

Harjinder Singh

Vs

Karnail Singh

(G. T. Nanavati, S. P. Kurdukar JJ)

06.03.1998

JUDGMENT

NANAVATI J

1. Both these appeals arise out of the judgment of Punjab and Haryana High Court in Criminal Appeal No. 58-DB of 1986. The High Court set aside the conviction of the six respondents who were convicted by the Court of Additional Sessions Judge, Barnala for the offences punishable under sections 148 and 302 read with 149 IPC in Sessions Case No. 15 of 1984. A complaint filed by Harjinder Singh had led to the trial of nine accused in Sessions Case No. 15 of 1984. The trial court had convicted six and acquitted the remaining three accused (A-7, A-8 and A-9).

2. The case of the complainant was that Munsha Singh (PW-10) and Dayal Singh (deceased) had pursuant to an agreement of sale taken possession of an agricultural land of village Bhadaur from Ghala Singh (accused) on 19.11.1981. There was a building consisting of 10 rooms in one corner of that land and it was being used for storing agricultural implements and other things connected with cultivation of land. Munsha Singh and Dayal Singh were cultivating that land. However, a dispute was raised by Ghala Singh and Balbir Singh regarding possession of that land. So Munsha Singh and Dayal Singh had moved an application before the District Magistrate, Barnala under section 145 of the Criminal Procedure Code and an order dated 22.4.1983 for attachment of that land was passed and for that purpose Naib Tehsildar, Lal Chand was appointed as a Receiver. Lal Chand was directed to take possession of that land and manage it till passing of the final order. Before he could do so the incident which led to the filing of this case took place 24.4.1983. On that day, in the evening, complainant, Harjinder Singh (PW-22), Sukhdev Singh (PW-5), Major Singh Nachhatter Singh, Jit Singh and Nazir Singh were present at Gurudwara Nanaksar to hear recitation of 'Rehras'. The recitation was over at about 8.00 p.m. At that time they saw one harvester combine proceeding towards the land in dispute. They apprehended that Ghala Singh and other followers of Sant Narain Singh might harvest and take away the crop from that land. They, therefore, decided to go to the land and for that purpose were waiting for a vehicle to come. After some time Dayal Singh came there with his jeep. They all left in that jeep for the land. As they had not seen the policemen who were posted near the Gurudwara Nanaksar they thought they possibly the policemen had gone on a round to the land. So after reaching there they shouted for those policemen but they were not found there. It was a moonlit-night and an electric lamp was also burning near that building. All of a sudden Gurcharan Singh, Karnail Singh, Mohinder Singh, Ghala Singh, Daya Singh and Bachan Singh came out of the building armed with rifles swords and gandasas and attacked them. The complainant received a gun shot injury on his right arm and took shelter in a nearby 'khal' (a water-

course). Accused Daya Singh fired at Jit Singh, (deceased), accused Ghala Singh fired at Nazir Singh and Ghala Singh fired at Dayal Singh. They all fell down as a result of the injuries received by them. Accused Bachan Singh and accused Karnail Singh then injured Nachhattar Singh (deceased) with a sword and gandasa. Some of the accused gave sword and gandasa blows to Major Singh (deceased). The accused then returned to that building and then ran away from that place. He, the complainant, went up to Sukhdev Singh who had also taken shelter in a nearby 'khal'. After ascertaining that five of their companions had already died he and Sukhdev Singh returned to the village leaving the jeep at the place of the occurrence. They went to the Gurdwara where Joginder Singh, Rupinder Singh, Harinder Singh, one Major Singh and Amar Singh were present. He and Sukhdev Singh informed them about the incident. Thereafter all of them went to Bhadaur Police Station. He narrated the occurrence to Sub-Inspector Iqbal Singh, but he did not record his complaint. He made them sit in the court-yard of the police station. In the afternoon he was not sent to the Civil Hospital at Bhadaur but as the doctor was not present he was brought back to the police station and was again sent to another hospital on the next day. Instead of recording his complaint the police lodged all of them in a police lock-up and did not allow anybody to meet them. They were produced before the Ilaqa Magistrate on 28.4.1983 and were taken on remand. On 3rd May, 1983 they were remanded to judicial lock-up. While they were in judicial lock-up Munsha Singh (PW-10) had come to see them and he had narrated the entire incident to him. Therefore, on 3.5.1983 Munsha Singh (PW-10) had sent an application to Senior Superintendent of Police, Sangrur in which all the details regarding the incident were given. He and his companions were released on bail on 3.5.1985. On 1.8.1983, he learnt from one Pritam Singh (PW-8) and Sher Singh (PW-1) that the six accused and Gurdial Singh and caused the deaths of Jit Singh, Dayal Singh, Nazir Singh, Nachhattar Singh and Major Singh and injuries to him in pursuance of a conspiracy hatched by Sant Narain Singh and Balbir Singh. As the police had not registered any offence against the accused in spite of the complaint made by him and Munsha Singh, he ultimately filed a complaint in the court of Judicial Magistrate, 1st Class, Barnala on 2.8.1983. In respect of the same incident a case was registered at the Bhadaur Police Station at about 1.30 a.m. as F.I.R. No. 41 on 25.4.1983 on the basis of same information given by Head Constable, Chanan Singh. It was the case of the complainant that the said complaint was recorded by twisting the correct facts and with a view to see that the real culprits who belonged to the group of Sant Narain Singh were fully protected.

