

SUPREME COURT OF INDIA

Kewal Singh

Vs.

State of Punjab

Crl.A.Nos.205-207 of 2003

(N. Santosh Hegde and B. P. Singh, JJ.)

14.10.2003

JUDGEMENT

B. P. SINGH, J.:-

1. The three appellants in these appeals were put up for trial before the Sessions Judge, Ferozepur who by his judgment and order dated July 8, 1998 in Sessions Case No. 32 of 1998 found the appellants guilty of various offences. Appellant Jagjit Singh was found guilty of the offence punishable under Section 302, I. P. C. while the remaining accused were found guilty of the offence under Section 302 read with Section 34, I. P. C. Appellant Kewal Singh was found guilty of the offence under Section 307, I. P. C. while the remaining two accused were convicted and sentenced for the offence under Section 307 read with Section 34, I. P. C. Jagjit Singh was also found guilty of the offence under Section 324, I. P. C. and the remaining two accused under Section 324, I. P. C. read with Section 34, I.P.C., Jagjit Singh was also found guilty of the offence under Section 379, I.P.C. while Kewal Singh and Amarjit Singh were found guilty of the offence under Section 27 of the Arms Act. The appellants have been sentenced to life imprisonment under Section 302 and 302/34, I. P. C. They have also been sentenced to various terms of imprisonment under the other sections of the I. P. C. and the Arms Act referred to hereinabove.

2. It appears that Sukhwinder Singh and two others of the prosecution party were also tried in Sessions Trial No. 34 of 1998 but were acquitted by the Sessions Court by a judgment of the same date.

3. The appellants preferred two appeals before the High Court of Punjab and Haryana at Chandigarh being Criminal Appeal Nos. 366-DB/1998 and 367-DB/1998 against their conviction and sentence. In Criminal Appeal No. 367-DB/1998, all the three accused were the appellants, while in the other only Jagjit Singh was the appellant. Amarjit Singh also preferred an appeal against the order of the Sessions Judge acquitting Sukhwinder Singh and others in Sessions Trial No. 34 of 1998 dated 8-7-1998 which was numbered as Criminal Appeal No. 228-DB/1999. The High Court by its impugned common judgment and order dated 18th April, 2001 dismissed all the appeals and affirmed the judgments and orders of the learned Sessions Judge. The appellants have preferred these appeals by special leave. It appears to us that an appeal even against the judgment in Criminal Appeal No. 228-DB/1999 has been preferred in a mechanical manner by a common special leave petition, in which there is no reference to the facts of that case, nor any grounds have been urged impugning the judgment and order of the High Court affirming the judgment of acquittal.

4. The members of the prosecution as well as the defence party belong to the same family. Kartar Singh was their common ancestor. Salwant Singh, Kewal Singh (accused) and Sohan Singh are brothers. Sukhwinder Singh, PW-7 is the son of Salwant Singh while Jagjit Singh and Amarjit Singh (accused) are the sons of Kewal Singh (accused). Balwinder Kaur, DW-4 is their sister. Baldev Singh, PW-8 and Narinder Pal Singh (deceased) were brothers being the sons of Sohan Singh. It thus appears that the two branches of Salwant Singh and Sohan Singh are members of the prosecution party while Kewal Singh and his two sons are the accused. From the evidence on record it appears that the relationship between the branch of Kewal Singh on the one hand and the branches of Salwant Singh and Sohan Singh on the other were strained on account of land disputes. There was a mutation case pending and certain disputes had also arisen on account of the Will left behind by late Kartar Singh. In this background, an occurrence took place at about 8.00 a.m. on June 7, 1994 in which Narinder Pal Singh lost his life while informant Sukhwinder Singh, PW-7 was injured. On the side of the defence Amarjit Singh accused and his sister Balwinder Kaur, DW-4 were said to have received injuries. That an occurrence took place on that day is not in dispute, but both sides have given their own version of the occurrence, each party alleging that the other party was the aggressor.

5. According to the prosecution, on June 7, 1994 at about 8.00 a.m. Sukhwinder Singh, PW-7 was getting ready to leave for his work when Narinder Pal Singh, (deceased) came to him and informed him that Kewal Singh armed with a gun, Amarjit Singh armed with dang and Jagjit Singh armed with kirpan were going towards their tubewell raising 'lalkara'. They apprehended danger to the lives of Baldev Singh, PW-8 and Salwant Singh who were at the tubewell and were unarmed. Therefore, PW-7 took his father's .32 bore pistol while Narinder Pal Singh (deceased) took the licenced revolver of his brother Baldev Singh, PW-8. They both left for the tubewell on a scooter.

