

Gurnam Singh and Another

Vs

State of Punjab

Criminal Appeals No. 381 of 1998 With Nos. 420 of 1998 and Death Ref. No. 2 of 1998

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

28.07.1998

JUDGMENT

G. T. NANAVATI, J. -

1. Criminal Appeal No. 381 of 1998 is filed by Gurnam Singh, who has been convicted under Sections 364 and 302 IPC for kidnapping Inder Singh, Puran Singh and Baldev Singh and then committing their murder. He has also been convicted under Section 3 of the TADA Act, 1987. For committing murders of those three persons, he has been sentenced to death. He has, therefore, filed Criminal Appeal No. 381 of 1998, challenging his conviction and also the sentence. As required, Reference No. 2 of 1998 has been made by the Designated Court for confirmation of his death sentence.
2. Criminal Appeal No. 420 of 1998 is filed by Palwinder Singh, who has been convicted under Sections 364 and 302 IPC for kidnapping Baldev Singh and committing his murder along with the appellant Gurnam Singh. He is also convicted under Section 3 of the TADA Act. For these offences, he has been sentenced to suffer imprisonment for life. For the offence punishable under Section 3 of the TADA Act, both the appellants have been sentenced to pay a fine of Rs. 5000 also.
3. As all the three cases arise out of a common judgment passed by the Designated Court, Nabha in Sessions Case No. 45 of 1994, they are heard together and disposed of by this common judgment.
4. The prosecution case against the two appellants was that they along with six other accused had formed an unlawful assembly, the common object of which was to abduct Baldev Singh, Inder Singh, Puran Singh, Kuldip Singh and Maheshwar Rai, and murder them and in prosecution of that object, they did abduct those persons and kill them. The prosecution had not led any direct evidence to prove the murders of those persons by the appellant. It, however, led evidence to prove that the eight accused, including the two appellants, had abducted those five persons and had failed to explain what had happened to them thereafter. Relying upon the evidence of PW 3 Pritam Singh and PW 7 Mukhtiar Singh, the Designated Court held that appellant Gurnam Singh had abducted Inder Singh and Puran Singh on 7-10-1992. Believing the evidence of PW 8 Sukhwinder Kaur, it held that the appellants Gurnam Singh and Palwinder Singh had, abducted Baldev Singh, on 7-10-1992 between 9 and 10 p.m. It also believed their evidence that at the time of abduction, they were armed with deadly weapons and had given threats to the other family members that if they reported the offence to the police, they would also be finished. Even though there was no direct evidence to show how those three persons were murdered, the Designated Court, relying upon the medical evidence which proved that the deaths had taken place shortly after their abduction and also upon failure of the appellants to explain what they did with the abducted persons, held them guilty for the

offence of murder also.

5. It was contended by the learned counsel for the appellants that there being no direct evidence as to how and under what circumstances Inder Singh, Puran Singh and Baldev Singh were killed, the Designated Court ought not to have convicted the appellants under Section 302 IPC. It was also submitted that all the three eyewitnesses had not named either of the appellants in their police statements as the person who had abducted Inder Singh, Puran Singh or Baldev Singh and it was for the first time in the Court that they had stated that the appellants were the abductors. It was also submitted that their evidence suffered from other infirmities also and therefore, it should not have been believed.

6. We have scrutinised the evidence of PWs 1, 2, 3, 6, 7 and 8. Evidence of PWs 1 and 2 establishes that Kuldip Singh and Maheshwar Rai were also abducted on 7-10-1992 between 9 and 10 p.m. but it does not implicate the appellants. PW 3 Pritam Singh has stated that Gurnam Singh and one Jita had come to their house at about 10 p.m. and taken away Inder Singh at gunpoint. He has also stated that when he protested, both the accused had threatened him that if he protested any more, then the whole family would be killed. In his cross-examination, he has stated that really he did not know the names of the persons who had abducted his brother and that he had come to know their names only when the police had told him who those persons were. He also stated that he had not identified them on 7-10-1992. This witness thus turned round in the cross-examination and gave a different version. What needs to be appreciated is that the witness and both the appellants belong to the same Village Shutrana. It was not even suggested to the witness that there was no light and, therefore, he could not have identified the persons who had taken away his brother. The only attempt made to raise some doubt regarding identify of the offences was by suggesting to the witness that they changed their clothes and, therefore, he could not identify them. This suggestion was readily accepted by the witness. It is difficult to appreciate how a person who was otherwise known, being of the same village, could not have been identified merely because he had changed his clothes. It was not suggested to the witness that the offenders had concealed their faces or done anything else to prevent their identification. This witness later explained that he had not given the names of the accused to the police because a threat was given by them that they would otherwise kill the whole family. That appears to be the reason why while giving evidence in the Court also, this witness accepted the suggestions made in the cross-examination and stated that he was not able to identify the offenders when the offence took place. In our opinion, the Designated Court was right in accepting what this witness stated in the examination-in-chief and not giving weight to what he stated in his cross-examination.

