

Makhan Singh

Vs

State of Punjab

Criminal Appeal No. 238 of 1988

(G. L. Oza, Jagannatha Shetty JJ)

27.07. 1988

JUDGMENT

OZA, J. -

1. This appeal has come to this Court on grant of leave against the conviction of the appellant under Section 302 and sentence of death and also his conviction under Section 201 IPC and sentence of 7 years rigorous imprisonment and fine of Rs. 200 awarded by Sessions Judge, Ferozepur and confirmed by the High Court of Punjab and Haryana. The appellant is convicted for having committed the murder of his father and son. It is alleged that deceased Banta Singh father of the present appellant owned 4-5 killas of land situated at Ferozepur Road where a tubewell was also installed by the side of a small kotha where he along with his grandson Seva Singh used to live away from the house where the appellant resides. It is alleged that Seva Singh used to go to gurudwara of their village to render services.

2. Banta Singh had only one son i.e. present appellant whereas the appellant had a son Seva Singh the deceased from his first wife (since deceased). Later he married second time and had two children, but she also died. At present he has the third wife and with her he has two sons.

3. It was alleged, as motive for the offence, that the appellant used to quarrel with his father and son in connection with land owned by father as the latter wanted to transfer his land in the name of Seva Singh who used to live with the grandfather.

4. According to the prosecution a day prior to Amawasaya of Chet 1985 (May 1985) when Nihal Singh (PW 2) was rendering services with Banta Singh and Seva Singh at gurudwara at about 5 p.m. the appellant went to the gurudwara and told his father and son that in the evening a truck of kar seva would come from Fazilka and that they would go to Amritsar to take the holy bath. On this representation appellant took Banta Singh and Seva Singh from the gurudwara. It is alleged that on the same at about 10 p.m. when Nihal Singh was proceeding to his fields for guarding his tubewell he met the accused on the way and found carrying dang with him. On being questioned by Nihal Singh as to why he was there and why he did not go to Amritsar, the appellant replied that Banta Singh and Seva Singh were sent to Amritsar by him in a truck of kar seva. It is further alleged that when Nihal Singh did not see for some time Banta Singh and Seva Singh he felt suspicious and lodged a report dated August 10, 1985 in the Police Station Mamdot. That became the FIR (Ex. PG).

5. S. I. Puran Singh who recorded the statement of Nihal Singh raided the house of the appellant who it is alleged was not present. On August 13, 1985, it is alleged that the appellant made an extra-

judicial confession to one Amrik Singh and Amrik Singh produced the appellant before the police. On August 15, 1985, a memorandum under Section 27 of the Evidence Act was recorded by the Investigating Officer at the instance of the appellant and later the dead bodies of Banta Singh and Seva Singh were recovered from a field. It is also alleged that at that time there was jhinja crop standing in the field. The dead bodies were identified by one Channan Singh who was a panch witness. The tricycle and other articles were recovered from the kotha at the instance of the appellant.

6. On the basis of this evidence the courts below convicted the present appellant. The circumstances which have been found against the appellant are : (i) seen with the deceased at the gurudwara by Nihal Singh (ii) extra judicial confession made to Amrik Singh (iii) the statement under Section 27 leading to discovery of dead bodies and (iv) recovery of tricycle and others articles from the kotha where the two deceased used to reside and the motive alleged against the appellant.

7. Learned counsel for the appellant contended that as against the motive is concerned the appellant at the trial had produced a will executed by deceased Banta Singh wherein he has given away all his lands to the appellant. In the cross-examination of prosecution witnesses it was suggested that his brother-in-law Manjit Singh was interested in getting the property transferred in his name or in his wife's name. It was also argued that extrajudicial confession even otherwise is a very weak piece of evidence and in this case it is strange that the appellant chose this Amrik Singh to make an extrajudicial confession and the reason suggested by Amrik Singh also do not appear to be justifiable. Similarly it was said that the recovery of dead bodies and the memorandum of the statement leading to the discovery are of no consequences as even according to the Investigating Officer he had learnt from Amrik Singh that the dead bodies were in the field but he felt that the information he had got was not sufficient and therefore he recorded the information under Section 27 given by the appellant.

8. In our opinion these contentions are well founded and must be accepted as correct. The field where the bodies were recovered is an open place. It is alleged that there was jhinjan crop standing in the field and prosecution has not led any evidence to indicate as to who was in possession of the field and who cultivated the crop which was standing at that time. We will discuss this part of the case in detail a little latter. It is very significant to note that according to the medical opinion bodies were recovered about three months after the death. The bodies were found disintegrated. It was difficult to identify. The disintegration has gone to such an extent that the bodies could not be removed and sent for post-mortem and therefore medical expert was called to the spot to perform the post-mortem. The prosecution did not examine any one of the relatives or the daughter of deceased Banta Singh or the son-in-law Manjit Singh to identify the dead bodies although it has appeared in evidence that during the trial Manjit Singh was present in the court.