3. By the time the case instituted upon the complaint of Harjinder Singh could be committed to the court of Sessions, the case instituted upon the police report was fixed for recording evidence. Apprehending that the said Session case would be over before the case instituted upon his complaint was committed to the Sessions court, Harjinder Singh moved an application under section 482 of the Code to the High Court for staying further proceeding in the Session case till the complaint filed by him was processed by the learned Magistrate and a committal order was passed. On February 14, 1984, the High Court passed an order to expedite the committal proceedings. The learned Magistrate committed all the nine accused mentioned in the complaint to the court of Sessions by his order dated March 30, 1984. On 7.4.1984 Harjinder Singh filed an application before the Sessions court that as the prosecution versions in the police challan case and the complaint case were conflicting and the number of accused and the prosecution witness were also different, a trial of the two cases should not be held together. As a counter blast the accused made an application on 24.4.1984 for consolidating and clubbing both the cases. The learned Additional Session Judge passed an order for clubbing the two cases and to treat the evidence recorded in one case as evidence in the other case. Aggrieved by that order, Harjinder Singh preferred a revision application to the High Court rejected it with some observations. Harjinder Singh, therefore, approached this Court with a grievance that if both the cases were consolidated then the accused were bound to the acquittal as only policemen

were cited as prosecution witnesses in the police challan case and they had falsely involved him and his party men and made out a false case of private defence for the real culprits. Upholding his contention this Court held as under:

"In the facts and circumstances of this particular case we feel that the proper course to adopt is to direct that the two cases should be tried together by the learned Additional Session Judge but not consolidated i.e. the evidence should be recorded separately in both the cases one after the other except to the extent that the witnesses for the prosecution who are common to both the cases be examined in one case and their evidence be read as evidence in the other. The learned Additional Session Judge should after recording the evidence of the prosecution witnesses in one case, withhold his judgment and then proceed in one case, withhold his judgment and then proceed to record the evidence of the prosecution in the other case. Thereafter he shall proceed to simultaneously dispose of the cases by two separate judgments taking care that the judgment in one case is not based on the evidence recorded in the other case."

4. This Court had also observed:

"We fail to comprehend the implications that would arise if the order passed by the learned Additional Sessions Judge as upheld by the High Court was to be implemented. The case presents a feature which is rather disturbing."