When they had reached near the village school they were noticed by appellant Jagjit Singh. Thereafter appellant Jagjit Singh and his companions turned and proceeded towards them. In order to save themselves, Narinder Pal Singh (deceased) parked his scooter and both ran towards the village. However, they were encircled near the shop of Amarjit Singh. Appellants Jagjit Singh and Amarjit Singh raised 'lalkara' to the effect that they will teach them a lesson and thereafter they mounted an assault on both of them. Appellant Jagjit Singh with his kirpan assaulted Sukhwinder Singh, PW-7 on his head but Sukhwinder Singh warded off that blow with his left hand as a result of which he suffered an injury on his left hand between the thumb and the index finger. Kewal Singh fired from his gun at Sukhwinder Singh which hit him, as a result of which Sukhwinder Singh fell down. Appellant, Jagjit Singh then snatched the pistol from the hands of Sukhwinder Singh and fired from the said pistol at Narinder Pal Singh (deceased), who was hit on his chest and fell down. On hearing the report of gun shots Baldev Singh, PW-8 and Salwant Singh came running to the place of occurrence and witnessed the occurrence. The Baldev Singh, PW-8 and Salwant Singh came running to the place of occurrence and witnessed the occurrence. The injured were being removed to the Baghi Hospital at Ferozepur but on the way Narinder Pal Singh succumbed to his injuries. His body was thereafter taken to the Civil Hospital, Ferozepur while PW-7 Sukhwinder Singh was taken to the Baghi Hospital, Ferozepur for treatment.

6. Inspector Daljit Singh, PW-12 on receiving information about the occurrence went to Baghi Hospital and recorded the statement of Sukhwinder Singh, PW-7 at 11.30 a.m. on the basis of which a formal FIR was drawn up at Police Station, Sadar, Ferozepur at 11.45 a.m. and a special report was despatched which was received by the Illaqa Magistrate at 2.00 p.m. He drew up the inquest report and sent the body for post-mortem examination. PW-12 also recovered from the place of occurrence three pellets of .12 bore a wad of .12 bore as well as two fired cartridges of .12 bore. He also recovered one empty of .32 bore. He also received the medico-legal report of DW-4, Balwinder Kaur and Amarjit Singh, accused. He recorded the statements of Amarjit Singh and Balwinder Kaur, DW-4 in the hospital on June 8, 1994. The case of the prosecution is that after his arrest on 13-6-1994 accused Kewal Singh suffered a disclosure statement and got recovered his licenced gun. Similarly, pursuant to the disclosure statement of Jagjit Singh (accused) the .32 bore pistol which he had snatched from Sukhwinder Singh, PW-7 was recovered. The case of the prosecution depends largely on the eye witness account of Sukhwinder Singh, PW-7 and Baldev Singh PW-8. The prosecution also relied upon the recoveries made.

7. The case of the defence as is evident from the examination of accused Jagjit Singh under Section 313, Cr. P. C. is to the following effect :-

8. On 7th June, 1994 at about 8.00 or 8.30 a.m. he and his brother Amarjit Singh were loading the fodder cut by them when they noticed that the spokes of their cycle had been broken. They asked Salwant Singh as to who had broken the spokes of their bicycle, but did not get an appropriate reply. In the meantime Baldev Singh, PW-8. Both of them took 'gandasis' and chased Amarjit Singh and Jagjit Singh, appellants who ran to save their lives. While they were running they found Sukhwinder Singh, PW-7 and Narinder Pal Singh (deceased) armed with pistol and revolver coming from the opposite direction. When they reached near Haveli of Amar Singh, Sukhwinder Singh, PW-7

grappled with Jagjit Singh and Amarjit Singh. Hearing the commotion their sister Balwinder Kaur, DW-4 also came near the place of occurrence and tried to separate them. In the meantime their father, Kewal Singh came armed with gun together with Mohinder Kaur, wife of Jagjit Singh. While grappling Sukhwinder Singh, PW-7 fired a shot at Jagjit Singh which hit Narinder Pal Singh (deceased). Salwant Singh, father of Sukhwinder Singh, PW-7 gave a 'gandasi' blow to Amarjit Singh while Baldev Singh gave 'gandasi' blows from its blunt side to Balwinder Kaur, DW-4. In these circumstances, Kewal Singh fired from his licenced gun in order to rescue his sons and daughter and to scare away the members of the prosecution party. He fired the first shot at a heap of cow-dung and the second at the wall of the haveli of Amar Singh. The pellets which ricocheted after hitting the wall caused injuries to Sukhwinder Singh. In the meantime many villagers arrived and separated them. Amarjit Singh and Balwinder Kaur, DW-4 were admitted in the hospital where the police had arrived and recorded the statement of Amarjit Singh and Balwinder Kaur, DW-4.

