This last statement explains the failure of the informant to mention in the report whether Rupinder Singh was dead or not. One circumstance which in our opinion enhances the value to be attached to the report is that at the earliest point of time the informant Surinder Singh took upon himself the responsibility for the injury caused to Kishan Singh on his head. The injury on Kishan Singh's head was caused by a gandasi and it was a serious injury which had resulted in the fracture of his skull. There was the possibility that the fracture of the skull might even lead to death in which case the consequences to the person who delivered the blow could well be very serious. But, without hesitation Surinder Singh had taken upon himself the responsibility for the blow, whereas, if he was a crafty mind he could have well attributed the blow to Kuldip Singh who was dead. The first information report has a ring of truth in it. We are, therefore, satisfied that Surinder Singh whose evidence in Court is substantially corroborated by the first information report was speaking the truth when he gave out the version of the prosecution in regard to the manner of the death of Kuldip Singh and the receipt of injury by Kishan Singh. We also accept his evidence that Joginder Singh and Balwinder Singh followed Kuldip Singh and that Rupinder Singh jumped into the well out of fear. One of the criticisms against the witness was the story that he picked up a gandasi at the house of Chanchal Singh could not be true. It was said that he must have taken the gandasi with him from his own house when he proceeded to the house of his uncle. Whether he picked up the gandasi at the house of Chanchal Singh or whether he took it from his own house anticipating trouble from the accused, we are satisfied that the occurrence took place substantially in the manner spoken to by him. It was said that the house of the witness was at a distance of 50 or 60 karms from the house of his uncle and that it was unlikely that nothing would have happened before he and Kuldip Singh went there. It was urged that either Rupinder Singh was the main target of attack or it was the intention of the accused to abduct one of the sisters of Rupinder Singh but neither of these things had been done by the time Kuldip Singh and Surinder Singh reached the house of their uncle. We are not impressed by this argument. The accused were still indulging in abuses when Kuldip Singh and Surinder Singh arrived at the scene. Kuldip Singh and Surinder Singh might have realised that something serious was likely to happen and therefore, rushed to the house of their uncle. It was unlikely that there was any lag of time in the succession of events.

9. We do not also see any reason for not accepting the evidence of PW 2, Chanchal Singh. The occurrence took place in front of his house and he was therefore, a natural witness. One of the comments made by the learned counsel was that his name was not specifically mentioned in the first information report as an eyewitness. There is no substance in this comment. The occurrence took place in the house of Chanchal Singh and it is also mentioned in the first information report that Chanchal Singh "tried to take care of Kuldip Singh who breathed his last after some time". A suggestion was made to him in cross-examination that he, his brother Thakar Singh and his son Surinder Singh were working in his field, when his daughter Rani informed him that something had happened in the village. The suggestion was denied. We were not able to find anything in his cross-examination to justify the rejection of his evidence. His evidence substantially accords with the evidence of PW 1 i.e. Surinder Singh.

10. According to the version of Kishan Singh the occurrence took place in the Phirni and not in the house. According to what version when Kishan Singh was going along the Phirni Kuldip Singh without any ado, without any altercation even, straightway delivered him the blow on the head. The accused did not explain why Kuldip Singh should have attacked him when Kuldip Singh was in no manner aggrieved by the conduct of any of the accused persons, particularly Kishan Singh. Again according to the defence version after Kishan Singh retaliated and gave a blow and struck Kuldip Singh on the neck, Kuldip Singh ran away from the Phirni. It is impossible to accept this story. According to the medical evidence the death must have been instantaneous. It is too much to believe that after receiving the injury of the kind that Kuldip Singh received, he would have been in any position to run away. Kishan Singh also made a reference in his statement under Section 313, Criminal Procedure Code to an alleged Panchayat at which it was decided that Rupinder Singh should do to his sister whatever he had done to Pammi. The story about the Panchayat was suggested to the witnesses but was denied. To our minds also the story appears to be entirely ridiculous. But, it does give an indication of the way the minds of the accused were working. Apparently they thought of teaching a lesson to Rupinder Singh and the members of his family by behaving towards Rupinder Singh's sister in the same manner as Rupinder Singh behaved towards Pammi. That was apparently the reason why when they went to the house of Chanchal Singh, they demanded, in the first instance that the girl should be brought out. It was unfortunate that Kuldip Singh intervened at that juncture. It was argued that the accused had no reason at all to cause any harm to Kuldip Singh. It is true. The accused had no grouse against Kuldip Singh but it was his unfortunate intervention that brought out the calamitous result. Incensed as the accused already were over the conduct of Rupinder Singh, Joginder Singh was apparently in no mood to brook any intervention. We are satisfied that the occurrence took place in the manner deposed to by the prosecution witnesses and that it was Joginder Singh that inflicted the injury on the neck of Kuldip Singh resulting in his death. The medical evidence shows that the injury was sufficient in the ordinary course of nature to cause death. In fact according to the doctor death must have been instantaneous. We do not see how escape from conviction under Section 302, Indian Penal Code is possible.

11. We will now deal with the death of Rupinder Singh. After Kuldip Singh was attacked, Rupinder Singh ran from his house towards the fields. He was followed, apparently chased by Joginder Singh and Balwinder Singh. According to PW 1, Rupinder Singh jumped into a well 'in order to save himself'. Joginder Singh and Balwinder Singh were about 15 to 20 feet from Rupinder Singh when he jumped into the well. It is not the case of the prosecution nor is there any evidence to justify such a case, that the accused drove Rupinder Singh to jump into the well leaving him no option except to do so. From the evidence of PW 1 we are unable to get a clear picture of this part of the incident. It is not the case of the prosecution that Rupinder Singh was beaten on the head and then thrown into

the well. According to the medical evidence he received an injury on the head which made him lose consciousness and thereafter he died of asphyxia, due to drowning. Apparently when Rupinder Singh Jumped into the well his head hit a hard substance with the result that he lost consciousness and thereafter died of asphyxia. In the circumstances of the case we are unable to say that the death of Rupinder Singh was homicidal, though we are conscious of the fact that what induced Rupinder Singh to jump into the well was the circumstance that Joginder Singh and Balwinder Singh were following him closely. If we were satisfied that Joginder Singh and Balwinder Singh drove him to jump into the well without the option of pursuing any other course, the result might have been different. As the evidence stands we are unable to hold that the death of Rupinder Singh was caused by the doing of an act by Joginder Singh and Balwinder Singh with the intention or knowledge specified in Section 299, Indian Penal Code. Joginder Singh and Balwinder Singh are, therefore, entitled to be acquitted of the charge of murdering Rupinder Singh.

12. In the result Balwinder Singh is acquitted and is directed to be set at liberty if he is in jail. If he is on bail his bail bonds will be cancelled. The conviction of Joginder Singh under Section 302 read with Section 34, Indian Penal Code for causing the death of Rupinder Singh is set aside but his conviction under Section 302 for committing the murder of Kuldip Singh is confirmed. If Joginder Singh is on bail he is directed to surrender. The appeal is partly allowed.

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