

Nidhan Singh and Others

Vs

State of Punjab

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Vs

Nidhan Singh

Criminal Appeals Nos. 15 and 16 of 1977

(CJI Y. V. Chandrachud, Syed M. Fazal Ali, A. D. Koshal JJ)

26.08.1980

JUDGMENT

CHANDRACHUD, C.J. –

1. The appellants in Criminal Appeal 15 of 1977 were convicted by the learned Sessions Judge, Patiala, for various offences arising out of an incident dated November 27, 1973, in which four persons were murdered. Appellant Nidhan Singh was convicted under Section 302 IPC for the murder of Gurcharan Singh and was sentenced to death. Appellants Balwinder Singh and Harnam Singh, who are the sons of Nidhan Singh, were convicted under Section 302 read with Section 34 IPC for the murder of Charat Singh, Shisha Singh and Hamir Kaur as also for the murder of Gurcharan Singh. All the appellants were further convicted under Section 307 read with Section 34 IPC for causing injuries to Gian Singh and Didar Singh, and under Section 27 of the Arms Act for unlawful use of firearms.
2. The three accused filed a common appeal in the High Court of Punjab & Haryana against their conviction and sentence. The learned Sessions Judge referred the death sentence for confirmation to the High Court. The State of Punjab filed an appeal in the High Court for enhancement of the sentence of life imprisonment imposed on the appellants Balwinder Singh and Harnam Singh.
3. The High Court confirmed the conviction of the appellant on all the charges as also the sentence of life imprisonment awarded to them on some of the charges. It, however, set aside the death sentence imposed on appellant Nidhan Singh and reduced it to life imprisonment.
4. We have two appeals before us, both by special leave : Criminal Appeal 15 of 1977 is by the accused, while Criminal Appeal 16 of 1977 is by the State of Punjab asking that all the three accused should be sentenced to death.
5. The High Court and the sessions court have both considered the various matters arising in the case fully and carefully. We will therefore not repeat what has been said by them and will confine our attention to the main points made before us by Mr. Mulla who appears on behalf of the appellants.

6. The incident out of which the prosecution arose happened at about 11.00 a.m. on November 27, 1973. Jagir Singh (PW 2) loaded 40 mds. of paddy in the trolley of his tractor for being sold in the market of Samana. Jagir Singh, was accompanied by his son Gurcharan Singh, Charat Singh, Gurmukh Singh, Didar Singh, Gian Singh and Hamir Singh. Gian Singh was driving the tractor. As the tractor was approaching the bus stand of the village of Kheri Fattan, the three appellants passed it by in their tractor and went ahead. They were armed with guns. Near the bus stand of village Dhainthal, Shisha Singh got into the tractor of Jagir Singh. Jagir Singh's tractor covered a distance of about 300 karams towards Samana when the appellants came out of the Sarkanda bushes from the right side of the road. Nidhan Singh fired a shot which killed Gurcharan Singh. Balwinder Singh and Harnam Singh fired shots which injured Charat Singh and Didar Singh. Jagir Singh jumped out of the trolley along with his rifle from which he fired a few shots in the air. In the meanwhile, Hamir Kaur and Shisha Singh jumped out of the trolley to save their lives but they too received gunshot injuries. Gurcharan Singh, Charat Singh, Shisha Singh and Hamir Kaur who were traveling with Jagir Singh met with their death while Gian Singh and Didar Singh were seriously wounded.

7. Jagir Singh then went to Samana in a bus and lodged his first information report (Ex. P.J.) at about 1.00 p.m. Sub-Inspector Banta Singh wanted the FIR and reached the place of occurrence within a few hours. He saw dead bodies of Gurcharan Singh, Charat Singh and Shisha Singh, prepared an inquest report and seized the cardboard wads, pellets and empty cartridges cells from the place of occurrence. He found Jagir Singh's tractor with a loaded trolley standing on the Patiala-Samana Road. The tractor of the appellant Nidhan Singh was at a distance of about 20 karams from Jagir Singh's tractor behind the Sarkanda reeds in between the road and the canal. That tractor was taken into possession under the memo (Ex. P.U.). The tractor of Jagir Singh was taken into possession under the memo (Ex. P.N.).

