

Didar Singh

Vs

State of Haryana

Satnam Singh and Another

Vs

State of Haryana

Criminal Appeal No. 270 And 271 of 1992

(Kuldip Singh, Yogeshwar Dayal JJ)

30.04.1992

JUDGMENT

YOGESHWAR DAYAL, J. –

1. This order will dispose of SLP (Criminal) No. 2505 of 190 filed by Didar Singh and SLP (Criminal) No. 621 of 1992 filed by Satnam, Singh son of Fauja Singh and Avtar Singh son of Anup Singh.

2. Special leave granted in both the petitions.

3. All the three were convicted by order of the Additional Sessions Judge, Karnal, dated February 24, 1988 under Section 302 read with Section 34, Indian Penal Code and were sentenced by a separate order of the same date for imprisonment for life. During trial Didar Singh, appellant, was on bail. All the three filed a criminal appeal before the High Court of Punjab and Haryana and a Division Bench of the High Court by the impugned judgment dated May 7, 1990 retained the conviction and sentence of all the three and dismissed the appeal.

4. The case was based on the circumstantial evidence as there was no direct evidence of the eyewitnesses in the case. The High Court classified the circumstantial evidence into four parts as under :

"(i) Oral evidence of Attar Singh PW 2 real brother of the deceased that the deceased was called by two out of the three accused Satnam Singh and Avtar Singh from his house in village Anchla around 4.00 p.m. on August 17, 1986 and left his house with them;

(ii) that the three accused and the deceased were seen together late in the evening on August 17, 1986 by Multan Singh PW 3 and Om Parkash PW 6 when all the three accused were beating the deceased with slaps and kicks;

(iii) of all the three accused having taken the deceased towards the dera of Fauja Singh, father of Satnam Singh accused thereafter when the two witnesses aforesaid

asked the accused not to beat the deceased; and

(iv) of the dead body of the deceased having been found lying on a cot inside a kotha of the dera aforesaid."

5. It was argued by Mr. Sharma, learned counsel for the appellant Didar Singh, that the first circumstance was not applicable to Didar Singh as he had never gone to the house of the deceased and only Satnam Singh and Avtar Singh had gone to the house of the deceased and brought him. It was further submitted that both eyewitnesses, Multan Singh PW 3 and Om Parkash PW 6, had seen the appellants in the moonlit night from a considerable distance. The fields were separated by a drain and the incident was supposed to have occurred in the fields of Satnam Singh who had a dera in village Bansa. The deceased belonged to village Anchla. The incident was of August 17, 1986 and the two PWs. who were eyewitnesses i.e. PW 3 and PW 6, are supposed to have seen the incident at 8.00/8.15 p.m. when all the three appellants were supposed to have been seen along with deceased by the witnesses.

6. The case of the prosecution, as per the report of Attar Singh, was that they were three brothers and he is the eldest. He had two other brothers, namely deceased Kidar Singh and Jagdish. Kidar, deceased, was 35 years old and was unmarried. There is a village Bansa which adjoins the revenue estate of village Anchla. These two villages are separated by a drain. He also stated that they have 4 kills of land situated in village Anchla along the drain which used to be cultivated by the deceased Kidar. At a distance of about 1 killa from the said drain in village Bansa, there is a dera of Fauja Singh, who is a father of the appellant Satnam Singh. Fauja Singh had some agricultural land at this dera. Due to the situation of their land and the dera of Fauja Singh there was a lot of love and affection between appellant Satnam Singh and his deceased brother Kidar. They used to meet quite often and have drinks. Avtar Singh appellant is the son of the real sister of Satnam Singh whereas Didar Singh appellant is the grandson (daughter's son) of Fauja Singh but he was not very certain. Didar Singh is also resident of village Bansa whereas the other two appellants i.e. Satnam Singh and Avtar Singh reside at the dera of Fauja Singh.

7. The further case in the FIR was that Kidar Singh had sold his he-buffalo to Satnam Singh for Rs. 1,100 and this money had not been paid by Satnam to Kidar. A day earlier to the FIR i.e. the day of incident, the appellants Satnam Singh and Avtar Singh had come to the house of the deceased. He was present at his own house. Reaching the house of Kidar, appellants Satnam Singh and Avtar Singh asked him to accompany them to their dera to which his brother agreed but he did not come back to his house. The next day, after waiting for Kidar, he along with one Maha Singh, started searching for Kidar at about 11.00/12.15 a.m. On the way, Multan Singh Sarpanch and Om Parkash, PW 3 and 6 met them and informed them that they had heard a noise at about 8.00/8.15 p.m. at the dera of Satnam Singh and had seen deceased being beaten by Satnam, Didar and Avtar. On this information he reached the dera of Fauja Singh and saw the dead body of Kidar lying on a cot in the room.

8. It will thus be noticed that so far as the statements of PW 3 and PW 6, who are eyewitnesses, are concerned, they were corroborated by the statement of Attar Singh, who had seen the deceased accompanying Satnam Singh and Avtar Singh. The only evidence against Didar Singh is that at 8.00/8.15 p.m. in moonlit night the two witnesses spotted Didar Singh along with two other appellants giving beating to Kidar.

9. On the facts of the case, since the first circumstantial evidence is missing vis-a-vis appellant

Didar Singh, we do not find it safe to maintain the conviction and sentence of Didar Singh and he is given the benefit of doubt. His appeal arising out of SLP (Criminal) No. 2505 of 1990 is accordingly accepted and he is acquitted accordingly.

10. However, we find from the medical evidence that Satnam Singh and Avtar Singh had taken drinks along with the deceased on the evening of August 17, 1986 and it appears to be a case of fight during a drunken brawl. In this view of the matter there appears to be no intention of murder and it appears to be a case under Section 304, Part I of the Indian Penal Code. The conviction of both Satnam Singh and Avtar Singh is accordingly converted to be under Section 304, Part I read with Section 34 of the Indian Penal Code. They both have spent or than 5 1/2 years in jail and the ends of justice would be met if their sentence is reduced to the sentence already undergone.

11. The appeal of Satnam Singh and Avtar Singh arising out of SLP (Criminal) No. 621 of 1992 are allowed to the aforesaid extent only.

12. The result is that the judgments of the courts below are modified to the aforesaid extent and all the three appellants are directed to be released forthwith, if not required in any other case.

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