

Rattan Singh and Others

Vs

State of Haryana

Criminal Appeal No. 48 of 1979

(S. Natarajan, Kuldip Singh JJ)

07.04.1989

JUDGMENT

KULDIP SINGH, J. –

1. The appellants have been convicted under Section 302/34, Indian Penal Code by the courts below and have been awarded sentence of imprisonment for life. The charge against the appellants was that on September 21, 1974 at 7/8 p. m. they, armed with swords, committed the murder of Kala Singh alias Sukha Singh in the area of Village Khizrabad. According to the prosecution the appellants had motive to commit the offence and the case against them was supported by Ajaib Singh PW 2 and Amir Singh PW 3 eyewitnesses and also by the medical evidence. The trial Judge by his judgment dated May 31, 1975 accepted the prosecution plea and convicted the appellants. High Court by its judgment dated May 3, 1978 upheld the conviction and sentence of the appellants.

2. The first information report was lodged by Ajaib Singh PW 2 on September 22, 1974 at 12.15 a. m. at Police Station, Assand which is at a distance of 3.4 miles from Village Khizrabad. At the trial this witness stated that he and his brother Kala Singh deceased had gone to Village Thall to enquire about the welfare of their sister Harbans Kaur who was married to one Bir Singh of that village. Village Thall is at a distance of 5 miles from Village Khizrabad. When they were returning from Village Thall, on the way they met Amir Singh PW 3. Amir Singh PW 3, who was working in his fields also joined them. Amir Singh is the first cousin of Ajaib Singh and Kala Singh deceased. At about 7 or 7.15 p. m. when they reached near the dera of one Piara Singh, they saw four appellants armed with swords. Rattan Singh, appellant shouted at Kala Singh, deceased, saying that about 8/10 days back the deceased had insulted him in the presence of his relations by giving him shoe beating. Rattan Singh also accosted Kala Singh deceased regarding a fight which took place about 7/8 years back. Nishan Singh also joined Rattan Singh in making these utterances. Rattan Singh thereafter aimed a blow with his sword at the head of Kala Singh but the deceased warded off the blow by raising his right hand. Kala Singh then ran towards the dera of Piara Singh but the four appellants surrounded him. Dalip Singh and Gurbachan Singh appellants wielded their respective swords but he raised his hands to save the vital parts of his body and accordingly the blows fell on his right and left hands. Deceased again managed to run and reached behind the dera of Piara Singh but the four appellants again succeeded in surrounding him and started giving sword blows on different parts of his body. Thereafter, the deceased fell down. The appellants threatened Ajaib Singh PW 2 and Amir Singh PW 3 not to come near them otherwise they would also be murdered. The eyewitnesses being empty handed kept on standing at some distance. After injuring the deceased the four appellants ran away with their respective weapons. When the two eyewitnesses went near the deceased Kala Singh, he was dead. Amir Singh PW 3 was left behind to guard the dead body whereas Ajaib Singh PW 2 went to the village to inform his relations and also to lodge the report at Police Station, Assand.

Ajaib Singh further deposed that he took a longer route to avoid the armed appellants and as such instead of 3/4 miles, he had to cover the distance of about 8/9 miles. In the cross-examination, he admitted that the deceased was a wrestler and about 8 years back Dalip Singh appellant and his father had fired shots which hit the deceased and three other persons. Both Dalip Singh and his father were tried but the matter having been compromised, outside the court, the witness turned hostile resulting in their acquittal. Ajaib Singh also admitted that one Gurmit Kaur was the wife of Sukha Singh s/o Piara Singh near whose dera the occurrence took place. He also admitted that the police had arrested the said Sukha Singh, but he denied that there was a general rumour about the deceased having illicit relations with Gurmit Kaur. Amir Singh PW 3 who is the first cousin of deceased fully supported the prosecution case as narrated by PW 2.

3. The statements made by the eyewitnesses find corroboration from the medical evidence. Dr. H. N. Monga PW 1 who conducted the post-mortem, found 14, injuries on the body of deceased Kala Singh. Ten of the injuries were incised wounds and remaining 4 abrasions.

4. So far as the motive for crime is concerned, the two eyewitnesses are consistent on the point that Rattan Singh and Nishan Singh Shouted at the deceased before opening the assault. Apart from 8 years' old fight in which deceased Kala Singh was injured by Dalip Singh appellant and his father, only about 8/10 days back Rattan Singh was given shoe beating by Kala Singh deceased in the presence of appellants' relations. Both the eyewitnesses have unanimously deposed on this aspect of the prosecution case and we do not find any reason to differ with the trial court and the High Court.

5. Mr. R. L. Kohli, learned counsel for the appellants vehemently contended that the story of two brother Ajaib Singh and Kala Singh deceased going to see their stepsister together is not natural. According to him Amir Singh PW 3 who owns only one Karnal of land had no reason to be present in his field at that very time when the two brothers were coming back from Village Thall after meeting their sister. He argued that Amir Singh being first cousin and a chance witness, his testimony cannot be relied upon. Mr. Kohli also contended that occurrence having taken place at 7/8 p. m. and the police station only 3/4 miles away the lodging of the first information report at 12.15 a. m. is highly belated. According to him the special report was received by the Judicial Magistrate, Karnal at 8.15 a. m. on September 22, 1974 which also shows that the first information report was not recorded at the time which it purports to indicate. Mr. Kohli supported his contentions by saying that since Piara Singh's son Sukha Singh was also arrested, the police was not sure about the culprits and the appellants have been falsely involved.

6. All the points raised by Mr. R. L. Kohli were raised before the trial court and the High Court. After appreciating the evidence of the witnesses, both the courts have rejected all these contentions. Believing the prosecution version in its entirety the appellants have been convicted for the murder of Kala Singh deceased. It is not for us to reappraise the evidence. Even otherwise there are no reasons to take a view different than the courts below. We see no improbability in Ajaib Singh and Kala Singh deceased going together to see their sister. It is in the evidence that she was unwell but even otherwise brothers visiting their sister at any time cannot be considered unnatural. Simply because Amir Singh PW 3 is the first cousin of deceased, that is not ground to reject his testimony. It is in evidence that Amir Singh was working in his land he accompanied the two brothers to the village. No infirmity has been found by the courts below either in the testimony of PW 2 Ajaib Singh or PW 3 Amir Singh. So far as the lodging of the first information report is concerned, in the circumstances as have been explained by PW 2 Ajaib Singh the trial court and the High Court have come to the conclusion that there was no delay. Occurrence took place at 7/8 p. m. and the report was lodged at 12.15 a. m. Ajaib Singh PW 2 first went to his village and then took the circuitous

route to avoid armed assailants which made him to travel for 8/9 miles instead of 3/4 miles. Similarly, there is no delay in sending the special report to the Magistrate. The report was lodged at 12.15 a. m. and at the dead hours of night travelling from Assand to Karnal must have been difficult. The receipt of the special report by the Magistrate at 8.15 a. m. cannot be considered to be delayed. As regards the arrest of Piara Singh's son, the murder having been committed near the dera of Piara Singh, the Investigation Officer might have joined his son in the investigation for the case. From this circumstance alone we are unable to infer that the Investigation Officer on reaching the place of occurrence did not know the real assailant of Kala Singh deceased.

7. We see no force in any of the contentions advanced by the learned counsel for the appellants and see no ground to differ with the conviction and sentence of the appellants. The appeal is, therefore, dismissed.

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