8. Dr. Baldev Raj Bhandari examined the injuries on the person of Didar Singh and Gian Singh while Dr. Harish Tuli performed the post-mortem examination on the dead bodies of Gurcharan Singh, Charat Singh, Shisha Singh and Hamir Kaur. All these four persons died indisputedly of gunshot injuries.

9. The appellants, though named in the first information report, could not be traced by the investigating Officer. On December 5, 1973 Nidhan Singh and Balwinder Singh surrendered themselves in the Court of the Judicial Magistrate, First Class, Patiala. Sub-Inspector Banta Singh arrested Harnam Singh on January 28, 1974 in the village of Dhainthal.

10. At the trial, the prosecution examined Jagir Singh (PW 2), Didar Singh (PW 3) and Gian Singh (PW 4) as eyewitnesses to the occurrence. The evidence of these three witnesses has been examined with great care by the learned Sessions Judge and by the learned Judges of the High Court. The appellants' counsel read out to us important passages from the evidence of these witnesses, from which it seems to us clear that the version of these witnesses is true.

11. It is urged by Mr. Mulla that the deceased Shisha Singh belonged to the group of the appellants and that he must have died on account of a bullet fired by Jagir Singh from his rifle. In support of this submission, learned counsel placed reliance on two circumstances. Kashmir Singh, son of the deceased Shisha Singh, who was examined by the appellants as a defence witness produced an account book which contained an entry showing that the appellant Nidhan Singh had given Rs. 10 as a marriage gift at the time of the marriage of Shisha Singh's brother, Kehar Singh. The argument is that if the relations between Nidhan Singh and Shisha Singh were so cordial, it is highly unlikely that Shisha Singh would be done to death by anyone of the appellants. The second circumstances on

which great reliance is placed by the learned counsel for the appellants is that the injury on the person of Shisha Singh was more likely to have been caused by a rifle than by a gun. The post-mortem report (Ex. P.C.) prepared by Dr. Harish Tuli shows that Shisha Singh had received a lacerated wound, 2 cms x 1(1/2) cms above and outside right nipple. His right lung and liver were ruptured as a result of the injury and two metallic pieces were recovered from his peritoneal cavity. These metallic pieces, according to Mr. Mulla, were parts of a bullet fired from a rifle and were not pieces of pellets fired from a gun. These two circumstances on which the appellants rely cannot be brushed aside as of no consequence whatsoever. The High Court has accepted the authenticity of the account book produced by Kashmir Singh and we do not think that we will be justified in taking a contrary view of that piece of evidence. But we are unable to agree that merely because the appellant Nidhan Singh had given a gift in the marriage of Shisha Singh's brother, the appellant and Shisha Singh can be said to be on such cordial terms as to rule out the possibility of Shisha Singh being killed as a result of the fire opened by the appellants. It is not alleged that there was any enmity between Jagir Singh and Shisha Singh. If that were so, the story that Shisha Singh was given a lift by Jagir Singh would have been difficult to accept. The first information report was lodged without the slightest delay and it refers expressly to the fact that Shisha Singh was given a lift by Jagir Singh in his tractor. It may perhaps be that the appellants had no intention to cause the death of Shisha Singh and that he might have met with his death while he was fleeing for his life, after the appellants opened fire from their guns.

12. As regards the second circumstance, we have given a careful thought to the appellants' contention that the injury on Shisha Singh's person must have been caused by a bullet. The appellants' learned counsel invited our attention to every piece of evidence which bears on this point but we see nothing to support the contention that Shisha Singh's death was caused as a result of a bullet injury. Shisha Singh could not have been more than a hundred yards away from Jagir Singh when the latter fired from his rifle. A bullet fired from that close range would have caused extensive damage and, in the normal circumstances, there would be an exit wound too. There was neither a bullet in Shisha Singh's body nor did he have an exit wound. The two metallic pieces found in the body could not possibly be parts of a bullet and are, from their description, parts of pellets. We therefore agree with the trial Court and the High Court that Shisha Singh died as a result of a shot fired from a gun.

