

Gurnam Kaur

Vs

Bakshish Singh and Others

Criminal Appeal No. 223 of 1975

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

03.10.1980

JUDGMENT

CHINNAPPA REDDY, J. –

1. Gurnam Kaur, mother of Karam Singh and Gurdeep Singh, both of whom were shot dead on the afternoon of January 9, 1973, is the appellant in this appeal by special leave of this Court under Article 136 of the Constitution of India. Four persons, Asa Singh and his three sons, Bakshish Singh, Karaj Singh and Major Singh were tried for the murder of Karam Singh and Gurdeep Singh by the learned Additional Sessions Judge, Amritsar. Asa Singh was acquitted while the remaining three were convicted under Section 302 and Section 302 read with Section 34, Indian Penal Code. Bakshish Singh was sentenced to death while Major Singh and Karaj Singh were sentenced to imprisonment for life on each count. The appeal preferred to the High Court of Punjab & Haryana by Bakshish Singh, Karaj Singh and Major Singh was allowed and all three of them were acquitted. Hence this appeal by special leave obtained by the mother of the two deceased persons.

2. The case of the prosecution briefly was that in connection with an incident which took place a few months before January 1973, there was a case against Bakshish Singh and one Balvinder Singh for an offence under Section 307, Indian Penal Code and a cross-case against Karam Singh. Bakshish Singh and Karaj Singh were desirous of settling the dispute between them by compromise and when they approached Karam Singh he informed them that the matter could not be settled until he consulted his brother Gurdeep Singh who was then then in England. After Gurdeep Singh returned to India, he was approached for a compromise. Gurdeep Singh declared that he would rather spend a lakh of rupees than agree to any compromise. On January 9, 1973, Gurnam Kaur (PW 1), and her daughter Charan Kaur (PW 2) were returning home from their at about 3 p.m. after plucking 'saag', which we are told is a green vegetable. At that time Richpal Singh (PW 3) son of Karam Singh one Natha Singh were working in their respective fields. While returning, PW 1 and PW 2 noticed all the four accused sitting at the tube-well of Singh. Just then the two deceased persons Karam Singh and Gurdeep Singh came from the side of the village. Asa Singh shouted that Gurdeep Singh and Karam Singh should not be spared as Gurdeep Singh said that he would rather spend a lakh of ruppes than enter into compromise with them. Immediately all the accused stood up and Bakshish Singh fired a shot at Karam Singh with a pistol. Majore Singh also fired at Karan Singh. The two shots hit the legs of Karam Singh and he fell down. Gurdeep Singh tried to run away but Karaj Singh chased him over a short distance and fired a shot at him with his pistol hitting him just about a buttocks. He also fell down. Bakshis Singh, Karaj Singh and Major Singh ran up to Gurdeep Singh. PWs 1 and 2 also ran up to Gurdeep Singh. Major Singh fired a shot at the head of Gurdeep Singh Baksis Singh fired a shot which hit him on the right thigh. Gurdeep Singh died on the spot. Asa Singh then shouted that Karam Singh was not yet dead. Thereupon Bakshis Singh,

Major Singh and Karaj Singh went back to Karam Singh and Bakshish Singh fired a shot at the neck of Karan Singh. Pws 1 and 2 tried to protect Karam Singh by covering him with their bodies. Karam Singh also died on the spot. The accused then ran away. PW 1 then went to the police post at Algon and gave a report Ex. PA at 4.50 p.m. to PW 20 the Assistant Sub Inspector of Police who was in charge of the police post. PW 20 forwarded the report to the police Station, Valtoha, where the first information report was registered at 5.55 p.m. He proceeded to the scene of occurrence and held inquests over the dead bodies of Karam Singh and Gurdeep Singh. At the time of the inquest over the dead body of Karam Singh two empty cartridges were found lying near the dead body and they were seized. Two other empty cartridges were found lying near the body of Gurdeep Singh and they too were seized. The clothes of Gurnam Kaur and Charan Kaur were found to be blood-stained and they were also seized. A search was made for the accused but they were not available. Next morning PW 20 again inspected the spot and found another empty cartridge near the place where the dead body of Gurdeep Singh was lying. PW 4, the medical officer in charge of the Civil Hospital, Taran Taran conducted the post-mortem examination over the bodies of Gurdeep Singh and Karam Singh. On Gurdeep Singh he found the following injuries :

1. Wounded of entrance. - A lacerated wound 1 cm x 3/4 cm present on the antrolateral aspect of the right thigh lower one-third. Margins were inverted and blackened.

