

Rajinder Singh alias Kada

Vs

State of Punjab

Criminal Appeal No. 531 of 1981

(M. M. Punchhi, B. P. Jeevan Reddy JJ)

21.04.1992

JUDGEMENT

PUNCHHI, J.:-

1. This appeal under S. 379 of the Criminal Procedure Code is directed against the judgment and order dated March 11, 1981 of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No 1044 of 1979.
2. The appellant herein, Rajinder Singh, was charged under S. 302, I.P.C. and under S. 27 of the Arms Act for causing the murder of Chamkaur Singh and for making use of a pistol for an unlawful purpose, before the Sessions Judge, Ferozepur. He was acquitted by the learned Sessions Judge on February 9, 1979. On State appeal to the High Court the acquittal was set aside and the appellant was convicted under S. 302, I.P.C. and was sentenced to life imprisonment as also to pay a fine of Rs. 2,000/- or in default further rigorous imprisonment for one year. The fine if realised, was ordered to be paid to the heirs of Chamkaur Singh deceased. He was also convicted under S.,27 of the Arms Act and sentenced to undergo rigorous imprisonment for one year.
3. The prosecution case is that Chamkaur Singh, since deceased, and the appellant herein belonged to village Ghall Khurd. The deceased had four brothers. One of them, namely, Thana Singh, had died 20 days before the occurrence on account of taking liquor. The deceased suspected that the appellant had administered poison to Thana Singh in liquor. On December 20, 1974, just before sunset, the deceased came from the side of the bus stand to his village. Harbans Singh P.W. 3 was standing in front of the house of one Jagtar Singh for taking a plough and he beckoned the deceased to come to him. At that moment, the appellant is stated to have come from the side of the lane and made Chamkaur Singh deceased stop, accusing him that he had talked ill of him to some shopkeeper but Chamkaur Singh denied having done so. Thereupon Chamkaur Singh moved forward towards his house accompanied by one Darbara Singh. The appellant at that juncture took out his pistol from underneath the blanket, with which he had wrapped himself, and fired a shot hitting the left flank of Chamkaur Singh. After receiving the shot Chamkaur Singh rushed inside the house of Harbans Singh Sansi and hid himself by chaining the door from inside. Harbans Singh P.W. 3 and Darbara Singh raised alarm saying "do not kill" "do not kill" but the appellant escaped from the place of occurrence with his pistol. Hakam Singh, P.W. 4 had also arrived at the spot from the side of his fields and saw the occurrence. Two others, Mohinder Singh and Gura Singh, took Chamkaur Singh to the Civil Hospital Ferozepur while Harbans Singh P.W. 3 went to the Police Station Ghall khurd, in the same village, and lodged the First Information Report. On arrival at the hospital Dr. S. 1. S.

Sandhu P. W. 2 attended to him. Chamkaur Singh remained in the hospital for about 13 days till January 2, 1975 when he died. It fell to the lot of Dr. Sandhu again to perform the autopsy of the deceased. In the opinion of Dr. Sandhu the death of Chamkaur Singh was due to toxemia and shock as a result of peritonitis as a consequence of fire arm injury in which the small gut was injured. According to the doctor the injury was sufficient to cause death in the ordinary course of nature.

4. The prosecution further alleges that the appellant could not be arrested and was declared an absconder. It is only on April 12, 1978, about 40 months later, that he was arrested at a check-post in another part of district Ferozepur and at that time he was holding a pistol. It was taken into possession as well as the ammunition found on his person.

5. When the case was sent up for trial after completion of investigation, the prosecution supported its case by production of two eye witnesses, Harbans Singh P.W. 3 and Hakam Singh P.W. 4 to give the ocular version. It also introduced in evidence two dying declarations of the deceased. One was said to have been made on December 20, 1974 to Shamsher Singh, P.W. 14 who was then posted as a Judicial Magistrate, First Class, Ferozepur. He was no more a Magistrate when his statement was recorded at the trial. The other one was of December 21, 1975 recorded by S.I. Vasdev P.W. 15. Besides, the abscondence of the accused was pressed into service. The learned Sessions Judge however placed no reliance on either the ocular version or the dying declaration and acquitted the appellant, but he was reversed by the High Court. The exercise in the instant appeal is to examine whether the High Court was justified in interfering in the acquittal of the appellant.

