

SUPREME COURT OF INDIA

Swaran Singh

Versus

State of Punjab

Jagjit Singh

Versus

State of Punjab

(D.P. Wadhwa and Ruma Pal, JJ.)

Criminal Appeal No. 721 of 1993, Criminal Appeal No. 720 of 1993.

26.04.2000.

JUDGMENT

Ruma Pal, J. - These appeals have been preferred from the decision of the Punjab & Haryana High Court holding the appellants guilty under Section 302 and Sections 302/34 of the Indian Penal Code (IPC) in connection with the death of Shamsher Singh and Amar Singh. The Additional Sessions Judge, Ludhiana as well as the High Court accepted the case of the prosecution and found the guilt of the appellants was established beyond reasonable doubt.

2. The case of the prosecution was that on 24th April, 1986 at about 7.30 p.m., Karnail Singh (PW-3) was driving a Car with Gurmel Singh (PW-4) sitting next to him and Shamsher Singh and Amar Singh seated in the rear. All of them had been to village Bharthala to inquire about 'purbias' (labourers) from Dilbagh Singh. They did not find Dilbagh Singh nor any 'purbia' and were on their way back to Samrala when a truck started continuously blowing its horn behind the car. Shamsher Singh asked PW-3 to stop the car which PW-3 did. Shamsher Singh got down from the car and started looking at the truck to identify who the driver was. Jagjit Singh who was driving the truck, brought the truck along side the car. Jagjit Singh's son Mittar Pal (also known as Lovely) and Swaran Singh were seated next to Jagjit Singh in the front cabin of the truck. Swaran Singh opened the left window of the truck and shot Shamsher Singh in the chest with his 12 Bore Double Barrel Gun. Shamsher Singh died on the spot.

3. On hearing the shot, Amar Singh got down from the car and went to the back of the truck. Then Jagjit Singh, his son Lovely as well as one Amrik Singh got out of the truck. Jagjit Singh fired at Amar Singh hitting Amar Singh in the chest. Amrik Singh told Jagjit Singh to fire more shots at Amar Singh. Whereupon Lovely took the 12 Bore Double Barrel Gun from Jagjit Singh and fired two more shots at Amar Singh, one of which hit Amar Singh in the neck and the other in the stomach. The assailants fired more shots at Amar Singh. Amar Singh died on the spot. While the assailants were firing shots, Satish Kumar, who got down from back of the truck also received a shot. PW-3 and PW-4 both raised an alarm whereupon the assailants fled away firing shots in the air as they ran.

4. The motive for the crime alleged by the prosecution was that Swaran Singh's struck had been de-listed from the Truck Union of Samrala by Shamsher Singh who was the President of the Truck Union, Samrala. It was also alleged that there was rivalry between Jagjit Singh and Shamsher Singh because of the forthcoming elections to the Presidents' Office of the truck union which was to be held about a week later.

5. On 24th April, 1986 at 9.30 p.m. Karnail Singh (PW-3) lodged a First Information Report at the Police Station, Samrala. SI Karnail Singh, S.H.O. P.S. Samrala (PW-5) went to the site and took possession of the truck, the car, the registration papers, the blood stained earth from near the dead bodies of the deceased, two empty cartridges from the cabin of the truck and four empty cartridges from near the dead body of Amar Singh. According to the PW-5 he found Satish Kumar who had been wounded at the spot and sent him to the Civil Hospital, Samrala. He then prepared an inquest report and sent the dead bodies for post mortem to the Civil Hospital, Samrala.

6. As far as Shamsher Singh was concerned the post mortem was performed at 10.30 A.M. on 25th April, 1986. The post mortem of Amar Singh was done the same day at 12.40 P.M. Both post mortems had been performed by Dr. Rajiv Bhalla, Medical Officer, Civil Hospital Samrala (PW-1). According to the post-mortem report Shamsher Singh had the following injuries :-

"There was a wound 2 cms in diameter on the right side of the chest with corresponding injury on the shirt and banian. The margins were blackened and rolled inwards with clots present. The wound was present in the 2nd and 3rd intercostal space in the mid clavicular line. The remnant of cartridge and pellets were removed from the wound and sealed."