13. Mr. Mulla then contended that Hamir Kaur must also have died as a result of a shot fired by Jagir Singh. For this contention there is no support in the evidence at all. It is undoubtedly strange that Jagir Singh should have fired four or five shots "in the air" from his rifle after the appellant opened fire. But the truth of the matter seems to us to be that though Jagir Singh was carrying a rifle he must have been taken by surprise and was pulverized when the appellant started firing from their respective guns. It must have hardly taken a couple of minutes for the appellants to fire five or six shots from their guns, which killed three persons almost on the spot. Hamir Kaur died a little later. Jagir Singh was unquestionably on his way to the market and he could not have possibly imagined that the appellants would attack him and his companions in broad daylight. Apparently, appellants had no strong motive or immediate provocation for doing so. Jagir Singh must have used his rifle when it was too late, almost while the appellants were making good their escape. We do not think that there is any warrant for the supposition that either Shisha Singh or Hamir Kaur died on account of the shots fired by Jagir Singh.

14. Though this is so, we are quite prepared to approach the case on the assumption that Shisha Singh met with his death due to a shot fired by Jagir Singh. We see no doubt that the appellant had pre-planned the attack on Jagir Singh's party. Jagir Singh was on his way to the Samana market,

having little reason to foresee what was coming. The answer to the question as to who commenced the aggression is furnished by the fact that four persons, three in any case if we exclude Shisha Singh, who were in Jagir Singh's tractor were done to death. And not even one of the three appellants had so little as a bruise or abrasion on his person. Jagir Singh fired from his rifle in self-defence and therefore, the fact that he happened to kill Shisha Singh cannot afford to the appellants the excuse of extenuation. It cannot mitigate their crime, especially when it is realised that Shisha Singh was not a member of the appellants' group.

15. Finally, it was urged that the appellants' tractor must have been on the metal road itself and could not have been taken by them behind the Sarkanda reeds. The argument is that in all probability, the Investigating Officer must have taken the appellants' tractor from the road to the place behind the reeds in order to bolster up a false case. This argument leaves us unimpressed. We find it impossible to accept that Sub-Inspector Banta Singh could have done anything of the kind in the presence of a large crowd which gathered at the place of occurrence. The quadruple murder must have created great excitement, if not panic, in the locality and there is evidence to show that several people gathered at the place of occurrence soon after the incident. Besides, the first information report itself shows that the appellants came out of the reeds and started firing at Jagir Singh and his party. The photographs which the Investigating Officer took soon after reaching the place of occurrence also show that the appellants' tractor was lying beyond the reeds. There was no reason for anyone to start manufacturing evidence right from the word 'go', even assuming that certain important members of a political party were interested in the case.

16. As regards the sentence, learned counsel for the State, Mr. Mukherjee, did not press the case for death sentence against Balwinder Singh and Harnam Singh, the sons of Nidhan Singh. He, however, urged that Nidhan Singh deserves the death penalty and that the High Court was in error in reducing his sentence to life imprisonment. We find ourselves unable to accept this contention. As observed by the High Court, the evidence is not clear enough to compel the inference that whether the fatal injury was caused by Gurcharan Singh as a result of the shot fired by Nidhan Singh. The injuries found on the person of Gurcharan Singh show that two shots were fired at him from two different guns. The sentence of death was imposed by the Sessions Court on Nidhan Singh for having committed the murder of Gurcharan Singh. Since the High Court was in doubt as to whether the fatal shot was fired by Nidhan Singh, it reduced the death sentence to life imprisonment. We agree with the reasoning of the High Court and find no justification for imposing the death sentence on Nidhan Singh.

17. In the result, both the appeals are dismissed and the order of conviction and sentence passed by the High Court is confirmed.

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