2. (a) A lacerated wound 1 1/4 cm x 1 cm present on the antromedial aspect of the right thigh lower one third. The margins were everted.

(b) Lacerated wound 10cm x 3cm present on the medial side of the right thigh upper one fourth. The margins of the 4 cm anterior were blackened. The depth was up to fat only.

3. Wound of entrance. - A lacerated wound 1 1/4 cm x 3/4 cm present on the back of the left thigh upper one-fourth. The margins were inverted.

Wound of exit. - A lacerated wound 6 cm x 3 1/2 cm present on the medial side of left thigh upper one-fourth. The margins were everted.

4. A lacerated wound 7 cm x 3 cm present on the middle and from part of the head. The underlying bones were completely blown off. The brain matter was coming in the wound.

5. Wound of entrance. - A lacerated wound 1 cm x 1/2 cm present on the back of the left hip. The margins were inverted.

(b) A lacerated wound 3 cm x 2 cm present on the left side of abdomen 7 1/2 cm below the umbilicur.

Dissection. - On dissection of injury No. 4 the clots blood was present below the pericranium. The booth hemispheres of the brain show fracture. The duramater was lacerated. Both hemispheres of the brain show laceration.

On dissection of jury No. 5 cloths of blood was present in the muscle of abdomen and left hip. All the injuries were ante mortem in nature and caused by firearm.

He found the following injuries on Karam Singh :

1. Wound of entrance. - A lacerated wound 1/2 x 1/4 cm present on the front part of the left knee. The margins were inverted.

Wound of exit. - Lacerated wound 1/2 cm x 1 cm present on the back of left knee. The margins were everted. The underlying bones were fractured.

2. Wound of entrance. - A lacerated wound 1 1/4 cm x 1 1/4 cm present on antromedial part of right thigh. Lower one third margins were inverted.

(b) A lacerated wound 2 cm x 2 cm present on the back of the right thigh lower one-third.

3. Wound of entrance. - Lacerated wound 2 cm x 2 cm with inverted margin present on the back of the right side of the neck 2 cm below the right ear.

(b) A lacerated wound on the left side of the neck 6 cm x 4 cm upper part.

Dissection. - On dissection cloths of blood present on the muscles of neck. The third vertebra shows fractures into pieces. The spinal chord was lacerated. All the injuries were ante mortem in nature and caused by firearm.

The head was healthy and empty. The stomach was healthy and empty. The bladder was healthy and empty. All the other organs were healthy.

The empty cartridges which were seized at the scene of occurrence were sealed on the spot, kept in the custody of the Muharrir Head Constable in charge of property at the Police Station, Valtoha, and, later sent to the ballistic expert.

3. On January 16, 1973, Bakshish Singh, Karaj Singh and Major Singh were arrested by PW 20. Bakshish Singh was interrogated and pursuant to the statement made by him a pistol was recovered. This pistol was later sent to the ballistic expert PW 6. The opinion of the expert was that out of the five cartridges recovered at the scene of occurrence, one cartridge found near the dead body of Karam Singh and two cartridges found near the dead body of Gurdeep Singh were fired from the pistol which was produced by Bakshish Singh while the remaining two cartridges (one found near the dead body of Karam Singh and the other near the dead body of Gurdeep Singh) were fired from some other weapon.

4. At the trial the prosecution examined Gurnam Kaur, Charan Kaur and Rachpal Singh as direct witnesses to the occurrence. Natha Singh the other alleged eyewitness was not examined by the prosecution on the ground that he was won over by the accused a memo to that affect was filed by Public Prosecutor.