7. In the opinion of PW-1 the cause of death was fire arm injury leading to the rupture of the right lung and left lung leading to hemorrhage, shock and death. It was also stated that the death was instantaneous and injuries were ante mortem in nature and were sufficient to cause death in the normal course.

8. The following six wounds were found on Amar Singh by PW-1 :-

"1. Wound 3.5 cms diameter on the left side of chest with blackened margins with rolled in ends. The shirt as blackened with corresponding injury on the shirt. The left strip of banian was missing. The wound was 10 cm deep and in the area of 1st and second intercostal space. The remnant of cartridge was seen in the wound and it was removed and sealed.

2. Wound 3 cm diameter in the middle of the chest in the anterior triangle of the neck. The wound was 7 cm in depth with remnant of cartridge and pellets removed and sealed.

3. Wound 3 cm diameter on the abdomen in the right upper quadrant with intestine protruding out of it 8 cm deep with margin rolled in and surroundings blackened. The intestines were ruptured and there was corresponding cut on the shirt and banian with margins blackened. The pellets were removed from injury and sealed.

4. A penetrating wound 2.5 cms diameter on the posterior aspect of the left leg in the popliteal fossa 2 cm above the knee joint line with rolled in margins and blackened ends. The wound was bone deep with remnants of cartridges and pellets embedded in the femur. There was fracture of the lower end of femur. The pellets were removed and sealed. There was corresponding cut in the pajama with margins blackened.

5. A penetrating wound 2.5 cm diameter in the left leg 3 cm below the knee joint with rolled in margins and blackened ends with corresponding cut on the pajama. The injury was done deep and there was fracture of the upper end of tibia.

6. Penetrating wound 2 cm diameter on the left leg rolled in margins and blackened end 3 cm below injury No. 5 pellet removed and sealed."

9. In the opinion of PW-1 the cause of death was due to the injuries which were ante mortem in nature and sufficient to cause death in the ordinary course. ?_ ?

10. The various items collected by PW-5 from the site as well as parts of the viscera of the deceased which had been removed during the post mortem were sent to the Forensic Science Laboratory (FSL) by the police for chemical analysis.

10. On 26th April, 1986 Swaran Singh surrendered and handed over at 12 Bore Double Barrel Gun (Ex. P-22) before the Judicial Magistrate, Samrala (PW-6), who gave in on the same day to PW-5. Three months later on 26th July, 1986 Gajja Singh father of Jagjit Singh produced a 12 Bore Double Barrel Gun (Ex. P-23) which was the licenced gun of Jagjit Singh before PW-5. After six weeks after that, the Sarpanch produced another 12 Bore Double Barrel Gun which was the licensed gun of Shamsher Singh (Ex. P-24). There other 12 Bore Double Barrelled Guns were produced by other witnesses on 27th October, 1986 (Ex. P-25, Ex. P-26 and Ex. P-27).

11. Surprisingly, although Jagjit Singh was named in the FIR he was not arrested but the case was taken up for investigation by Shri Mohinder Singh, DSP, Shri Baldev Sharma, DSP, Shri Sanjeev Gupta, SP and Shri B.P. Tiwari, DIG, Crime, Chandigarh all of whom "found" that Jagjit Singh was innocent. The police accordingly only challened Swaran Singh. Being aggrieved, PW-3 filed a complaint on 1st December, 1986 against Jagjit Singh, Mittar Pal Singh (alias Lovely) and Amrik Singh. All the four accused were committed to trial on 22nd September, 1988. The objection of the accused that the complaint case and the challan case could not be clubbed was rejected by the Trial Court on 8th February, 1989 and the trial commenced on 18th February, 1989.

12. The Additional Sessions Judge, Ludhiana charged Swaran Singh and Jagjit Singh under Sections 302/34 IPC and Amrik Singh and Mittar Pal Singh under Sections 302/34 IPC. All four accused were also charged under Sections 307/34 IPC.

13. Apart from tendering the formal evidence of Constable Dev Bharath, AMHC Jai Singh, Constables Hazura Singh and Jagtar Singh on affidavits (as these witnesses were not required by the defence for cross-examination), the prosecution examined seven witnesses in support of the charges, namely, Dr. Rajiv Bhalla (PW-1), Ashok Kumar, Draftsman (PW-2), Karnail Singh (PW-3), Gurmel Singh (PW-4), Karnail Singh SHO PS Samrala (PW-5), K.S. Bhullar, Judicial Magistrate, Samrala (PW-6) and Randhir Singh (PW-7).