5. In the police case the prosecution had examined only three witnesses Head Constable, Chanan Singh (PW-1), Constable Pawan Kumar (PW-2) and Constable Karnail Singh (PW-4) as eye-witnesses. Sub-Inspector, Iqbal Singh (PW-12) and other Investigating Officer were also examined to prove the FIR and other circumstances. The eye-witnesses deposed consistently with the FIR. Their version was that during the night between 24th and 25th April, 1983 at about 10.00 p.m. Joginder Singh along with a large number of persons belonging to the party of Sant Gurdev Singh had come to the land, possession of which was in dispute and for guarding the same police guard headed by Head Constable, Chanan Singh and constable Pawan Kumar, Karnail Singh and Balvinder Singh was posted. They had carried a saffron coloured 'Nishan Sahib' and were also armed with fire arms and other weapons. When they reached near the gate of the building Head Constable, Chanan Singh inquired about their identity and then tried to persuade them not to take forcible possession of the land in that manner. At that stage accused Joginder Singh raised a 'lalkara' that "come what may, we shall take possession and finish the dispute once for all". Joginder Singh and his companions then surrounded the building. Apprehending danger to their persons, Karnail Singh, Gurcharan Singh and Mohinder Singh who were present in a tent pitched on the adjoining land rushed to that building to take shelter therein. Joginder Singh and his companions made an attempt to enter into the building and also started firing towards the building at the same time. In order to save themselves Mohinder Singh, Karnail Singh and Gurcharan Singh who were armed with guns also started firing. As the situation became serious Head Constable, Chanan Singh instructed the three constable to take care of themselves and rushed to the Police Station for lodging information regarding the offence which had taken place. In their statements recorded under section 313 of the Code the three accused, against whom a charge was framed on the basis of the same FIR for the offences punishable under section 302 read with 34 IPC and 27 of the Arms Act, stated the same thing.

6. In this complaint case the prosecution examined Harjinder Singh (PW-2), Sukhdev Singh (PW-5)

as eye-witnesses and Pritam Singh (PW-8) and Sher Singh (PW-1) to prove the conspiracy stated to have hatched by accused Nos. 8 and 9 and pursuant to which accused Nos. 1 to 7 had caused the murders of five deceased and injuries to Harjinder Singh. Munsha Singh (PW-10) was examined to prove possession of Dayal Singh over the land and the building.

7. The fact that Jit Singh, Dayal Singh and Nazir Singh died of gun shot injuries and Major Singh and Nachhattar Singh had received injuries caused by sharp edged weapons was held proved. Similarly, injury caused to Harjinder Singh by gun shot was also held proved. These findings were not challenged before the High Court and are not questioned in these appeals. The evidence of Sher Singh (PW-1) and Pritam Singh (PW-8) was disbelieved by the trial court and therefore, A-8 and A-9 were acquitted. It also acquitted A-7 as no overt act by him was proved. The trial court believed the evidence of the two eye-witnesses. The presence of Harjinder Singh and Sukhdev Singh was admitted by Karnail Singh (A-1), Mohinder Singh (A-2) and Gurcharan Singh (A-3). It is held that their evidence received support from the medical evidence which discloses that the shots were not fired from a short distance of less than 3 feet as pleaded by the accused. It also believed the evidence of PW-9, Head Constable Pratap Singh who has stated that he had attested the recovery Memo Ext.PN and that while examining the walls of the building he had not observed any bullet mark thereon. It further held that Harjinder Singh and Sukhdev Singh had properly explained the delay in filing the complaint and, therefore, the delay did not create any doubt regarding the correctness of the version stated therein, except with respect to accused Gurdial Singh, Sant Narain Singh and Balbir Singh whose names were possibly added while filing the complaint. It also held that the version given in FIR No. 41 by Head Constable, Chanan Singh was a twisted one and did not appear to be entirely true. Though the trial court found that Joginder Singh and his seven companions including the complainant had trespassed upon the land it held that they were not the aggressors and the accused had no right of private defence. It disbelieved the version of the accused as not true. The trial court held that the accused had gone near the victims and caused injuries to them from a short distance as dead bodies were found outside the compound and no blood stains were found from places other than the places where the dead bodies were lying. The trial court also held that besides Karnail Singh, Mohinder Singh and Gurcharan Singh, there were other persons, who had helped them in causing injuries to Nachhattar Singh and Major Singh by sharp edged weapons. The trial court, therefore, convicted Nos. 1 to 6 under section 302 read with 149 IPC on all the five counts.

