

Saudagar Singh

Vs

State of Haryana

(M.K. Mukherjee, K. Venkataswami JJ)

08.07.1997

JUDGMENT

MUKHERJEE, J.

1. These two appeals have been heard together as they stem from a common judgment rendered by the Additional Judge. Designated Court, Karnal (at Ambala) in Sessions Trial No.52 of 1987. Facts leading to these appeals and relevant for their disposal are as under:

2(a) On December 27, 1986, at or about 3.00 A.M. Naurang Singh, a resident of village Manakpur lodged an F.I.R. with Om Prakash (PW-19), the then Station House Officer of Ambala (Sadar) Police Station, at Civil Hospital, Ambala, wherein he stated, inter alia, that to keep a vigil over the electric line of their village, Gurdev Singh (P.W.10), the Sarpanch, used to deploy some villagers every night. In the previous evening, Gurdev had sent Faqira (P.W.15), Chowkidar of the village, to inform Harbhajan Singh and Gurnam Singh, two of the villagers, that they would have to perform the above duty in that night. Accordingly, Faqira went to the house of Harbhajan Singh at or about 8.30 P.M. and having found his nephew Nachhatar Singh present there apprised him of the direction of Gurdev Singh. Nachhatar Singh however, refused to comply with such direction. Over this issue a quarrel ensued between Faqira and Nachhatar Singh in course of which the informant (Naurang Singh) and his son Nirmail Singh (P.W.14) came out of their house. Nachhatar Singh then left the place saying that he would teach Gurdev Singh a lesson for exploiting his authority as the Sarpanch. Sometimes thereafter, Gulab Singh, Kulwant Singh, Jaswant Singh @ Bant Singh and Saudagar Singh, all sons of Amar Singh, Shamsher Singh and Baldev, sons of Sadhu Singh, Charan Singh, son of Raunaq Singh and Nachhatar Singh, son of Gurnam Singh, came there fully armed. While gulab Singh and Shamsher Singh had guns with them, Charan Singh and Bant Singh had Gandas as and the other four lathis. When the informant along with his son Nirmail Singh and Faqira was about to leave the place to call Gurdev Singh Saudagar Singh gave a lathi blow on his (informant's) head. Similar blow was also given by Nachhatar Singh. On being so assaulted, informant raised an alarm and hearing the same, Sawarna Singh (the deceased) and his brother Gian Singh, sons of gurdev Singh reached there. Seeing them, Shamsher Singh fired a shot which, however, did not hit anybody. then Gulab Singh fired a shot which hit Swaran Singh and felled him down. All the miscreants then ran away with their respective weapons. The informant and Swarna Singh were then taken to the hospital where the Station House Officer came on receipt of a ruqa form the doctor.

(b) On the above statement of Naurang Sing, a case was registered against the above eight accused persons and Sub-Inspector Om Prakash took up investigation. He first arranged to get the dying declaration of Swaran Singh recorded by Shri R,K. Garg (P.W.2), an Executive Magistrate (Exht. P/C-4) and then went to the site of the incident. He seized some blood stained earth and two pieces of wad from near the house of Naurang Singh and also prepared a site plan. In course of investigation, he arrested the accused persons and seized the licenced DBBL gun of accused Shamsher Singh and two cartridges.

(c) On January 11, 1987, Sub-Inspector Om Prakash received a report that Swaran Singh had succumbed to his injuries; and on receipt of the same he went to the hospital and after holding inquest on his body sent it for post-mortem examination. Dr. Vinay Goel, (P.W.1) who held the autopsy, recovered some pellets from the dead body of Swaran Singh and sent the same to the Forensic Science Laboratory (F.S.L.) for examination. On receipt of the report of F.S.L. and after completion of investigation, police submitted charge-sheet against the eight accused persons and in due course, their case was committed to the court of sessions.

3. The accused persons pleaded not guilty to the charges levelled against them and contended that they had been implicated falsely.

4. In support of its case, the prosecution examined twenty witnesses but the defence did not examine any. On consideration of the evidence adduced, the Designated Court convicted all the eight accused persons under Section 148IPC and 323/149 IPC accused Gulab Singh under Section 302 IPC and Section 27 of the Arms Act read with Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (TADA); accused Shamsher Singh under Section 307 IPC and Section 27 of the Arms Act read with Section 6 of the TADA seven accused (except Gulab Singh) under Section 302/149 IPC and seven accused (except Shamsher Singh) under Section 307/149 IPC.

5. Assailing their convictions, the eight accused have filed one of these two appeals (Criminal Appeal No. 231 of 1988) while the other appeal has been preferred by Gian Singh (P.W.16), the brother of deceased Swaran Singh, for enhancing the sentences imposed upon them.