14. Swaran Singh in his defence stated that he was a member of the Truck Union and was actively helping Jagjit Singh, the co-accused who was a rival candidate of Shamsher Singh, the deceased in the election to the Presidentship of the Truck Union which was to take place on 3.5.86. According to Swaran Singh, both the deceased with the intention of carding away the helpers of Jagjit Singh came armed to the front of the house of Swaran Singh on 24.4.86. When Swaran Singh reached his house in his truck at 4.00 p.m. along with his cleaner, Satish, he found the deceased in a drunken state, shouting and using abusive language. The deceased allegedly were also firing indiscriminately

Swaran Singh claimed that he ran away leaving his licensed loaded gun, the cartridges along with the belt and his cleaner behind in the truck. He further stated that the cleaner, Satish received gun shots at the hands of the deceased. He claimed that the eye witnesses were procured.

15. Jagjit Singh's defence was that he had been falsely implicated because of his rivalry with Jagjit Singh in relation to the truck union.

16. Amrik Singh and Mittar Pal Singh's defence was that they were not present at the spot at all. They examined three witnesses, namely, the Ahmad, the Clerk (Complaints) and the Clerk (Records) of the Deputy Commissioner's office of Ludhiana to prove that they had moved an application before the concerned authorities for having been falsely implicated in the case.

17. The Trial Court acquitted Amarik Singh and Mittar Pal Singh on the ground that the prosecution had not been able to establish their guilt. The Trial Court, however, convicted Swaran Singh under Section 302 IPC for the murder of Shamsher Singh and under Sections 302/34 IPC for the murder of Amar Singh. Jagjit Singh was convicted under Section 302 IPC for the murder of Amar Singh and under Sections 302/34 IPC for the murder of Shamsher Singh. Both the accused were sentenced to life imprisonment and to pay a fine of Rs. 5,000/- or in default to further undergo rigorous imprisonment for one year in respect of each of the offences. The amount of fine, if recovered, was directed to be paid to the next kin of Shamsher Singh and Amar Singh as compensation. The sentences were directed to run concurrently.

17. Three appeals were preferred before the High Court of Punjab and Haryana. The first appeal was filed by Swaran Singh against his conviction, (Criminal Appeal No. 315/DB of 1991), the second appeal was preferred by Jagjit Singh against his conviction, (Criminal Appeal No. 204/DB of 1991), and the third appeal was preferred by the State of Punjab (Criminal Appeal No. 270/DB of 1992) against the acquittal of Mittar Pal Singh. The High Court disposed of all the appeals by a common judgment dated 18th September, 1992. The High Court dismissed the State's appeal against the acquittal of Mittar Pal Singh but affirmed the findings of the Trial Court in respect of Jagjit Singh and Swaran Singh. However, the sentences were altered by setting aside the sentences of fine imposed.

18. Being aggrieved by the decision of the High Court, Swaran Singh and Jagjit Singh have preferred appeals before this Court. It is contended before us by both the appellants that both the Courts had erred in relying on the eye witnesses, namely, PW-3 and PW-4 as their account of the incident in so far as it related to Mittar Pal Singh had been disbelieved by both the Courts. It is further submitted that the evidence of the eye witnesses that the deceased had not drunk alcohol was belied by the Report of the FSL. It is also pointed out that Dilbagh Singh from whom inquiries the Trial Court in respect of Jagjit Singh and Swaran Singh. However, the sentences were altered by setting aside the sentences of fine imposed.

19. Being aggrieved by the decision of the High Court, Swaran Singh and Jagjit Singh have preferred appeals before this Court. It is contended before us by both the appellants that both the Courts had erred in relying on the eye witnesses, namely, PW-3 and PW-4 as their account of the incident in so far as it related to Mittar Pal Singh had been disbelieved by both the Courts. It is further submitted that the evidence of the eye witnesses that the deceased had not drunk alcohol was belied by the Report of the FSL. It is also pointed out that Dilbagh Singh from whom inquiries regarding purbias were allegedly sought to be made by the deceased had not been examined as a witness. It is further contended that the Investigating Officer's evidence was inconsistent with the

evidence on record. The appellants' claim that the incident in fact had taken place in front of clearly showed that the cartridges recovered from the spot could not be linked to the licensed gun of Jagjit Singh.

