

State of Punjab

Vs

Surjit Singh

Criminal Appeal No. 556 of 1983

(S. Natarajan, A. P. Sen JJ)

20.01.1987

JUDGMENT

NATARAJAN, J. -

1. This appeal by special leave by the State of Punjab is directed against the judgment of the High Court of Punjab and Haryana in Criminal Appeal No. 207(DB) of 1983 insofar as it relates to the acquittal of accused 2, Surjit Singh, the respondent herein. The Sessions Judge of Amritsar had convicted one Harcharan Singh (accused 1) under Section 302, IPC and his younger brother Surjit Singh (accused 2), the respondent herein under Section 302 read with Section 34, IPC for having committed the murder of one Harjinder Singh on October 13, 1982 and sentenced both of them to undergo imprisonment for life. In the appeal filed by the two accused, the High Court confirmed the conviction and sentence awarded to accused 1 but set aside the conviction of the respondent (accused 2) and acquitted him. The acquittal of the respondent is challenged in this appeal.

2. The facts of the case can be set out with advantage with reference to the genealogical table given below :

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# Jagat Singh (dead) (wife Shanti) | ----- |||
Karam Kartar Singh Paramjit Kaur Singh ||| Parminder Singh----- |||
|Harcharan Surjit |Singh Singh |(accused 1) (accused 2) | -----
| | Harjinder Singh Gurcharan Singh (deceased) (PW 10)##
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3. Accused 1 and 2 wanted to exclude all other sharers and secure for themselves the entirety of an ancestral house left by their grandfather Jagat Singh. Their uncle Kartar Singh posed no problem because he had already relinquished his rights. However, their grandmother Shanti and aunt Paramjit Kaur would not give up their rights, and in this stand they were supported by deceased Harjinder Singh. There were proceedings under Section 107, CrPC between accused 1 and his aunt's son Parminder and in those proceedings also, deceased Harjinder Singh took sides with Parminder Singh. Accused 1 and 2 were infuriated with Harjinder Singh for taking sides against them and the resultant grievance was the motive for the attack on the deceased.

4. On the fateful day of October 13, 1982 Harjinder Singh and Gurcharan Singh (PW 10) were proceeding to their shop at about 8.30 a.m. En route accused 1 and 2 beset themselves on Harjinder Singh and stabbed him with the daggers carried by them. Accused 1 inflicted a stab on the left side of the chest and another on the left flank of Harjinder Singh. Accused 2 inflicted a stab on the back and another stab near the hip of Harjinder Singh. They inflicted some more stabs and on receipt of them Harjinder Singh fell down. The occurrence was witnessed by Gurcharan Singh PW 10 and

also by Gurbax Singh (PW 11) and one Kanwal Main Singh (not examined). He was, however, tended for cross-examination but the accused did not avail of the offer. After the attack accused 1 and 2 ran away from the scene with their respective weapons. Harjinder Singh was rushed to the hospital by Gurcharan Singh (PW 10) in a car but he was pronounced dead by the doctor at the hospital.

5. On receipt of intimation from the hospital, Ajit Singh, ASI of Police proceeded to the hospital and recorded a statement Ex. P-2 from Gurcharan Singh between 11.25 a.m. to 12.15 p.m. A case was registered against both the accused and a copy of the Special Report was delivered to the Magistrate at 2.35 p. m. the same day.

6. Dr. Jaswant Singh, PW 9 conducted the autopsy on the dead body of Harjinder Singh and found five incised wounds and two abrasions on the dead body. For the purpose of the appeal it will suffice if injury Nos. 1 to 4 alone are set out. They are as under :

1. Incised stab wound 2.5 cm x 1 cm on the front side of the chest near the left nipple.
2. Incised stab wound 2 cm x 1 cm on the front of the left side of the abdomen. 3 cm away from the left ilium chest.
3. Incised stab wound 3 cm x 1 cm on the back on the chest in between the scapular region, bone deep.
4. Incised stab wound 3 cm x 1.5 cm on the left hypochondriac region on the front of the left side of the chest. 18 cm below the left nipple.

7. Dissection revealed that :

- (1) Injury No. 1 had pierced the wall of the chest and entered through 5th intercostal space and pierced the pericardium and the heart through and through with about 600 cc of free fluid blood in the left chest cavity, and
- (2) Injury No. 2 had pierced the abdominal wall through the wall of the stomach.

8. Accused 1 and 2 were arrested on the same day i.e. October 13. On October 15 they gave statements to the police leading to the recovery of two daggers from places of concealment. One of the daggers contained human blood while the other contained stains which were disintegrated. Since the learned Sessions judge had declined to place reliance on the statements and the recovery of the weapons, no further reference to the weapons is called for.