6. As said before, Chamkaur Singh had been taken to the Civil Hospital, Ferozepur the same day, i.e., December, 20, 1974. On his arrival, Dr. S. I. S. Sandhu, Surgical Specialist, Civil Hospital, Ferozepur sent message Ex.P.B. at 6.00 p.m. to the S.H.O. Police Station Ferozepur city, intimating the arrival of the injured. The Hospital and the Police Station are opposite each other. Another message Ex.P.C. was sent likewise at 6.20 p.m. suggesting recording of the dying declaration of Chamkaur Singh since his condition was serious. At 10.30 p.m. vide application EX.PD S.I. Vasdev asked the opinion of Dr. Sandhu whether Chamkaur Singh was fit to make statement, but the doctor opined that the injured was not fit to make a statement. Then on the next day on 21-12-1974, again opinion was sought by the Police to that effect at 11.00 a.m. and then the doctor declared Chamkaur Singh fit to make a statement. Dr. Sandhu claimed to have ordered giving pathedin injection to the injured by way of sedation on the arrival of the injured in the Hospital, and another injection on 21-12-74 at 4.00 p.m. That was the reason that on the earlier day, i.e. on 20-12-1974, when his opinion was sought about the ability of the injured to make a statement, he had opined that he was unfit to make a statement due to sedation. It is worthy of notice at this stage that it was Vasdev S.I. attached to Police Station Ghall Khurd who responded to the need of recording a dying declaration and not the police of Police Station Ferozepur City. It is worthy to note that Chamkaur Singh himself was a constable serving in the office of S.P. Ferozepur City. From the medical report Ex.P.J., Dr. Sandhu, when called again as a Court witness, explained that Chamkaur Singh was conscious when he was brought for examination at 6.15 p.m. and at that time he was fit to make a statement although his conditions was serious. He however went on to say that he had ordered a pathedin injection to be given to the patient so that he goes to sleep, which injection would have had its effect after half an hour.

7. The first dying declaration of the deceased, as said before, was recorded by Shamsher Singh P. W. 14. According to Shamsher Singh P.W. 14 he received a police application on the basis of which he went to the Hospital in order to record the dying declaration of the deceased at 6.45 p.m. Having reached there he obtained the opinion of Dr. Sandhu regarding fitness of Chamkaur Singh to make a

statement. Noticeably no document was prepared by P.W. 14 in tllat regard. He claimed to have prepared his own proceedings in the form of a memorandum Ex.P.N. and noted therein that Dr. Sandhu had certified Chamkaur Singh to be fit to make a statement and that on his pointing out Chamkaur Singh he had recorded the dying declaration of the deceased. The memorandum Ex.P.N. itself contains the dying declaration of Chamkaur Singh which is pointed as Ex.P.N./2. P. W. 14 claims that it was recorded on the dictation of the injured, which was read out to him after recording and to which the injured put his signatures . This dying declaration is to the following effect:

"My brother Thana Singh had died earlier. He was poisoned in liquor. Now I have come to know as to who had done it. Earlier I did not know. I wanted to go from my head-quarters after taking leave but could not get an opportunity. Today I got down at Ghali Khurd Bus Stop. Darbara Singh member Panchayat was with me. Rajinder Singh accused came there. He said that I had talked something about him to some shopkeeper. I replied in the negative. I proceeded and then saw back that the accused took out a pistol from underneath his blanket. He fired, which hit me on the left side of my flank. I entered some one's house but the accused ran away. Jagat Singh, Jagtar Singh, Darbara Singh and many other people had come there."

P.W.14 further stated that the dying declaration was sent by him to the Area Magistrate but corrected himself that Police Station Ghall Khurd fell within his jurisdiction and stood shifted to another Magistrate. He also stated that he had resigned from the post of Judicial Magistrate, First Class, Ferozepur. He while giving the evidence described himself as a practising advocate at Kharar, a tehsil town. In his memorandum Ex.P.N. besides his version and narration, there is no signature of Dr. Sandhu even though his name prominently figures in it. Even after recording it Dr. Sandhu was not asked to certify recording of it. According to P.W. 14 there was no necessity for it because he was himself satisfied that Chamkaur Singh was fit to make a statement all through. Memorandum Ex. P. N. was not put to Dr. Sandhu or he even apprised to know its contents. The prosecution dare not risk it. Dr. Sandhu may have totally denied the involvement in the recording of the first dying declaration. Another significant factor emerging from the first dying declaration is that the names of the two eye-witnesses Harbans Singh P.W. 3 and Hakam Singh P.W. 4 do not find mentioned as persons who had seen the occurrence. Others were so named.

