

PEPSU HIGH COURT

Nazar Singh

Vs

State (Pepsu)

Criminal Appeals Nos. 184 and 185 of 1950 and C. R. and Revn. No. 282 of 1950

(Teja Singh, C.J. and Gurnam Singh, J.)

30.11.1950

JUDGMENT

Teja Singh, C.J.

1. Nazar Singh ft his brother, Gajjan Singh were tried by the Sea. J., Bhatinda on the charges of murder, lurking house trespass, wrongful confinement and causing simple hurts with a sharp-edged weapon. The learned Ses. J. convicted them under Sections 304, Part I, 458 and 324, Penal Code and sentenced each of them to 10 years R. I. on count 1, 2 years' R.I. on count 2 and 1 years' R. I. under count 3. Gajjan Singh who had also been charged with illicit possession of a spear was convicted under Section 19, Indian Arms Act ft was sentenced to 4 months R. I. All these sentences were ordered to run concurrently. The convicte have preferred separate appeal from jail against their convictions and sentences while the State has made an appln. for revn. for the enhancement of the sentences awarded to both the convicts under Section 304, Part I. The appeals as well as the revn. ptn., will be disposed of by one order.

2. The facts of the case are very simple Nazar Singh applt. who was also called Bhuria was married to Mt. Bibi daughter of Arjan Singh of village Bachak about 12 years ago. It appears that differences arose either between the husband and the wife or between the husband and the parents of the wife at a very early stage, with the result that Mt. Bibi did not visit Bhuria's house except once and Bhuria did not care to send for her later on. In course of time Mt. Bibi got married to another person and gave birth to a female child. The occurrence is alleged to have taken place on the night between 6th and 7th sawan 2006 samvat. Mt. Bibi had gone to her parents' house and we are told that she was sleeping in the court yard along with her mother Mt. Santi and younger sister Mt. Kartaro. Gurdial Singh, Mt. Bibi's brother ft Mota Singh, her uncle, were sleeping on the roof of house. The prosecution version is that both the Appellants . came to the house sometime after midnight and tried to take away Mt. Bibi by force. Her outcries awoke Mt. Santi and Kartaro as well as Gurdial Singh and Mota Singh. Because of the noise made by

these persons the Appellants . did not succeed in their mission and so they both attacked Mt. Bibi and hit her on the head. The eye-witnesses deposed that Bhuria was armed with a gandasa and Gajjan Singh with a spear and both of them used their weapons. Mt. Santi and Kartaro came to Mt. Bibi's rescue and they also received injuries at the hands of the culprits. By the time Gurdial Singh and Mota Singh came down the culprits had left the place. They were pursued but when they had gone some distance Bhuria was heard urging his companion to fire at their pursuers. Terrified at this Gurdial Singh and Mota Singh returned to their house. Mt. Bibi had evidently expired by that time and after Gurdial Singh had attended upon Mt. Santi and Kartaro and had spoken to Mota Singh and some other persons of the village to organise a pursuit party and run after the accused, he proceeded to the Police Station for the report. The distance between the village and the Police Station is 13 miles and the time of the first information report recorded by Gurdial Singh is given as 10 a.m. The prosecution story proceeds that Mota Singh with the help of a number of residents of the village chased Bhuria and Gajjan Singh and overtook them near village Raikhe. That place is about 5 miles from Bachak and about 4 miles from the village of the Appellants . On seeing them the accused made an effort to run away and when overtaken they offered obstruction. The pursuit party, however, proved to be too strong for them and they were both apprehended after some struggle and exchange of injuries. Bhuria was even fired at by one of the members of the pursuit party and received a few gunshot wounds.