6. In the context of the case made out by the prosecution, the first question that falls for our consideration in these appeals is whether it has been able to conclusively prove that Swarna Singh met with his death owing to gun-shot injuries and Naurang Singh sustained injuries owing to assault by lathis. To answer this question we may profitably look to the medical evidence on record. Dr. N.P. Jindal (P.W.8) Medical Officer of civil Hospital, Ambala city, testified that on December 26, 1986 at 11.50 P.M. he examined Swarna Singh and found multiple pellet injuries in and around his abdomen and those injuries were fresh and bleeding. P.W.8 further testified that thereafter he examined Naurang Singh and found one lacerated wound on his left parietal region and one abrasion on the right forearm. According to the doctor the injuries found on the person of Naurang Singh could have been caused by lathi. In Cross-examination, P.W.8 stated that Swaran Singh remained under his treatment upto 7.40 A.M on December 27, 1986 after which he was shifted to surgical ward.

7. The testimonies of Dr. Subhas Goel (P.W.3) and Dr. P.D. Kakkar (PW-7) reveal that Swaran Singh was X-rayed on the same day and the skiagrams showed multiple radio opaque shadows of metallic density in the abdominal area.

8. From the evidence of Dr. S.P. Shenoy (P.W.7) we get that on January 2, 1987 Swaran Singh was operated upon by him for gun shot injuries on his abdomen but despite all efforts he succumbed to those injuries on January 11, 1987. He opined that the death was the direct result of the gun shot injuries and in giving the above opinion refuted the defence suggestion that the immediate cause of the death was infections developed during surgery.

9. The only other witness examined by the prosecution in this regard was Dr. Vinay Goel (P.W.1), who conducted the autopsy on the dead body of Swaran Singh on January 12, 1987. On perusal of his evidence, we find that his objective findings regarding injuries and his opinion as to the cause of the death are in conformity with those of the other doctors whose evidence we have discussed earlier. The evidence of P.W.1 reveals that some pellets were recovered from the dead body which were put in bottle duly sealed and sent for F.S.L. examination.

10. Since from the evidence of the doctors it is manifest that Swaran Singh met with his death due to gunshot injuries sustained on December 26, 1986 and that on the same day. Naurang Singh also sustained some injuries which could be caused by lathi, we proceed to consider whether they are the outcome of the incident as narrated by the prosecution.

11. Faqira (P.W.15) and Gian Singh (P.W.16) are the two witnesses who were examined by the prosecution to give an ocular version of the incident. Besides, it pressed into service the dying declaration of Swarna Singh (Exhibit P/C-4), as recorded by Shri R.K. Garg (P.W.2), Executive Magistrate, Ambala. Before discussing the evidence of the above witnesses, it needs to be mentioned that Naurang Singh, who claimed to have sustained injuries in the incident and lodged the FIR with the police at the hospital where he was admitted for treatment and as such was the most important witness for the prosecution - was not examined. The learned counsel for the accused-appellants, therefore, asked us to draw an adverse presumption against the prosecution under Section 114, illustration (g) of the Evidence Act. On perusal of the record, we are however, unable to accept the above submission as we find that the explanation offered by the prosecution for non-examination of Naurang Singh that he was gained over by the accused is borne out by record, in that his son Nirmail Singh (P.W.14) who also claimed to have seen the incident when examined under Section 161 Cr.P.C. turned hostile. Besides on being cross-examined by the Public Prosecutor, he (P.W.14) stated that the complainant party was suspecting that his father had joined hands with the accused.

12. Coming now to the evidence of the two eye witnesses we first notice that it was not disputed that at the material time Gurdev Singh (P.W.10) was the Sarpanch and Faqira (P.W.15) was the Chowkidar of the village and that since prior to the incident a vigil was being kept over the village electric lines by the villagers to avert theft, as per directions given to Gurdev Singh by the Deputy Commissioner. Judged in the context of the above undisputed facts, the claim of P.W.15 - as corroborated by Gurdev Singh (P.W.10) that on the fateful evening under the direction of the latter, he went to intimate Harbhajan Singh and Gurnam Singh that they were to perform the above duty must be accepted. Equally acceptable is his further claim that when he met Nachatar Singh, son of Gurnam Singh he refused to comply with the above directions of Gurdev Singh and challenged his authority for, the record indicates, earlier there was a dispute over the office of the Sarpanch between Gurdev Singh and accused Shamsher Singh and Baldev Singh and since, ultimately, the Deputy Commissioner appointed Gurdev Singh in the above post the accused party had a grievance against him. Considered in the light of these facts and circumstances and in absence of any satisfactory material to indicate as to why P.W.15 would depose falsely against the accused persons, we find no reason to disbelieve his testimony regarding the incident more so, when the defence failed to elicit anything in cross-examination to discredit him.

