

State of Punjab

Vs

Sohan Singh

(A. M. Ahmadi, M. M. Punchhi JJ)

13.03.1992

JUDGEMENT

AHMADI, J.:-

1. The respondent Sohan Singh and his brother were put up for trial for the murder of Darshan Singh, a nihang. Sohan Singh was convicted under S. 302, I. P. C. and was sentenced to life imprisonment and a fine of Rs. 2,000/-, in default further rigorous imprisonment for two years. He was also convicted under S. 27 of the Arms Act and was sentenced to undergo rigorous imprisonment for six months. The substantive sentences were to run concurrently. Sohan Singh preferred an appeal challenging his conviction, being Criminal Appeal No. 736 of 1976. The High Court allowed his appeal accepting his defence plea that he had fired a fatal shot in self-defence. The High Court, therefore, acquitted him of all the charges and it is against that order of acquittal that the present appeal by special leave is preferred.

2. The facts, briefly stated are that on October 14, 1975 while Sohan Singh and his brother Manohar Singh were sitting on a platform in front of the house of Darshan Singh the latter objected to the use of foul language and asked them to leave the place. Sohan Singh and his brother left the place. On October 15, 1975 both of them are alleged to have manhandled Major Singh, younger brother of the deceased Darshan Singh. Major Singh, a school going boy, complained about the same to his brother Darshan Singh. It is the prosecution case that thereafter on the next day, October 16, 1975, at about 2 p.m., when Darshan Singh and Major Singh were at their residence Sohan Singh armed with a gun and Manohar Singh armed with a spear stood in front of their house and raised khanguras. Thereupon, Darshan Singh came out and told them if they were not satisfied with the beating they had given to Major Singh on the previous day. On this, Manohar Singh asked Darshan Singh to come out and so saying Sohan Singh and Manohar Singh walked along the lane. Darshan Singh and Major Singh followed them empty handed while their mother Puran Kaur trailed behind them. When Sohan Singh and his brother reached the spot near the house of Teja Singh, Darshan Singh and Major Singh asked them to stop whereupon Sohan Singh is alleged to have fired a shot from his pistol which hit Darshan Singh on his chest. Mohinder Singh, a third person, claims to have seen Sohan Singh and Manohar Singh running away from the place of occurrence with their weapons. Darshan Singh died on the spot. Major Singh went to the Police Station Sirhali, 8 miles away from the place of occurrence, and lodged the First Information Report at about 5.40 p.m. which reached the Magistrate at Tarn Taran at 1 1.00 p.m. P.W. 1, Dr. P. S. Virk, who conducted the autopsy on October 17, 1975, at about 8.00 a.m., found a lacerated entrance wound with inverted margins 3 x 1-1/2 cm. on the left side of the chest, 5 cm. medial to left nipple. There was an exit wound 3.5 x 1.5 cm. on the left lateral side of the chest, 8 cm. below the axilla. Dr. Virk opined that these injuries were antemortem in nature and caused by a fire-arm. Both the injuries were the result of a single gun shot and were sufficient in the ordinary course of nature to cause death.

3. The prosecution placed reliance on the ocular evidence of Major Singh and Puran Kaur, the brother and mother of the deceased, and sought corroboration from the evidence of Mohinder Singh who claims to have seen Sohan Singh and his brother running away from the place of occurrence with their weapons. Sohan Singh, on his arrest on October 22, 1975, is alleged to have made a disclosure statement leading to the recovery of the pistol used in the commission of the crime. An empty cartridge which was received from the place of occurrence was sent to the Ballistic Expert who opined that it was fired from the pistol attached at the instance of Sohan Singh. The defence of Sohan Singh was that he had fired the shot in self-defence when he saw Darshan Singh threatening to injure him with a sua. His case was that while they were passing along the lane Darshan Singh and his brother Major Singh followed him and when they reached the place of occurrence Darshan Singh tried to inflict a blow with a sua whereupon he turned and fired the shot which killed the deceased. The High Court came to the conclusion that the defence version was more probable having regard to the background in which the incident occurred.

4. There is no dispute regarding the incident of October 14, 1975 when Darshan Singh had asked Sohan Singh and his brother to leave the place in front of his house. There is also no dispute that on the next day October 15, 1975, Sohan Singh and his brother had roughed up Major Singh and the latter had complained about the same to Darshan Singh. The High Court, therefore, took the view that it was Darshan Singh and his brother Major Singh who had cause for grievance against Sohan Singh and his brother Manohar Singh. The High Court, therefore, felt that Sohan Singh and his brother had no cause to go to the house of Darshan Singh on October 16, 1975, at about 2.00 p.m. to pick up a quarrel with him. Even on that occasion when Darshan Singh came out of his house and asked Sohan Singh and his brother to go away they started to walk along the lane towards their house. This would not be the conduct of Sohan Singh and his brother if they had come to the house of Darshan Singh determined to pick up a quarrel with him. The High Court, therefore, felt that it was more probable that when Sohan Singh and his brother were passing by the side of the house of Darshan Singh along the lane leading to their residence, Darshan Singh followed them and being a nihang must be armed. Sohan Singh and his brother were followed to a considerable distance, say 25/30 karams, before the incident occurred. Even according to the testimony of A.S.I. Jasmer Singh, the Investigating Officer, the house of Darshan Singh was about 125 yards behind the place of occurrence. This would show that Darshan Singh had followed Sohan Singh and his brother to a distance of about 125 yards from his house before the incident took place. Now if Sohan Singh and his brother had left the house of Darshan Singh after the latter had asked them to leave there was no reason for Darshan Singh to follow them to that distance, particularly when both the brothers were armed and according to the prosecution Darshan Singh was unarmed. It also does not stand to reason that Darshan Singh would follow the two brothers who were armed without arming himself. The High Court, therefore, felt that it was probable that while Sohan Singh and his brother were passing along the lane via the house of Darshan Singh to their residence the latter followed them probably armed. It is found from the cross-examination of P.W. 1, Dr. Virk, that Darshan Singh had a kirpan on his body when the autopsy was performed. In addition thereto, there is the evidence of P.W. 5, Gurdip Singh, that a spiked dang was seen near the dead body of Darshan Singh when he reached the spot. Of course, the prosecution has cross-examined him on this point and he has admitted that he was deposing of the presence of the spike dang for the first time in Court. Be that as it may, even the find of the dagger on the person of the deceased establishes that he was not unarmed. The High Court has also doubted the presence of Major Singh who claims to be an eye-witness to the incident because he was a school going boy and the incident occurred during school hours. His statement that he came to his residence for lunch had to be taken with a pinch of salt because the evidence of P.W. 5 shows that the school is about half a kilometer away from his

residence. Even assuming that he was present the question is whether in the background of above facts implicit reliance can be placed on the testimony of Major Singh and his mother Puran Kaur. The High Court, in the above facts, came to the conclusion -that the prosecution story was not probable and the defence version was acceptable. We do not think that in the facts discussed above this view taken by the High Court is not plausible. No independent witness has been examined even though the incident is alleged to have taken place in broad day light on a public road in an inhabited area. Since the view taken by the High Court is reasonable and probable, we see no reason to interfere.

5. In the result we see no merit in this appeal. The appeal fails and is dismissed. The b'ail bond to stand cancelled.           Appeal dismissed.

</html