9. To the same effect is the statement of Kewal Singh and Amarjit Singh, appellants.

10. From the facts narrated above it is evident that an occurrence did take place at the place and time alleged by the prosecution. Members of the prosecution as well as the defence party were injured in the course of the incident. It is also not in dispute that both parties came armed and used their respective weapons. The real dispute is as to whether the appellants were the aggressors or whether the prosecution party itself mounted an assault on them compelling them to defend themselves, and in the course of such incident some members of the defence party were also injured. Both parties have charged the other as the aggressor. In support of their respective versions evidence has been led. While PWs. 7 and 8 supported the case of the prosecution, the defence examined Balwinder Kaur, DW.4 an injured witness, to support the defence case, apart from the statement of the accused in their examination under Section 313, Cr. P. C.

11. In a case of this nature the objective findings of the investigating officer and the nature of injuries suffered by the members of the prosecution and the defence party are of great assistance to the Court in finding the truth. We find that Balwinder Kaur, DW-4 was injured in the course of the same incident and this is obvious from the fact that she was immediately removed to the hospital where she was examined by Dr. Faqir Masih, DW-1, who found the following injuries on her person :-

"1. Lacerated wound 6.5 c.m. x 0.5 c.m. in left parietal area placed longitudinally 10 cms. above left pinna. Fresh bleeding was present.

2. Reddish contusion 7.5 cms. x 3.5 cms. on back and upper part of left forearm.

3. Reddish contusion 7 cms. x 3 cms. on back of right thigh in its meddled part placed horizontally.

4. Swelling involving right eye, upper eye lid and outer corner of left eye brow."

12. He had also examined Amarjit Singh accused and found the following injuries on his person :-

"1. 2 cms. x 0.25 cm. incised wound in left parietal area, 8 cms. from left pinna.

2. Bluish contusion 5 cms. x 2 cms. in right lower eye lid with 0.25 cm. abrasion on right cheek.

3. 12 cms. x 2 cms. reddish contusion in left upper chest posterior side placed vertically 5.5 cms. on left side of chest.

4. Reddish contusion 8 cms. x 3 cms. on outer side of left thigh, 10.5 cms. below left iliac crest, placed horizontally.

5. 4 cms. x 2 cms. reddish contusion on back of left lower leg, 13 cms. above left ankle.

6. 3 cms. x 0.5 cm. incised wound on back of right elbow with fresh bleeding, underlying bone was cut."

13. Much was sought to be made of the fact that DW-1 had been placed under suspension and had been tried in a corruption case on the allegation that he had given a wrong opinion with regard to the gravity of the injuries. The High Court observed that the injuries on Balwinder Kaur, DW-4 were inconsequential and did not positively make out her presence at the spot. It is difficult to outright reject the evidence of Balwinder Kaur in the manner the High Court had done, in view of the other circumstances proved at the trial. It is not disputed that Balwinder Kaur, DW-4, as well as Amarjit Singh accused were admitted in the hospital and their injuries were examined by the medical officer. It is also not disputed that the investigating officer had gone to the hospital and recorded the statements of Amarjit Singh (accused) and Balwinder Kaur, DW-4, after obtaining the opinion of the doctor.

14. On the other hand admittedly Narinderpal Singh, deceased had died on account of a gun shot injury and it is the case of the prosecution that the shot was fired from the pistol of Sukhwinder Singh, PW-7 from whom Jagjit Singh had snatched the weapon and fired at the deceased. So far as Sukhwinder Singh is concerned he was examined by Dr. Harbinder Singh, PW 3 at the Baghi Memorial Hospital, Ferozepur City on 7th June, 1994 and he found large number of punctured wounds on various parts of the body of Sukhwinder Singh. We had the advantage of looking at the sketch produced by the prosecution which shows the location of the injuries. There are small punctured wounds all over the body including the face, the right arm, right thigh etc. According to the doctor, the upper most injury on the person of Sukhwinder Singh and the lowest injury on his person were about 5 feet away from each other. The injuries suffered by Sukhwinder Singh are attributed to Kewal Singh (accused) who is said to have fired at Sukhwinder Singh with his .12 bore gun.

