

Harchand Singh and Others

Vs

State of Punjab

Criminal Appeal No. 260 of 1974

(R. S. Sarkaria, R.S. Pathak JJ)

09.01.1981

JUDGMENT

R. S. PATHAK, J. –

1. This appeal by special leave is directed against the judgment and order of the High Court of Punjab & Haryana maintaining on appeal the conviction and sentence of the appellants by the learned Additional Sessions Judge, Ludhiana.

2. The appellants were tried for the murder of Jit Singh and Kehar Singh. The case of the prosecution was that Jit Singh, Kehar Singh and Sarwan Singh (PW 4) were three brothers. They were accused of murdering the appellant Kaka Singh's uncle Hari Singh, but were acquitted. Sometime later on December 30, 1971 at Mandi Amhedgarh when the appellants Kaka Singh, Harchand Singh and Dalip Singh met Kehar Singh a quarrel took place between them. Kehar Singh returned to his fields and informed Jit Singh and Sarwan Singh and the latter's son, Mohinder Singh, of what had taken place. Towards sunset, it was alleged, when the four started for their village, Jit Singh riding on a mare and the other three walking behind him, including Kehar Singh who had a bicycle with him, they were attacked by the appellants. Jit Singh and Kehar Singh were done to death while the other ran away. The learned Additional Sessions Judge, Ludhiana tried the appellants and convicted Dalip Singh and Kaka Singh under Section 302 of the Indian Penal Code for the murder of Jit Singh and sentenced them to imprisonment for life and a fine of Rs. 2,000 each, and convicted the other four appellants under Section 302 read with Section 149 of the Code and sentenced them to imprisonment for life. For the murder of Kehar Singh, Charan Singh, Ranjit Singh and Karam Singh were convicted under Section 302 of the Code and sentenced to imprisonment for life and a fine of Rs. 2,000 each, and the remaining accused were convicted under Section 302 read with Section 149 of the Code and sentenced to imprisonment for life. Convictions under Section 27 of the Arms Act followed in respect of Harchand Singh, Charan Singh, Kaka Singh and Dalip Singh and they were sentenced to one year's rigorous imprisonment. The six accused were also convicted under Section 148 of the Code and sentenced to one year's rigorous imprisonment. Two appeals were preferred to the High Court, Criminal Appeal 1317 of 1972 and Criminal Appeal 2 of 1973 against the convictions and sentences. The High Court considered the evidence led before the trial Court, which consisted both of evidence led by the prosecution as well as evidence led in defence. The High Court found in the testimony of Sarwan Singh (PW 4) and Harbhajan Singh (PW 8) sufficient evidence of motive in the appellants for assaulting the deceased, and in regard to the actual attack on the deceased it saw good ground for relying on the evidence of Sarwan Singh (PW 4) and Major Singh (PW 5). Supporting and corroborative evidence was considered by the High Court to be sufficient to confirm the guilt of the appellants. In the result, it held that the case against the appellant had been established beyond doubt, and consequently it

dismissed the appeals.

3. Shri Ram Jethmalani has very fairly placed the entire material on the record before us and has attempted to show that the evidence of Sarwan Singh (PW 4) and Major Singh (PW 5) was tainted by animus and partisanship, that it was vitiated by their bad character and lack of credibility, and that there were material contradictions between the statement of Sarwan Singh (PW 4) before the committing Magistrate and his unsworn testimony before the police. Learned counsel also sought to demonstrate that the delay in filing the first information report was not validity explained and the conduct of the prosecution witnesses shortly after the murders was unnatural. In particular, he has placed before us specific material in the endeavour to show that the appellant Harchand Singh had been falsely implicated. We have carefully considered the matter and, in our judgment, but for the case of Harchand Singh, the appeal must fail. The testimony of the eyewitnesses is fully supported by other evidence and we have no doubt that all the appellants, except Harchand Singh, were involved in the commission of the offences for which they have been tried. We consider it unnecessary to detail the direct and circumstantial evidence on which the High Court has relied. Whatever may be said in respect of the eyewitness accounts of Sarwan Singh (PW 4) and other witnesses, there is no reason why the testimony of Major Singh (PW 5) should not be accepted. His statement seems to us to present a fair and straightforward account of the incident except so far as it relates to the appellant Harchand Singh, and we are satisfied that he more than sufficiently proves, and confirms, that the remaining appellants were involved in the two murders.

4. In regard to Harchand Singh, however, we have considerable doubt whether he was present on the scene at all. He is said to have been one of those present at the time when a brawl took place with Kehar Singh at Mandi Ahmedgarh, and his presence and involvement in the murder is sought to be established by the allegation that he was armed with a double-barrelled breach loading gun, that as Jit Singh was passing mounted on his mare Harchand Singh exhorted his co-accused not to spare Jit Singh and simultaneously fired two shots at Jit Singh. As Jit Singh lowered his head, it is said, the shots missed him. Two empty cartridges are alleged to have been found subsequently about five Karams from the body of Jit Singh. Learned counsel for the appellant has referred us to a report of the Forensic Science Laboratory, Chandigarh indicating that the two cartridges had been fired thorough the right barrel of the gum. If this be true, then plainly they could not have been fired by Harchand Singh. It is not the case of the prosecution that the gun was reloaded after the first shot. There was considerable dispute before us whether the report could be accepted in evidence. It is urged for the appellants that the document was not received when the trial had started and that it was handed over to the court two days later without informing the defence about it. There is no doubt that if the report is accepted it goes a long way to demolishing the case of the prosecution against Harchand Singh. Even if this material be discounted there is such inconsistency in the prosecution evidence against Harchand Singh that it forms an insufficient basis for convicting him. Indeed, an attempt was made to prove that he had motive for participating in the attack by alleging that his uncle Karam Singh had brought a woman from village Manki, who had been restored to her brother by Kehar Singh, and for that reason Harchand Singh had harboured acute ill feeling towards Kehar Singh. This allegation was made by Sarwan Singh (PW 4) for the first time in his statement during the trial and not before. Then it is difficult to believe that, having regard to the distance from which the two shots are said to have been fired by Harchand Singh, he could have missed Jit Singh. The explanation given by the prosecution evidence in that regard is unacceptable. The two shots are said to have been fired at the commencement of the assault and it seems inconceivable that the mare, which does not appear to have been injured by any gun-fire, should not have bolted after the shots were fired, and should have permitted the remaining appellants, who were on foot, to overtake Jit Singh and hack him down with their gandas. The story set up by the prosecution appear

improbable.

5. In all the circumstances of the case, we find it difficult to hold that Harchand Singh was present during the commission of the crimes and, in our judgment, he is entitled to the benefit of doubt.

6. In consequence, the convictions and sentences imposed on the appellant Harchand Singh must be set aside, while those relating to the remaining appellants should be affirmed.

7. Accordingly, we set out the aforesaid reasons in support of our Order dated May 9, 1980 (See next para) allowing the appeal by Harchand Singh and dismissing the appeal of the remaining appellants.

ORDER DATED MAY 9, 1980

For reasons to be pronounced later, the appeal filed by Harchand Singh is allowed and his conviction and sentence for the different offences under the Indian Penal Code are quashed. He is directed to be set at liberty forthwith, unless required in connection with some other case. In case he is on bail, his bail bond shall stand discharged. So far as the other appellants are concerned, their appeal is dismissed.

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