5. The High Court took the view that two out of the three eyewitnesses examined by the prosecution, namely, Gurnam Kaur and Charan Kaur did not witness the occurrence at all and the third witness, Richpal Singh, might have witnessed the occurrence, but his evidence was not acceptable as he falsely vouched for the presence of the other two eyewitnesses. We have, therefore, to examine the reasons given by the High Court for concluding that Gurnam Kaur and Charan Kaur did not witness the occurrence. Having done so, we think that the reasons given by the High Court for discarding the testimony of PWs 1 and 2 are flimsy, insubstantial and bear no scrutiny. Trivial, unimportant and inconsequential circumstances have been unduly magnified to assume the shape of

dark, forbidding storm clouds instead of the little specks of dust that they, indeed, were.

6. First it was said that the 'saag' alleged to have been thrown away by the two women was not seized by the police and therefore their story that they had plucked 'saag' and were going with the 'saag' when the accused came upon the scene was false. That they had plucked 'saag' etc. was mentioned by PW 1 at the earliest point of time in the first information report itself. There was no particular reason for saying that they had plucked 'saag' and were going home with it if the story was not true. If it was not found when the police came next day it might be because some animal might have eaten it away or it might have been blown away by wind or swept away in some other manner. The investigating officer when questioned said : "I did not make any attempt to find out the saag which the ladies were stated to have been carrying in the first information report. It is incorrect that this story of ladies having gone to pluck the saag was made up at the spot after deliberations and consultations". It is difficult to see the force of the suggestion. If the story about saag was introduced after deliberation, nothing could have been easier than to effect an alleged seizure too and what was the point of it all ? We do not think anything turns at all on the circumstance that the saag said to have been thrown away by the women was not seized by the police.

7. Next, it was said that the evidence of PWs 1 and 2 that their clothes became stained with blood when they tried to protect the deceased, was not true because the blood stained clothes were not sent to the chemical examiner and the fact that the clothes became stained with blood was not mentioned either in the first information report or in the statement of PW 2 before the police. It is true that in the first information report PW 1 did not mention about her clothes becoming stained with blood but surely it cannot a circumstances of any significance if we remember that the first information report given by a rustic lay woman is not to be treated as or equated to the summary of the entire prosecution case and a mere omission to mentioned an incidental fact cannot have the effect of nullifying an otherwise prompt and impeccable report.

8. Regarding the failure of PW 2 to mentioned the fact in her statement to the police we note, again, that it is a mere omission and not a contradiction. The undoubted fact remains that the clothes of Gurnam Kaur and Charan Kaur were seized by the police and produced in court. If the Charan Kaur were not sent to the chemical examiner it was obviously because the investigating officer failed to realise the importance, such as it was, of sending the cloths to the chemical examiner for his opinion. We do not think that the High Court was justified in drawing that Gurnam Kaur and Charan Kaur were not eyewitnesses merely because their alleged blood stained clothes were not sent to the chemical examiner and Gurnam Kaur had not mentioned in the first information report and Charan Kaur had not mentioned in her statement to the police that their clothes had become blood-stained. Next, the High Court thought that the circumstances that the stomach of the two deceased were empty clinched the case against the prosecution. According to the evidence of Gurnam Kaur the deceased were in the habit of taking lunch at about 1 or 2 p.m. If so, it was understandable according to the High Court why Gurnam Kaur allowed them to go without food till 3 p.m. and why she and her daughter were doing nothing but plucking saag in the fields. The High Court also thought that it was beyond comprehension that PWs 1 and 2 should have plucked a little bit of saag for four hours continuously. From these circumstances the High Court guessed that the occurrence must have taken place at about 12 noon, at a time when both PWs 1 and 2 must have been in their house preparing lunch. To our minds the entire reasoning of the High Court on this part of the case was based on plain conjecture. When rustic women like Gurnam Kaur and Charan Kaur mentioned the time as 1 p.m., 2 p.m. 3 p.m. allowance must be made and the times mentioned should not be treated as precise. They were not asked in cross examination why they were carrying in the fields till 3 p.m. instead of making the lunch ready. If asked they might have given a very plausible

examination. The High Court was also wrong in thinking that the two women must necessarily be engaged in plucking saag all the time when they were in the fields. Having gone to the fields to fetch the saag they might very well have attended to some other operations to which they were accustomed. In fact Charan Kaur mentioned in her cross-examination that the two of them went round their garden to see the plants and then started plucking the saag. We are of the view that all the circumstances mentioned by the High Court to conclude that PWs 1 and 2 did not witness the occurrence were peripheral and did not touch the substance of their evidence.