8. The High Court agreed with the finding recording by the trial court that Ghala Singh and Balbir Singh were in possession of the disputed land but that since the complainant's party had been disputing their possession it was plausible to assume that it was that the complainant's party which had taken initiative and tried to take over possession. The High Court also doubted the evidence of Harjinder Singh and Sukhdev Singh on the ground that no harvester combine was seen near the disputed land and if going of the harvester combine in that direction was the real cause for Harjinder Singh, Sukhdev Singh, Joginder Singh and others to go to the field then after finding that there was no harvester combine on or near the land there was no reason for them to go up on that land. The High Court also held that the delay in lodging the complaint indicated that the complainant's version was an afterthought and that it had taken him long time in evolving the same. It also doubted the version of Harjinder Singh that Munsha Singh had met him on 2nd May, 1983 and informed him about the manner in which the incident had happened. It held that Harjinder Singh was not satisfied with the version given by Munsha Singh and, therefore, it took much time for him to file the complaint. The High Court also disbelieved the evidence of Harjinder Singh that Pritam Singh (PW-8) and Sher Singh (PW-1) had told him about the conspiracy hatched by Sant Narain Singh and others on the ground of improbability. It further held that the version given by the

three witnesses was not at all plausible and it clearly appeared to it that the complainant's party had on the night of occurrence gone to take forcible possession of the disputed land and the building and that they had possibly gone in large number and variously armed since they had to accomplish the purpose of taking forcible possession. The High Court believed the evidence of Iqbal Singh (DW-4) that there were bullet marks on the outer walls of the building also described as 'That', that as many as 32 empty cartridges were recovered from outside the 'That' and held that these two circumstances unmistakably indicated that the complainant's party was armed with fire-arms and also made use thereof. The High Court further held that since Karnail Singh, Mohinder Singh and Gurcharan Singh had taken shelter in the 'That' and it had high walls it was not improbable that they had escaped unhurt. It further held that the said three accused were facing grave danger to their lives, therefore, in firing towards the complainant's party they had legitimately acted in exercise of the right of private defence. The High Court also believed the defence version that Joginder Singh and others wanted to fix Nashan Sahib on the land as three cement bags found lying in the jeep which were abandoned by Joginder Singh and other. The High Court, therefore, acquitted all the six respondents. Mr. Sushil Kumar, learned counsel for the complainant who is the appellants in Criminal Appeal No. 589 of 1989, submitted that the High Court has not correctly appreciated the evidence of Harjinder Singh (PW-2) and Sukhdev Singh (PW-5) and has also not given due weight to the reasons given by the trial court for believing their evidence and for disbelieving the defence version. He therefore submitted that the findings recorded by the High Court deserve to be reversed. The learned counsel appearing for the respondents supported the judgment of the High Court by submitting that the High Court has given good reason in support of the findings recorded by it. He submitted that even though it is possible to take a different view on re-appreciation of the evidence of the two eye-witnesses and other material evidence, the view taken by the High Court cannot be said to be so unreasonable as to call for interference by this Court.

9. Harjinder Singh (DW-2) has stated in his evidence that in view of the dispute regarding possession of the field a police post was located near the Gurudwara Nanaksar and that no policemen were posted on the disputed land. In his cross-examination Iqbal Singh has stated that after his transfer from Sangrur to Bhaduar he was posted in the 'That' which is in the village that is near Gurudwara Nanaksar in March 1982 and remained posted there for seven months, he had denied in examination-in-chief that on the date of the incident the police post was located near the Gurudwara Nanaksar in the village but he had to admit that fact in his cross-examination. When questioned whether any entry was made in the official record to show that the police guard was subsequently shifted to the 'That' he pleaded ignorance. DW-4, Iqbal Singh also stated in his examined-in-chief that the guard was posted at the place where the incident took place and not in the village near Gurudwar Nanaksar. In his cross-examination he first denied any knowledge about Gurudwara Nanaksar of Bhaduar but when further cross-examination he had to admit that there is a Gurudwara at Bhadaur and a police guard was posted there. He then changed his version and stated that subsequently the police guard was shifted from that place to the 'That'. He was confronted with his previous statement and had to admit that Entry No. 54 made in DDR of 13.4.1983 shows that Head Constable, Chanan Singh reported for duty in the police station and was directed to resume duty at Gurudwara Nanaksar, Bhaduar. He had also to admit that he had not passed any order for posting any policemen on duty at the 'That'. It is, therefore, clear from the evidence of PW-2 and admission made by DW-2 and DW-4 that the police guard was posted near the Gurudwara Nanaksar in the village and not at the 'That'. The High Court overlooked this evidence which clearly suggests that the accused, DW-2 and DW-4 had falsely stated that the police guard was posted at the 'That'. This was an important aspect as it had a direct bearing on the correctness of the versions regarding the manner in which the incident had taken place and on the question as to who were present at that

time. The trial court had considered this aspect and had rightly doubted the presence of Head Constable, Chanan Singh and other constable at the time of the incident.