13. The evidence of P.W.15 gets ample corroboration from that of Gain Singh (P.W.16), brother of deceased Swaran Singh. This witness was cross-examined at length particularly to prove that there was no source of light which could enable him and P.W.15 to see the incident, much less, identify the miscreants, but such attempt failed. On the contrary, we find that his evidence that there was street light near the site of incident is borne out by Om Prakash (P.W.19), the Investigating Officer, who stated that there was an electric pole near the spot with a bulb fitted therein. In support of his testimony, he produced photographs (PE/7 to PE/12) taken at his instance at the time of his visit to the spot.

14. Assailing the evidence of Faqira (P.W.15), it was submitted on behalf of the accused-appellants that having regard to the testimony of Gurdev Singh that he (P.W.15) had come to his house to inform him about the conversation which took place between him and Nachhatar Singh he could not have been present at the place of occurrence at the material time for, admittedly, gurdev Singh reached the place only after the firing was over. We do not find any merit in this contention for there is nothing on record to indicate that Faqira had continued to stay in the house of gurdev Singh after apprising him of the talk he had with Nachhatar Singh and that he went to the place of occurrence with Gurdev Singh. The other related contention was that Gurdev Singh did not name Faqira as one of the persons whom he met and heard of the incident when he reached the spot. This contention is also without any substance for Gurdev Singh stated that on reaching the spot he found Naurang Singh, Nirmail Singh, Gain Singh, my son etc. standing there and that the persons present their narrated the incident to him and mentioned the names of the assailants. From the manner in which the statement of P.W.10 was recorded by the Trial Judge, the presence of Faqira, therefore, cannot be excluded. So far as the testimony of Gian Singh (P.W.16) is concerned, the criticism of the learned counsel was that it materially contradicted his statement recorded under Section 161 Cr.P.C. On perusal of his evidence, we find that the contradictions relate to minor aspects and details and do not in any way impair his testimony.

15. Notwithstanding the evidence of the two eye witnesses, which fully supports the case of the prosecution, we feel that some of the accused-appellants should be given the benefit of doubt in view of the dying declaration made by Swaran Singh. Though therein, Swaran Singh specifically mentioned that they were surrounded by about ten persons and that Shamsher Singh and Gulab Singh fired shots towards him and his brother Gian Singh (P.W.16) he did not name five of the other six accused- appellants and stated that he could not identify them in the night as their faces were covered. He, however, mentioned the name of accused Balbir Singh as one of the persons present there but did not ascribe any role to him. When the evidence of the two eye witness is considered along with the dying declaration, the conclusion is inescapable that along with others, Gulab Singh and Shamsher Singh had formed an unlawful assembly, both of them fired from their respective guns and the shot fired by Gulab Singh hit Swaran Singh, which ultimately resulted in his death. Since, however, Swaran Singh has not named five of the appellants before us, namely, Kulwant Singh, Jaswant Singh, Saudagar Singh, Charan Singh and Nachhatar Singh, we by way of abundant caution exonerate them from the charges for which they have been convicted. Accused Baldev Singh also gets the benefit of doubt in view of the fact the dying declaration speaks only of his presence at the spot. For the foregoing discussion, the conviction of both Gulab Singh and Shamsher Singh under Section 148 IPC is upheld. Having regard to the fact that both of them fired shots from their respective guns, it is obvious that the common object of the unlawful assembly of which they were members was to kill Swaran Singh and his brother Gian Singh, though the attempt of Shamsher Singh failed. We, therefore, also uphold the conviction of Gulab Singh under Sections 302 and 307/149 IPC and of Shamsher Singh under Sections 302/149 and 307 IPC as also their convictions under Section 27 of the Arms Act read with Section 6 of the TADA. However, since

Naurang Singh was not examined by the prosecution we do not feel inclined to sustain the conviction of Gulab Singh and Shamsher Singh under Section 323/149 IPC for causing hurt to him.

16. In the result, we allow the appeal preferred by the eight accused-appellants (Criminal Appeal No.231 of 1988) in part and set aside the convictions and sentences recorded against Kulwant Singh, Jaswant Singh, Saudagar Singh, Charan Singh, Nachhatar Singh and Baldev Singh. As regards, the other two accused-appellants, namely Gulab Singh and Shamsher Singh, we uphold all the convictions recorded against them except the one under Section 323/149 IPC. They will now surrender to their bail bonds to serve out the sentences imposed upon them for the convictions now upheld by us.

17. So far as the other appeal preferred by Gian Singh (Criminal Appeal No.237 of 1988) is concerned, we find that no ground has been made out for enhancing the sentences of imprisonment for life imposed upon the above two accused persons, namely, Shamsher Singh and Gulab Singh to death. This appeal is accordingly dismissed.