7. PW 7 Mukhtiar Singh has also deposed that on 7-10-1992, at about 9.00 p.m. three persons entered his house. One of them gave a blow on this face with a torch which he was carrying and then they asked his brother Puran Singh to get up from the cot. One of them also said that the others should be locked in a room so that they may not go to the police station and report about the incidence. He further stated that thereafter they took away his brother Puran Singh. He explained that he had not given the names of the offenders earlier because of fear. He identified those three persons in the Court also. The only infirmity which we find in his evidence is that he had not stated before the police that before those three accused took away his brother, they had taken the other family members in a room and locked them therein. The witness had no difficulty in identifying them as they were from the same village. It was suggested to him that there were two factions in the village and that in one of the elections, he had supported the faction which was opposed to the accused. It was also put to him that he was falsely involving the accused at the instance of the police. Both these suggestions were denied by the witness. Having gone through the entire record,

we find that there is no material on record to show that there were two factions in the village. Even the Sarpanch who was examined as a defence witness did not depose about any faction in the village. There is also no material to show that this witness was under the thumb of the police or that the police could have exercised some influence over him. Thus, the suggestions made by the defence do not receive any support from the material on the record and, therefore, no weight can be attached to them and they deserve to be disregarded. There was no reason for the witness to falsely involve Gurnam Singh and the other two accused if really his brother was not kidnapped by them. In our opinion, the Designated Court was right in placing reliance upon his evidence and in holding that Gurnam Singh and Amrik Singh had kidnapped Puran Singh.

8. PW 8 Sukhwinder Kaur has deposed that at about 9 p.m., two young Sikhs armed with guns, came to her house and took away her husband. When she had tried to prevent them from doing so, she was pushed aside and the door of the house was closed from outside. She was further stated that she had identified those two persons and they were Gurnam Singh and Kulwinder alias Palwinder Singh. She also identified them in the Court. She then explained that she had not given their names to the police because while leaving, both the accused had threatened her that in case she approached the police, they would eliminate her and her children. She came out of her house next day in the morning when their servant came and opened the door. This witness was cross-examined at length, but the only thing that the defence could bring out was that she had not stated before the police that the accused had closed the door from outside when they had left. This omission on a trivial point can hardly affect the truthfulness of her evidence. As regards the identity of the accused, she stated in her cross-examination that not only Gurnam Singh and Palwinder Singh belonged to the same village, but they were on visiting terms with them. Some suggestions were put to her to show that she was falsely involving the accused at the instance of the police. But those suggestions were denied by her. Thus, we find no good reason for discarding her evidence. The Designated Court was right in relying upon her evidence and holding that Gurnam Singh and Palwinder Singh had kidnapped her husband.

9. Thus, the evidence of PWs 3, 7 and 8 clearly establishes that Inder Singh, Puran Singh and Baldev Singh were in fact kidnapped by Gurnam Singh and some other accused and that in the kidnapping of Baldev Singh, Palwinder Singh had also taken part. The evidence further establishes that while kidnapping, the accused were armed with deadly weapons. Both the appellants had also given threats to the witnesses. As rightly pointed out by the Designated Court, the medical evidence also establishes that the deaths of Inder Singh, Puran Singh and Baldev Singh had taken place within short time after they were kidnapped and that leads to a legitimate inference that the persons who had kidnapped them had killed them.

10. The prosecution case was that Gurnam Singh and Palwinder Singh along with six other accused had committed the offences. There is an evidence to show that any of the appellants had himself killed any of the deceased. Therefore, the Designated Court instead of convicting them under Section 302 should have convicted them for the offence punishable under Section 302 read with Section 34 IPC. We are also of the view that in the absence of any evidence as regards the motive for abduction and as regards the accused who actually caused their deaths and the manner and circumstances in which they were caused, the Designated Court should not have imposed death sentence upon appellant Gurnam Singh.

11. We, therefore, partly allow the appeal of Gurnam Singh. His conviction under Section 302 IPC is altered to one under Section 302 read with Section 34 IPC. The order of his sentence is modified and instead of death sentence, he is directed to suffer imprisonment for life for the deaths of Inder

Singh, Puran Singh and Baldev Singh. Criminal Appeal No. 420 of 1998 filed by Palwinder Singh is dismissed subject to the alteration of his conviction from under Section 302 to one under Section 302 read with Section 34 IPC. As we are not confirming the death sentence, death reference stands rejected.