10. The High Court also failed to appreciate that after seeing the harvester combine going towards the land PW-2 had first tried to inform the policemen who were posted near the Gurudwara Nanaksar but he did not find them there and, therefore, he and others had gone to the land believing that policemen might have gone there to take a round. It was under these circumstances that he and his companions had left for the field in the jeep of Dayal Singh at about 9 p.m. The High Court doubted this version of PW-2 on the ground that if they had really gone to the land to see if the party of Ghala Singh was doing anything with the said harvester combine then they would have returned as the harvester combine was not seen near the land. The High Court overlooked the evidence of PW-2 that he and his companions had believed that possibly policemen had gone to the land and, therefore, had alighted from the jeep and gone near the building and shouted for the police. Therefore, the High Court was not right in rejecting the evidence of PW-2 and PW-7 on the ground that their conduct was not consistent with their version that they had gone to the land to find out whether Ghala Singh and others were trying to do anything with the crop raised on that land.

11. The evidence discloses that a Nishan Sahib was found from the land when the recovery memo was prepared in the morning and that three bags of cement were also found from the jeep in which PW-2 and others had gone and which was abandoned at the place of the incident. On the basis of this evidence the High Court has recorded a finding that Joginder Singh and his companions had gone to that field to fix the Nishan Singh on the land and that makes it more probable that they had gone there in a large number armed with weapons and with a determination to take forcible possession of the land. What the High Court failed to consider is that neither any mark of any other vehicle nor any weapon except one which was found near one of the dead bodies was found lying on the land when the police had search that police on the next day in the morning. The High Court also overlooked the fact that Dayal Singh had returned to the village from outside and immediately after he was informed by PW-2 and others to go he had gone along with them in the jeep to that field. Dayal Singh had not known before he reached Gurudwara Nanaksar that any Nishan Sahib was to be fixed on the land, therefore, he could not have carried the cement bags for that purpose. Therefore, it was not proper to draw a conclusion therefrom that PW-2 and his companions had gone to the field with a determination to fix a Nishan Sahib on the land.

12. According to PWs-2 and 7 after alighting from the jeep which was kept at a distance of about 100 ft. from the gate of the compound in which the building was situated they had gone near the gate and had shouted for the police. At that time, all a sudden. A-1 to A-7 rushed out from that building and attacked them. The High Court disbelieved their evidence on the ground that Ghala Singh and Daya Singh were already in possession of the land and, therefore, there was no reason for them to attack. So it was more probable that PW-2 and his companies started the assault as by fixing Nishan Sahib there, they wanted to create evidence that they were in possession. What the High Court failed to appreciate was that if the four policemen were present on the land PW-2 and others would not have taken the risk of either fixing the Nishan Sahib or entering into that building. They were not out to attack the policemen. If they had opened the assault on the policemen they would not have escaped unhurt. The trial court had rightly held they though PW-2 and his companions had trespassed upon the land they had not gone there with an intention to attack anyone. This aspect was also not considered by the High Court. PWs-2 and 7 also appear to be right because the manner in which received injuries discloses that they were taken by surprise. The defence version that Karnail Singh, Mohinder Singh and Gurcharan Singh had started firing at PW-

2 and others when they were attempting to climb the steps of the building was obviously not correct, as in that case the dead bodies would have been found within the compound of the building and not outside. The High Court totally overlooked the evidence that Major Singh and Nachhattar Singh had died as a result of injuries caused to them by sharp edged weapons. The dead bodies of both of them were found outside the compound and at some distance. The nature and extent of injuries received by them go to show that they could not have gone out after receiving the injuries. This circumstance clearly establishes that they were attacked and injured outside the compound. The accused did not explain the circumstances under which Major Singh and Nachhattar Singh came to be injured and killed. They cannot be said to have been killed by A-1 to A-6 in exercise of the right of private defence.

