

Gurnam Singh and Another

Vs

State of Punjab

Criminal Appeal No. 563 of 1985

(M. K. Mukherjee, B. N. Kirpal JJ)

19.10.1995

JUDGMENT

M. K. MUKHERJEE, J.

1. Gurnam Singh and Pala Singh, the two appellants before us, along with four others were placed on trial before the Judge, Special Court, Ferozepore to answer charges under Sections 148, 302/149 and 324/149 IPC. On conclusion of the trial the learned Judge convicted the two appellants under Section 302/34 IPC and sentenced each of them to suffer imprisonment for life, while acquitting the others. Aggrieved thereby the appellants have preferred this appeal under Section 14 of the Terrorist Affected Area (Special Courts) Act, 1984.

2. Shorn of details the prosecution case is that on 10-8-1984 at or about 5 p.m. were Malkiat Singh (the deceased) and his brother Nachhatar Singh (PW 4) were irrigating their paddy field with the water of a government khaal (water channel) which is brought to their field through an outlet allotted to them, Gurnam Singh came there and closed the outlet. As soon as Malkiat Singh tried to open it, Gurnam Singh gave a blow with a Kassi on his head. PW 4 then rushed to his rescue but, by that time the other appellant Pala Singh reached there armed with a gandasa accompanied by others. On a lalkara raised by Gurcharan Singh (since acquitted) Pala Singh gave a gandasa blow on the head of Malkiat Singh. When PW 4 tried to intervene Pala Singh assaulted him also. Thereupon the appellants and others started assaulting the deceased further. Finding no other alternative PW 4 and his brother Jit Singh retaliated by beating Gurnam Singh. Then the accused persons fled away with their respective weapons. Immediately thereafter Malkiat Singh and PW 4 were taken to the hospital at Bagha Purana where Dr. T. C. Aggarwal (PW 1) examined them. PW 1 also attended to the injuries of Gurnam Singh who had also come to the hospital the same evening. PW 1 sent the medico-legal reports of their injuries to Bagha Purana Police Station and considering the injuries sustained by Malkiat Singh referred him to the Ludhiana Hospital for better treatment. On receipt of the medico-legal reports, Shri. Natha Singh (PW 5) ASI of Police attached to Bagha Purana Police Station went to the hospital and recorded the statement of Nachhatar Singh. He forwarded the statement to the police station for registering a case and took up investigation. On the same day he recorded the statement of Malkiat Singh also.

3. While in the hospital at Ludhiana, Malkiat Singh succumbed to his injuries on 17-8-1984 and consequently the case, which was earlier registered under Section 324 IPC was converted to one under Section 302 IPC. He held inquest upon the dead body of Malkiat Singh and sent it for post-mortem examination on 18-8-1984. On receipt of the report of the post-mortem examination and completion of investigation PW 5 submitted the charge-sheet.

4. The appellants pleaded not guilty to the charges levelled against them and their version of the incident, as can be gathered from the Gurnam Singh had opened the outlet in question as it was his turn to take water of the canal through it, to which Nachhatar Singh and Malkiat Singh objected and both of them assaulted him. In exercise of his right of private defence he then assaulted Malkiat Singh and Nachhatar Singh.

5. That Malkiat Singh met with his death owing to injuries sustained on 10-8-1984, as alleged by the prosecution, stands conclusively proved by the evidence of Dr. T. C. Aggarwal (PW 1) who examined him in the Bagha Purana Hospital on that day at 6.15 p.m. and that of Dr. J. S. Lama (PW 2), who held post-mortem examination on his dead body on 18-8-1984. According to PW 1 Malkiat Singh had the following injuries on his person :

- "1. Incised wound on right parieto-temporal region measuring 5.5 cms x 1.5 cms bone-deep with profuse bleeding.
2. Incised wound on left temporal region measuring 1.5 cms x 0.5 cm.
3. Incised wound on the left eyebrow measuring 1 cm x 0.25 cm skin- deep.
4. Lacerated wound on the face below and lateral to left eye measuring 0.5 cm x 0.5 cm.
5. Abrasion on the left hand measuring 2 cms x 2 cms."