9. The High Court thought it very significant that the empty cartridges seized at the scene of occurrence on January 9 and 10, 1973, were dispatched to the ballistic expert on January 16, 1973, on which date the accused were arrested and a pistol was recovered from Bakshish Singh. The High Court was apparently prepared to accept the suggestion that after the pistol was recovered some cartridges were fired from it and the empty cartridges were passed off as those recovered from the scene of occurrence on January 9, and 10 1973. There is no basis whatever for this view of the High Court. PW 15 the Muharrir Head Constable of Police Station Valtoha who was in charge of the property stated that the empty cartridges were deposited with him on January 11, 1973, and the pistol was deposited with him on January 16, 1973 and that when the property was in his custody nobody tampered with them. He was offered for cross-examination but no question was put in cross-examination. There was, therefore, no basis for the High Court to suspect that the empty cartridges were those which must have been fired from the pistol after it was produced by Bakshish Singh.

10. Shri Anthony learned counsel for the respondents submitted that there was considerable delay in making the report. He drew our attention to the circumstance that the special report sent to the magistrate from the police station reached him during the night of January 9/10, 1973 at 2.10 a.m. The Muharrir Head Constable who was in charge of the police station stated that the report was received from the Police Post Algon at 5.55 p.m. and that it was received by the Ilaqua Magistrate, Patti, thirteen miles from Valtoha at 2.10 a.m. He also mentioned that the last bus to Patti left Valtoha before 6 p.m. The delay was thus clearly explained. The witness was not cross-examined.

11. A submission made by Shri Anthony was that they eyewitnesses had been made to affix their finger impression on the statements made by them at the inquest and this showed that the police were not quite confident about the reliability of the alleged eyewitnesses to the occurrence. A reference was made to *Dadar Singh v. State of Punjab* ((1975) 4 SCC 272 : 1975 SCC (Cri) 530 : AIR 1974 SC 1193). We are unable to agree with the submission of Shri Anthony. It is not axiomatic that whenever the police take the signature of witnesses to their statements despite the ban of Section 162, Criminal Procedure Code, it must be presumed that the witnesses were not considered reliable by the police. It is a question of fact to be determined in the light of the circumstances of each case. In the present case the three eyewitnesses were the mother, the sister and the son of one of the deceased and there was no question of the police taking their signatures in order to make them stick to their statements as they were otherwise considered to be unreliable.

12. We have find earlier that the High Court had discarded the evidence of eyewitnesses on superficial and unsubstantial grounds. Apart from the fact that there were no justifiable grounds for rejecting their testimony we are greatly impressed by the evidence of PW 1 and the substantial corroboration received by it from the first information report and the medical and the expert evidence. An examination of the first information report shows that Bakshish Singh was responsible for firing two shots at Karam Singh and one shot at Gurdeep Singh. He was alleged to have shot once at the legs and later again at the neck of Karam Singh and once on the right thigh of Gurdeep Singh. The medical evidence supports the evidence of PW 1 and what is more important the medical

evidence is in tune with the first information report. The empty cartridges which were found at the scene of occurrence show that two of them found near Karam Singh and one found near Gurdeep Singh were shot from the pistol of Bakshish Singh. The manner in which the medical evidence and the expert evidence fit in with the earliest version given by PW 1 in the first information report, to our mind justifies our placing implicit reliance on her evidence. The principle to which regard must be had in dealing with appeals filed by private parties against judgments of acquittal passed by High Court have been explained by this Court in *Arunachalam v. P. S. R. Sadhanantham* ((1979) 2 SCC 297 : 1979 SCC (Cri) 454 : (1979) 3 SCR 482). We have kept in mind those principles and we have no hesitation in setting aside the judgment of acquittal passed by the High Court. We restore the judgment of the learned Additional Sessions Judge convicting the three respondents but having regard to the long lapse of time, we substitute the sentence of life imprisonment for the sentence of death in the case of Bakshish Singh also. The sentence of life imprisonment awarded to Major Singh and Karaj Singh by the learned Additional Sessions Judge are restored.

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