20. In our view, both the appellants were rightly found guilty by both the Courts. The evidence against them is conclusive. That there was enmity between the accused and Shamsher Singh was admitted. Amar Singh was the deceased' associate and had the misfortune not only to have been present when Shamsher Singh was killed but also to have made himself visible to the accused then.

21. Both the eye witnesses' account of the deceased's involvement are not only consistent but were corroborated by the material evidence. The site plan proved by PW-2 showed that the truck was parked towards the right rear end of the car in which the deceased was travelling. If the deceased were firing indiscriminately, it is hardly likely that the appellants would park the truck next to the car. The photographs which were tendered as Exts P-9 and P-10 show the position of Shamsher Singh's body next to the truck on the road on the left of the truck and Amar Singh's body at the rear of the truck. The blood stained earth which was collected from the spot where the deceased's bodies were found supports the position that the deceased were killed at the spot next to the truck and not near Swaran Singh's house as claimed by the accused. Both the Trial Court as well as the High Court rightly rejected the story of Swaran Singh to explain the presence at the truck at the scene of the crime.

22. That Swaran Singh was present at the scene and was carrying a loaded double barrel gun and a cartridge belt has been admitted by him. His defence was that he had not fired any shots and that the deceased in a drunken state were the aggressors. The appellants' allegation that the deceased were drunk does not appear to be borne out by the medical evidence. According to the Chemical Examiner's report (Ext. PV/3) the alcohol concentration found in the viscera of the deceased (Ext. Nos. 1, 2 and 4) was 74.75 mg/100 mls. This does not show either that the alcohol had been consumed immediately prior to the occurrence as was suggested to the eye witnesses nor can it be said that the alcohol content was sufficient to make the deceased inebriated.

23. It was also correctly noted by both the Courts below that if indeed the deceased had been shooting indiscriminately as alleged by him, there would have been some pellets on the walls of Swaran Singh's house. The High Court also noticed that it was not even suggested to any of the witnesses in the prosecution that there were pellets or pellet marks near Swaran Singh's house.

24. The evidence of PW-1 and the post-mortem reports was to the effect that the single wound on the right side of the chest of Shamsher Singh and several wounds on Amar Singh were blackened. Blackening is caused by smoke deposit. Smoke particles are light. They do not travel far. Therefore, smoke deposit, i.e. blackening is limited to a small range'. See Forensic Science in Criminal Investigation & Trails (3rd Edn.) P.280; Fisher, Sensson, and Wendel's Techniques of Crime Scene Investigation (4th Edn. p. 296). The fact that the firing was at close range supports the evidence of the eye witnesses and runs contrary to the defence account of the incident. The situs of the wounds found by PW-1 on the deceased also bear out the eye witnesses' testimony of the incident.

25. As far as Swaran Singh is concerned, the gun which was handed over by him bearing No. 8395/5391-A-7 (Ext. 22) to PW-6 was tested by the Forensic Science Laboratory at Chandigarh. The report (Ext. P-7) showed that three of the cartridges collected from inside the truck and the site had been fired from the right barrel of Ext. 22 and another cartridge had been fired from the left barrel of the same gun. Both the eye witnesses said Jagjit was driving the truck. He alighted from

the driver's side of the truck viz. the right of the truck. Amar Singh's body was found shot at close range near the right rear end of the truck. The wounds found on Amar Singh's body by PW-1 thus sustain the eye witnesses' version.

26. No doubt, the particular empty cartridge cases found could not be related to Jagjit Singh's licensed gun which had been handed over to the police by his father, three months after the incident, but there was evidence that the gun had been fired.