PW 1 opined that injuries 1, 2 and 3 could be caused by a sharp-edged weapon while the other injuries by a blunt weapon. He further opined that injury 1 could be caused by a kassi and injury 2 by a gadasa. PW 2 corroborated the evidence of PW 1 regarding the external injuries found on the person of Malkiat Singh and further stated that there were fractures of anterior cranial fossa and middle cranial fossa on the right side. He opined that the death was the result of injury 1, namely, the wound on the right temporal region. Indeed, this part of the prosecution case was not seriously challenged by the defence; on the contrary, as noticed earlier, the appellants took the plea of right of private defence.

6. To prove the authorship of the crime the prosecution rested its case principally upon the ocular version of the incident as given out by Nachhatar Singh (PW 4). Besides, it pressed into service the statement of Malkiat Singh (the deceased) recorded by the Investigating Officer under Section 161 CrPC, (Ext. P-15) which, consequent upon his death due to the injuries sustained in the incident, became admissible in evidence as his dying declaration. PW 4 detailed the entire prosecution case including the manner in which he sustained the injuries. Though PW 4 was cross-examined at length said that he is unworthy of credit. On the contrary his evidence as regards the nature of assault on Malkiat Singh gets ample support from the medical evidence which we have discussed earlier. That PW 4 sustained injuries in course of the incident as claimed by him also gets support from the evidence of PW 1 when he stated that he found a lacerated wound as also an incised wound on his person. While on this point it will be pertinent to mention that the suggestion put to PW 4 on behalf of the appellants which we have noticed earlier corroborates his claim as an eyewitness to the incident. Another circumstance which corroborates PW 4 is the prompt lodging of the FIR detailing the substratum of the prosecution case.

7. It was, however, contended by Mr. Sushil Kumar appearing on behalf of the appellants that in the FIR that he lodged PW 4 did not disclose the fact that Gurnam Singh had sustained injuries in the incident much less explained those injuries. Consequently, he submitted, PW 4's belated claim that on being assaulted he and his brother Malkiat Singh retaliated in exercise of their right of private defence to explain away the injuries on the person of Gurnam Singh should not be accepted. For the foregoing reasons the learned counsel for the appellants asked us to hold that there was no reasonable explanation for the injuries sustained by the appellant Gurnam Singh which made the evidence of the sole eyewitness, namely, PW 4 suspect. We do not find any merit in this contention. The obligation of the prosecution to give an explanation for the injuries sustained by an accused in a case of assault, if need be, comes only at the stage of the trial and therefore absence of such explanation in the FIR would not by itself affect the prosecution case. It was next contended on behalf of the appellants that having regard to the nature of injuries sustained by Gurnam Singh it must be held that a case of right of private defence as contended by him was made out. The evidence of PW 1 no doubt proves that Gurnam Singh had sustained two abrasions, a contusion and an incised wound on his forehead but then the explanation offered by PW 4, in the absence of any material in support of the claim of Gurnam Singh as to how he sustained those injuries must be accepted. In other words, the evidence on record clearly establishes that the appellants were the aggressors and, therefore, the deceased and PW 4 were justified to assault Gurnam Singh in exercise of their right of private defence. Since we find the evidence of PW 4 to be wholly reliable we need not go into the probative value of the dying declaration.

8. Now that it stands established that the two appellants caused injuries 1, 2 and 3 on the person of the deceased with kassi and gandasa and injury 1 was sufficient in the ordinary course of nature to cause death the only other question that requires to be decided is whether the offence committed by the appellants, in furtherance of their common intention, falls under Section 302 or under Section 304 (Part I) IPC. The answer to this question is not far to seek for the evidence of PW 4 clearly shows that the incident took place in course of a sudden quarrel over the opening of the outlet and therefore the appellants can be said to have committed an offence under Section 304 (Part I) IPC and not under Section 302 IPC.

9. For the foregoing discussion we set aside the conviction and sentence of the appellants recorded under Sections 302/34 IPC and convict them under Sections 304 (Part I) 34 IPC. For the altered conviction we sentence each of them to suffer rigorous imprisonment for seven years. The appellants, who are on bail, will not surrender to their bail bonds to serve out the sentence.

10. The appeal is thus disposed of.