9. As to the extrajudicial confession, it may be noted that Nihal Singh claims to be a person who had seen the deceased Banta Singh and Seva Singh along with the appellant in the month of May in the gurudwara. On the same night he again met the appellant and enquired about them. The witness also stated that when he did not see the old man for some time, he became suspicious about the missing of those two persons. This witness in order to justify his meeting with the appellant at 10 p.m. on that day said that although his own land was at a distance, he had taken some land on lease which was adjacent to the land of the appellant and so he had to go near the appellant's house. But in cross-examination he had to admit that for the lease he had no document to support.

10. The prosecution has suggested that the appellant did not search for his father, but according to

the appellant, the deceased has been taken away by Manjit Singh to their place on the pretext that Manjit Singh's wife i.e. the appellant's sister was not well and this was also put in cross-examination to Nihal Singh. In the absence of evidence of Manjit Singh, the suggestion of the appellant cannot be brushed aside.

11. On August 10, 1985 FIR was lodged by Nihal Singh (PW 2) and on August 13, 1985 the appellant went to Amrik Singh (PW 3) to make an extrajudicial confession. Amrik Singh says that the appellant told him that as the police was after him he had come and confessed the fact so that he might not be unnecessarily harassed. There is nothing to indicate that this Amrik Singh was a person having some influence with the police or a person of some status to protect the appellant from harassment. In his cross-examination he admits that he is neither the lumbardar or sarpanch nor a person who is frequently visiting the police station. He further admits that when he produced the appellant there was a crowd of 10 to 12 persons. There is no other corroborative evidence about the extrajudicial confession. As rightly conceded by the learned counsel for the State that extrajudicial confession is a very weak piece of evidence and is hardly of any consequence. The counsel however, mainly relied on motive, the evidence of last seen, the evidence of recovery of dead bodies and the conduct of the appellant in not making a report about the missing father and son.

12. As regard the motive the will in question is sufficient to dislodge it. An attempt was made by the learned counsel for the State to suggest that even after the will the appellant could have done away with the old man to avoid changing the will. But the will was executed on December 31, 1984 and it is a figment of imagination that the murder was committed apprehending that the will was likely to be changed. There is also no evidence to indicate that appellant was not having good relations with his father or that there was ever any trouble between father and the son. In fact Nihal Singh was asked in cross-examination as to whether there was any dispute between the father and son ? He had to admit that there was no dispute or difference.

13. As regards the evidence of last seen it was the case of appellant that Manjit Singh had taken Banta Singh and Seva Singh to his place on the pretext that the wife of Manjit Singh was not well. There is no evidence led by the prosecution to negative this stand of the appellant. Manjit Singh has not been examined although it has come in evidence that he was present in the court when Nihal Singh was examined. The sister of appellant was not examined and in the absence of any such evidence to negative this stand of the appellant it could not be said that the prosecution has proved that suggestion was false. In these circumstances, the presence of deceased Banta Singh and Seva Singh along with the appellant at the gurudwara on the Amawasaya day in Chet could not be said to be the last seen before the murder in question. May be Nihal Singh saw them on that day but it is significant that no other person connected with the deceased has been produced to suggest that he was not seen thereafter. Therefore, the evidence as to last seen also cannot be considered as a piece of circumstantial evidence against the appellant.

14. Then we are left with the recovery of the dead bodies. Investigating Officer S. I. Puran Singh (P.W. 8) admitted in cross-examination that after recording the statement of Amrik Singh he could not know the correct place where the bodies and other articles were kept buried and concealed. This clearly indicates that he could get some information from the statement of Amrik Singh. As seen earlier. The field is an open place surrounded by other fields and according to Nihal Singh the adjacent field is his own as he had taken it on lease and therefore it cannot be said that anyone else could not know about the bodies being buried in the field. The Investigating Officer himself admitted that after recording the statement of Amrik Singh he knew that the bodies were buried in the field but he felt that information was not sufficient. It cannot therefore, be said that the place

from where the bodies were recovered was such a place about which knowledge could only be attributed to the appellant and none else. Since the exclusive knowledge to the appellant cannot be attributed, the evidence under Section 27 cannot be said to be a circumstances against the appellant.

15. As regards the recovery made from the kotha where the deceased Banta Singh used to reside there is nothing significant. The tricycle and other belongings of the deceased were bound to be there and on that basis no inference could be drawn against the appellant.

16. In view of all these circumstances, the charge against the appellant cannot be said to have been proved beyond doubt and the conviction of the appellant therefore cannot be sustained. The appeal is therefore allowed. Conviction and sentence passed against the appellant are set aside. He is in custody. He be set at liberty forthwith if not wanted in connection with any other case.

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