27. The appellants contention that because the eye witnesses' account of the involvement of Mittar Pal was not accepted by either of the Courts, therefore, their evidence was suspect, is a non-sequitur.. Merely because one portion of the evidence of PW-3 and PW-4 is disbelieved does not mean that the Courts were bound to reject all of it. Besides Mittar Pal's acquittal by the Trial Court is unsupported by any reason. The High Court, in its turn, held that it was unlikely that they eye witnesses would have remained on the spot after Jagjit Singh had shot Amar Singh killing him instantaneously. The High Court also said that "their version that Mittar Pal Singh alias Lovely accused had snatched the gun of his father and fired two gun shots is not believable being highly unnatural because if Jagjit Singh accused was bold enough to fire first gun shot hitting the neck of Amar Singh deceased, then there was no question of his not repeating gun shots, especially when the medical evidence shows that the injuries on the dead body of Amar Singh were caused with gun shot from close range. Thus, it cannot be said that the medical evidence corroborates the participation of Mittar Pal Singh alias Lovely accused in this occurrence".

28. It is not necessary for us to question this reasoning as no appeal has been preferred against Mittal Pal's acquittal but in the case of the accused the medical evidence corroborates their participation.

29. Regarding the time of the occurrence, it may be that PW-1 has stated in cross-examination that both the deceased could have met their death at about 4.00 P.M. on 24.4.86, but this does not by itself established the fact that the deceased were killed at 4.00 P.M. The evidence of PW-1 in-chief was that the deaths could have been caused within 24 hours prior to the post-mortem. Therefore, PW-1's evidence is equally consistent with the case of the prosecution that the incident took place at 7.45 P.M. PW-1's evidence regarding Satish Kumar in fact supports the prosecution's case. Satish Kumar was examined on 24.4.1986 at 11.20 P.M. In cross-examination he said that the injury had been caused "within six hours". This statement means that the injury did not take place at 4.00 P.M. Besides, if Satish Kumar had been injured at 4.00 P.M., as claimed by the accused, there is no explanation why he should have been admitted to the hospital at 9.20 P.M. more than five hours later and that too by the police. The chronology of the series of occurrences shows that the crime had taken place at about 7.30 p.m. as claimed by the prosecution and testified to by the eye witnesses. That being so, the lodgment of the F.I.R. by PW-3 promptly with a detailed account of the incident, rendered improbable the possibility of the fabrication of the involvement of the appellants.

30. Given these unambiguous confirmatory circumstances, we see no reason to interfere with the reliance placed by both the Courts on PWs-3 and 4's direct evidence of the part placed by the appellants in the perpetration of the crime. On the other hand, the appellants' version of the incident has not been substantiated at all.

31. The fact that the deceased had gone to make inquiries about the employment of purbias from Dilbagh Singh is peripheral to the case and the credibility of the eye witnesses' account of the

incident can in no way be affected by Dilbagh Singh not being produced in support of the prosecution case. In any event, as recorded by the Trial Court, "Dilbagh Singh PW had been given up as he was won over by the accused. For similar reasons, the P.P. for the State could not produced Dilbagh Singh's mother". The appellants also contended that the evidence of PW-5 was discrepant. The appellants have emphasised that PW-5 had incorrectly stated that he had not gone out of the police station prior to recording of the FIR. He had also incorrectly stated that he had found Satish at the scene of the crime at 11.45 p.m. and sent him to the hospital whereas Satish had in fact already been taken to the hospital by some other police personnel at 9.20 p.m. None of the discrepancies are sufficient to discard the case of the prosecution or to throw doubt on the eye witnesses' testimony. Furthermore the trial commenced about three years after the incident. In the meanwhile PW-5 had been transferred in April 1987 from Samrala. PW-5 was called to give evidence in 1990. In the circumstances it is not unlikely that he would not remember the details of the investigation. These are the adverse effects of a delayed trial. This aspect has been dealt with at length by my Learned Brother and I am in respectful agreement with his opinions' on the matter.

32. Having found no lacunae in the reasoning of the High Court either on facts or law, we dismiss the appeals. If the accused are on bail, they shall be taken into custody forthwith to serve out the sentences imposed on them.

D.P. Wadhwa, J. - I agree with the judgment pronounced by my noble and learned sister Ruma Pal, J. I, however, wish to add a few lines.

33. The First Information Report was lodged within 2-1/2 hours of the occurrence and the case registered against four persons, namely, Shamsher Singh, Jagjit Singh, Amrik Singh and Mittarpal Singh Appeal dismissed.