13. In spite of the clear finding recorded by the trial court that the investigation with respect to the incident was not fair right from the stage of recording of the FIR, the High Court instead of pointing out how the said finding was not correct simply brushed it aside by observing that it was not proved by the complainant that Sub-Inspector, Iqbal Singh and the succeeding Investigating Officer were the followers of Sant Narain Singh. While disposing of Criminal Appeal No. 590 of 1988 we have already pointed out how the investigation was one sided and not fair. In spite of the fact that as many as five deaths had taken place and complainant Harjinder Singh was injured no offence was registered by Sub-Inspector, Iqbal Singh against the respondents. It was on the basis of the same FIR which was lodged by the Head Constable, Chanan Singh against Harjinder Singh and his companions that the respondents came to be tried in Sessions Case No. 26 of 1983. The explanation given by SI, Iqbal Singh that he did not record the complaint of Harjinder Singh and did not register any offence in respect of the deaths of those five persons and injuries to Harjinder Singh because he was of the opinion that respondent Nos. 1,2 and 3 had acted in exercise of the right of private defence was nothing but a lame excuse to cover up his partisan attitude and abuse of position. The important and relevant aspects have been completely overlooked by the High Court.

14. The High Court failed to appreciate that though SI, Iqbal Singh and the photographer who were examined as defence witnesses had stated that there were bullet marks on the walls of the 'That' building, there was no mention about the same in the site plan or the writing prepared with respect to the position on the land after the incident. Head Constable, Pratap Singh (PW-9) who was present when the site plan and the writing were prepared has categorically stated that he had not noticed any bullet mark on the walls nor anybody had even tried to show such marks. The High Court failed to appreciate that this important circumstance falsified the defence of the respondents that Joginder Singh and his men including the complainant had started that attack by firing towards the building. The High Court has heavily relied upon large number of empties found from inside and outside the compound of the building, but what it failed to appreciate was that most of the empties were such as could have been fired from the licensed guns of Karnail Singh and Gurucharan Singh. The gun which was found lying near the dead body of one of the victims and other weapons seized by the police were not even sent for examination to a Ballistic Expert. This deliberate omission on the part of the Investigation Officer was not without any design.

15. We find that evidence of complainant Harjinder Singh and Sukhdev Singh. PWs 2 and 7 does not suffer from any infirmity and can be safely relied upon. Their version regarding the manner in which the incident took place appears to be natural and probable. The reasons given by the High Court for not accepting their evidence are not proper and sufficient. Their evidence has been discarded without considering some relevant aspects which we have pointed out earlier. Though the evidence of PW-2 as regards the conspiracy alleged to have been hatched by A-8 and A-9 along with A-1 to A-7 cannot be believed as evidence of PWs-1 and 8 from whom he had come to know

about it, cannot be believed. There was no reason to disbelieve the evidence of PW-2, Harjinder Singh regarding the manner in which the incident took place.

16. Having considered carefully the evidence of PWs-2 and 7 and the reasons given by the High Court for not believing them and acquitting the respondents we are of the opinion that the High Court not only failed to give due weight to the reasons given by the trial court but also failed to consider some very relevant aspects while appreciating their evidence. But their evidence does not rule out the possibility of the respondents' entertaining an apprehension that PW-2 Harjinder Singh and his men had come there to take forcible possession of land and to attack them. However, there can be no doubt that they exceeded the right of private defence when they chased Major Singh and Nachhattar Singh outside the compound and killed them. There was also no necessity for them to fire as many as 30 to 40 rounds at Jit Singh, Dayal Singh and Nazir Singh. Thus in view of the facts and circumstances of the case, they can be said to have exceeded the right of private defence and committed the offence punishable under Section 304 Part I read with 34 IPC. Therefore these appeals are allowed, the acquittal of the respondents is set aside and they are convicted under section 304 Part I read with 34 IPC and sentenced to suffer rigorous imprisonment for a period of 10 years.