9. The defence of the two accused was one of total denial. The learned Sessions Judge found the testimony of PWs 10 and 11 to be absolutely truthful and hence he convicted accused 1 and 2 under Section 302 and Section 302 read with Section 34, IPC respectively. The learned Judges of the High Court have accepted the prosecution case insofar as accused 1 is concerned but strangely enough they have entertained doubts about the truth of the prosecution case insofar as accused 2 is concerned and acquitted him.

10. Mr. S. K. Bagga, learned counsel for the appellant took us through the relevant portions of the evidence of the prosecution witnesses as well as the judgment of the Sessions Judge and the high

Court and argued that there was absolutely no basis for the High Court to set aside the conviction of accused 2. On a consideration of the matter we find ourselves in full agreement with his submission.

11. Accused 1 and 2 were both interested in getting the ancestral house exclusively for themselves and hence they would have nurtured a common grievance against Harjinder Singh for the support he was extending to the other claimants who were not willing to forego their share in the house. The occurrence had taken place in broad daylight and was witnessed not only by Gurcharan Singh (PW 10) but also by an independent witness Gurbax Singh (PW 11). The deceased had been rushed to the hospital without delay but unfortunately he had succumbed to his injuries. Ajit Singh, ASI had proceeded to the hospital without delay and recorded a statement EX. P-2, which contains a full narrative of the occurrence, from PW 10. Without any delay a case had been registered and the Special Report had reached the magistrate with appreciable promptitude. Accused 1 and 2 had been taken into custody on the same day. Having regard to all these features there can be no doubt whatever that accused 1 and 2 had jointly perpetrated the crime and they had caused the stab wounds on Harjinder Singh.

12. There are absolutely no grounds on the basis of which any differentiation can be made in construing the evidence of the prosecution witnesses as between accused 1 and 2 for holding that the evidence is clinching as against accused 1 but is of a doubtful nature as against accused 2. The High Court has itself commended the evidence of Gurcharan Singh (PW 10) and Gurbax Singh (PW 11) and observed that their evidence "inspires confidence insofar as Harcharan Singh appellant is concerned". Having so observed it is not comprehensible how the High Court can state in the very next breath as follows :

So far as Surjit Singh appellant is concerned, his participation in the crime, to our mind, seems to be doubtful. He might or might not have participated in the commission of the crime.

13. The slender reasons given by the High Court for entertaining a doubt, clearly unwarranted in our opinion, about the participation of accused 2 in the attack on Harjinder Singh are that no stab injuries were found at the corresponding places where accused 2 is said to have stabbed the deceased and secondly Dr. Jaswant Singh has stated that all the stab injuries found on the dead body of Harjinder Singh could have been caused by one and the same weapon. The High Court has committed a serious error in evaluating the veracity of the evidence of the two eyewitnesses solely with reference to the site of the injuries found on the dead body of Harjinder Singh. Injury No. 3, it has to be seen is on the back of the chest of the deceased. It may well be that this was caused by accused 2 when he stabbed the deceased on his back. As regards the other stab aimed at the hip, it is quite likely that it may have landed at the site of injury No. 4 due to the deceased turning or twisting his body at the time of the stab. Turning to the other reason given by the High Court it has to be borne in mind that both the accused had used weapons of the same kind viz. daggers and hence the doctor's opinion that all the stab injuries could have been caused by the same weapon cannot detract the case against accused 2 in any manner.

14. On a reading of the judgment it appears to us that the High Court has allowed the appeal against accused 2 more on account of sympathetic considerations than on account of any infirmities in the prosecution evidence. This is revealed by the observation of the High Court that "Accused 1 and 2 have no other brothers and it is a matter of common knowledge that the tendency in this part of the country is to implicate as many near relations as possible". The High Court is also in error in taking the view that a person convicted under Section 302 read with Section 34, IPC stands on a very

different footing from a person convicted under Section 302, IPC. The High Court has failed to see that when an offence is committed in furtherance of the common intention of two or more accused, then every one of them is as much guilty as the other and it is not necessary that every one of them should have participated in the commission of the offence to the same extent and degree as the other person or persons accused of the offence had acted. Even if injury Nos. 1 and 2, which are the fatal injuries had been inflicted by accused 1 and not by accused 2, the latter would be as much guilty of the offence of murder as the former because of the common intention forged between the two.

15. The High Court was, therefore, patently in error in allowing the appeal of accused 2 and setting aside his conviction. Learned counsel for accused 2 submitted that since we are dealing with an appeal against acquittal we may not interfere with the judgment appealed against as the High Court has rendered the judgment upon its view of the evidence. We cannot sustain this argument because the evidence of the eyewitnesses is so clinching and conclusive that there is no scope or room for two views being taken of the evidence.

16. In the result, we allow the appeal and set aside the judgment of the High Court and restore the conviction of the respondent under Section 302 read with Section 34, IPC and sentence him to undergo imprisonment for life. The respondent is directed to surrender himself to custody within seven days for undergoing the sentence failing which he will be arrested and placed in custody.

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