8. The second dying declaration is claimed to have been recorded by S. I. Vasdev, P.W. 15 of Police Station Ghall Khurd. As he says, on 20-12-1974 at 6.15 p.m. he recorded the First information Report at the instance of Harbans Singh P.W. 3. After recording it he went to the spot and recovered therefrom an empty cartridge. He recorded the statements of Hakam Singh P.W. 4 at that time. He then went to Civil Hospital, Ferozepur reaching there at 9.30 p.m. He then made application Ex.P.D. at 10.30 p.m. enquiring from the doctor about the fitness of Chamkaur Singh to make a statement. The opinion bneing negative, he ventured again on the next day at 11.00 a.m. This time the doctor's opinion was positive and then he recorded the dying declaration Ex. P.O. The dying declaration recorded by P.W. 15 reads like thus:

"I am a constable in the police, on 20-12-1974 I came on leave to Ghall Khurd. I came by bus, Darbara Singh was with me. He and I came in front of the house of Harbans Singh. Accused Rajinder Singh came from the front side. He was having a blanket around. He said that I had talked to a shop keeper about him I told him that some-one had misled him. I proceeded forward and looked backwards. The accused took out his pistol and fired towards me. After that I started raising raula. The shot fired by the accused hit me on my left flank and I got injured. Out of fear I entered

the house of Harbans Singh Sansi. I bolted the door from inside. Jagtar Singh son of Joginder Singh, Harbans Singh son of Sawan Singh Jats, Hakam Singh son of Isher Singh had seen the occurrence. Rajinder Singh fled away with the pistol from the spot. He ran towards kikar trees. Where Kewal Singh brother, was waiting for him. They both ran away. They had both connived to kill me. The cause of enmity is that on 21-12-1974 my brother Thana Singh died by taking liquor. I later on came to know that Rajinder Singh had poisoned him in liquor due to which the death occurred. As I could not know earlier, I could not proceed further. On Diwali night my brother Balam Singh and Rajinder Singh gambled. Rajinder Singh won some money. I had got that amount returned from Rajinder Singh. While I was in injured state, Gurnam Singh son of Hari Singh and Mohinder Singh son of Arjan Singh of Ghall Khurd took me in a jeep and got me admitted in the hospital."

9. As is evident there are contrasting features in the two dying declarations. The presence of Harbans Singh PW3 and Hakam Singh PW4, as said before, had not been mentioned specifically in the first dying declaration. In the second dying declaration, the names of those two witnesses got introduced. It is yet to be seen whether Harbans Singh and Hakam Singh PWs can be said to be reliable witnesses whose presence at the spot could be taken as established. Besides in the second dying declaration the brother of the appellant, by the name of Keral Singh, had been introduced as a co-culprit. Though it is the admitted case of the prosecution that Police Station City stood informed of the arrival of the injured at the Hospital, and that ASI Rajinder Kumar of City Police Station had come there with Constable Ashok Kumar to be given the bag of clothes of the injured on 20-12-1974, it indicates that even though the Ferozpur police was there in attendance, it was not prepared to carry the burden of getting recorded a dying declaration. In this situation, it is rather dramatic that Shamsheer Singh, PW14 should jump into the fray without having been asked by anyone officially, under proper documents, to record the statement of the injured at 6.45 p.m. and without complying with the essential formalities of making an application to the doctor, disclosing his identity, seeking his opinion as to the fitness of the injured to make a statement, and if permitted having recorded the statement of the injured in the presence of the doctor. The role of Shamsheer Singh PW14, even if we leave aside the suspicion entertained by the Sessions Judge on his veracity on the basis of his judicial career, seems to us suggestive of an overdoing, shared by the police to not let go a crime against their fellow policeman unpunished. It is also plain that while introducing the expression "other persons" to be present in the first dying declaration it was like drawing a blank cheque to be filled in at a later stage conveniently, in order to plug in convenient witnesses, if the ones mentioned already were not prepared to support the prosecution. The effort in that regard was to say the least naive, if not clumsy. The dying declaration recorded by S I Vasdev on the following morning also demonstrates that by that time Harbans Singh and Hakam Singh had been tied up as willing witnesses.