15. We have carefully examined the medical evidence on record and it appears to us that most of these punctured wounds were superficial, and it does not appear that they were caused by a direct hit from a .12 bore gun, otherwise the injuries could not be so superficial and would not have spread to such an extent as to cause injuries all over the body.

16. The case of defence is that when Kewal Singh found that his two sons and daughter Balwinder Kaur were being assaulted, he in an attempt to scare away the members of the prosecution party, fired two shots without aiming at any particular person. He fired the first shot at the heap of cow dung and the second shot at the wall of haveli of Amar Singh. Inspector Daljit Singh, PW 12, Investigating Officer, deposed that he had gone to the place of occurrence and lifted three pellets of .12 bore gun and a wad of .12 bore from there. He had also collected two empty cartridges of .12 bore gun and one empty of .32 bore pistol. Sukhwinder Singh PW 7 in his deposition admitted that at the time when Kewal Singh fired, he was at a distance of 2-3 karams from the wall of the haveli of Amar Singh and he (PW 7) was standing at a distance of 2-3 feet or 11/2-2 feet from that wall. The case of the defence is that the shot fired at the wall only to scare away the members of the prosecution party may have resulted in the pellets ricocheting after hitting the wall causing injuries to Sukhwinder Singh. This is the specific plea of the appellants as would be evident from their examination under S. 313, Cr. P. C. The other shot, according to the defence, was fired at the heap of cow dung cakes. PW 12, the Investigating Officer, admitted that he lifted the wads from near the wall of Amar Singh and removed the pellets from the wall of Amar Singh. He had first denied that one of the shots fired by Kewal Singh hit the cow dung cakes, but after consulting the case diary he stated that he had recorded that one fired shot had hit the cow dung cakes and scattered the same. As we have observed earlier the superficial pellet injuries caused to Sukhwinder Singh do not appear to be the result of a direct hit, and the probability that since he was standing near the wall, the pellets may have ricocheted and injured him cannot be said to be improbable.

17. Having regard to the totality of evidence, we are also convinced that both the parties came armed and indulged in a free fight which resulted in injuries on both sides. The fact that the deceased and PW 7 were carrying fire arms is admitted. On the other hand Kewal Singh also came armed with a gun on hearing the commotion is not in dispute. In the fight that ensued injuries were

caused to members of both parties. Since both the parties had come prepared to fight, it is unnecessary to go into the question as to whether any of them exercised their right of private defence and, therefore, the culpability of the accused must be determined by reference to their individual acts.

18. In the facts and circumstances of this case we are satisfied that Kewal Singh did not fire at any one with a view to cause injuries but had fired at the wall and at the cow dung heap only with a view to scare away the members of the prosecution party when he found that they were assaulting his two sons and daughter. Similarly so far as Amarjit Singh is concerned there is nothing to suggest that he caused injury to anyone though it was stated that he was armed with a 'dang'. There is an allegation that he raised the proverbial lalkara. There is no evidence on record to prove that he caused any injury to the members of the prosecution party. On the other hand he was also injured in the occurrence. We, therefore, do not find any reliable evidence to convict appellants Kewal Singh and Amarjit Singh.

19. The question then remains as to whether appellant Jagjit Singh is guilty of any offence. The consistent case of the prosecution is that after Sukhwinder Singh was injured and he fell down, his pistol was snatched by Jagjit Singh and he fired at deceased Narinderpal Singh causing his death. There is also evidence on record which has been accepted by the courts below that the pistol which he had snatched from the hands of Sukhwinder Singh and from which he fired at the deceased Narinderpal Singh was recovered from him by ASI Mukhtiar Singh, who took over investigation from PW 12. There is thus sufficient evidence to hold that he is the person who caused the death of Narinderpal Singh. In the facts and circumstances of the case only he can be held guilty of the offence under Section 302, I. P. C. His appeal, therefore, is devoid of merit and must be rejected.

20. In the result Criminal Appeal No. 206 of 2003 is partly allowed and Kewal Singh and Amarjit Singh are acquitted of the charges levelled against them. They shall be released forthwith, if not required in connection with any other case. The appeal is so far as it relates to Jagjit Singh and Criminal Appeal No. 205 of 2003 preferred by Jagjit Singh are dismissed. The Criminal Appeal arising out of Criminal Appeal No. 228-DB/1999 on the file of the High Court, being Criminal Appeal No. 207 of 2003, is also dismissed.

Order accordingly.