10. The First Information Report was shown to have been recorded on 20-12-1974 at 6.15p.m. under Section 307/34, 1.P.C. and under Section 25/27/54/59 of the Arms Act. It is shown to have been despatched to the Magistrate the following day on 21-12-1974 at 8.00 p.m. much after the recording of the second dying declaration. It is shown to have been received by the Magistrate still two days later on 23-12-1974 at 10.05 a.m. The investigation stretched its timings. The version was improved. It was said that after the occurrence when the appellant ran away with his pistol, he was joined near the kikar trees by his brother Kewal Singh, who too is a Constable in the police. He is suggested to have been waiting for the appellant as an aide. Then both of them are said to have fled away. Since the appellant was shown to have been absconding, Kewal Singh brother of the appellant was hurriedly put up for trial for offence under Section 302/34, IPC. The learned Sessions Judge,

Ferozepur, however, discharged the accused Kewal Singh on 9-9-1975 vide his decision in Sessions Case No. 66 of 1975. This apparently was an attempt to try the appellant in absentia, but the effort failed.

11. We have also gone through the evidence of the two eye witnesses. Harbans Singh, PW3 when detailing the version said that after talking to the appellant, Chamkaur Singh along with Darbara Singh moved forward towards their house and when Chamkaur Singh turned back he was hit by pistol shot fired by the appellant. His reason for being at the spot was that he had gone to the house of one Jagir Singh for taking a plough. He lives in the east of the village whereas the house of Jagir Singh is towards the west of the village. Though he says that his house and that of Jagir Singh was about 20 houses apart, the defence suggestion was that about 200 houses intervene. He appears to be a chance witness altogether. There could be plenty of ploughs to be borrowed in his own neighbourhood. So far as Hakam Singh PW4 is concerned, his house is towards the south of the place of occurrence and there intervened about 150 houses between his house and the place of occurrence. He too is a chance witness. Nobody from the locality was examined by the prosecution. Material witnesses like Darbara Singh, Jagat Singh and Jagtar Singh, as well as Guna Singh and Mohinder Singh, who were claimed to have seen the occurrence and removed the injured to the hospital in their jeep were not examined by the prosecution. It is due to the second dying declaration recorded by S.I.J. Vasdev PW 15, that the names of these two i.e., Harbans Singh and Hakam Singh came in the forefront, and on accomplishing such a fiat, the F.I.R. seems to have been written thereafter and the report despatched on 21-12-1974 at 8.00 p.m. to the Magistrate afterwards. There was in the interval plenty of time to withhold the despatch of F.I.R. till the story could be woven, concerning as it was, to a fellow policeman.

12. Thus it appears to us that the presence of these two witnesses Harbans Singh and Hakam Singh at the scene of occurrence is not free from doubt. The investigation was in doubt as to who was the culprit. As a first step, the theory of the first dying declaration was introduced without taking somebody independent, like Dr. Sandhu, into confidence. The investigation later introduced the story of another dying declaration. This one was with the aid of Dr. Sandhu, but this brought in the names of the two eye witnesses to figure at a time when everything was manageable from the official point of view in reporting the matter to the Magistrate. The investigation also in the instant case therefore appears to us to be not free from taint. The views of the learned Sessions Judge, Ferozepur in acquitting the appellant as compared to those expressed by the High Court have been weighed again by us with the evidence on record, and we tend to agree with the learned Sessions Judge, disagreeing with the views expressed by the High Court, so as to acquit the appellant.

13. The abscondence of the accused relied upon by the High Court remains of no consequence. In the first place it is not a determining factor and not one which could outweigh the other material appearing on the record. It by itself does not establish the guilt of the appellant beyond reasonable doubt.

14. For the views afore-expressed, we find it difficult to sustain the conviction of the appellant. Accordingly he is extended the benefit of doubt and acquitted. The appeal is accordingly allowed.

Appeal allowed.

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