3. According to the evidence of the Doctor who conducted the post mortem examination on Mt. Bibi's dead body, she had two incised wounds and 15 abrasions. Both the incised wounds were on the head, one 5 ½" x ¼" running from front backwards just above the right ear and the other 3 ½" x ½" above the first wound and parallel to it. These injuries had resulted in the fracture of the right parietal, frontal and temporal bones and the cutting of the small membranes and brain. The Doctor's opinion was that each of these injuries was sufficient individually to cause death in the ordinary course of nature. Mt. Santi had five incised wounds spread on different parts of the body. They were all simple. Mt. Kartaro had only one incised wound somewhat slight, but bone deep, on the lower part of the left side of the back. Indar Singh and Maghar Singh who claimed to have been injured in the course of the struggle with the accused at the time they were apprehended had respectively two incised wounds and an abrasion. The injuries of Bhuria consisted of two incised wounds, 30 gun-shot wounds scattered in an area of 8" x 6" on the right side of the chest, a punctured wound on the front side of the lower side of the chest and a few contusion marks behind the left shoulder. Gajjan Singh had multiple contusion marks of different sizes on the left leg.

4. The Appellants . denied their guilt. They also denied that they went to the house of Mt. Bibi's parents with the intention of abducting her or that they were pursued and apprehended in the manner alleged. As regards the injuries found on their respective persons, Bhuria's explanation was that he was caught hold of while he was going along on a road and assaulted. Gajjan Singh stated that he was apprehended in his village. His brother had already been arrested and when he saw him being beaten he wanted to help him and consequently he was also belaboured.

5. The principal evidence examined by the prosecution can be divided into two heads. (His Lordship then proceeded to discuss the evidence and stated:) Our attention was drawn to those parts of the statements of P. Ws. Indir Singh, Sainsi, Bakhtawar Singh, Punjab Singh and Maghar Singh who averred that when Gurdial Singh came to them after the occurrence he told them that Bhuria and Gajjan Singh had killed Mt. Bibi and inflicted injuries upon others. But this does not constitute legal evidence, because being the previous statement of Gurdial Singh to the witnesses it could only be used to corroborate him and since Gurdial Singh made no mention of it in his statement at the trial it does not amount to corroboration and is, therefore, not relevant. (His Lordship continued further discussion of the evidence and stated:) In view, however, of what I have said above, I do not believe that Gajjan Singh was apprehended in the manner deposed to by the witnesses or that the spear was found in his possession. In the result I would accept his appeal, set aside his conviction and sentences under the various counts and direct that he be released forthwith.

6. As regards Bhuria, the case is entirely different. It was not denied that he was married to Mt. Bibi and consequently neither Gurdial Singh nor the other witnesses could have had any difficulty in recognising him. Mt. Santi and Kartaro were in the courtyard when Bhuria caused injuries to Mt. Bibi and then Mt. Kartaro herself was attacked and injured by him. His name was mentioned in the first information report and it is also proved that he was pursued and was apprehended after considerable struggle. The number and the nature of the injuries found on his person belie the story that he was apprehended in his village. Evidently he not only made an effort to make good his escape but he even offered resistance. Mt. Santi and Kartaro are agreed that they saw him hitting Mt. Bibi on her head with his gandasa and since the opinion of the Doctor was that both the head injuries of the deceased were individually sufficient to cause death in the ordinary course his offence amounted to murder, pure and simple. The learned Ses. J. has held that he was guilty of culpable homicide not amounting to murder and the reason that he has given for so holding is that the primary object of the culprits was not to kill Mt. Bibi but to abduct her. I have no hesitation in coming to the conclusion that the learned Judge has misdirected himself on this point. Whatever may have been the primary object of the culprits when they trespassed into the house as soon as they attacked Mt. Bibi and inflicted injuries upon her head with highly dangerous weapons and each of the injuries caused by them was found to be fatal, it must be held that even if they had no intention to kill, at least their intention was to cause injuries sufficient to cause death in the ordinary course. It must be remembered that every sane person must be presumed to intend the result that his action normally produces, and if a person hits another on a vulnerable part of his body like the head and the weapon used by him is such that can produce fatal results and death occurs as a result of the blow or blows inflicted by him, it is idle to suggest that his intention was other than to take the life of his victim. It is, however, not necessary for me to go into this matter in greater detail, because in the revision petn. put in by the State Govt. no exception is taken to the legality of Bhuria's conviction under Section 304, part i, and all that is urged is that the sentence awarded to him is mild and not consistent with the

gravity of the offence. The learned Advocate-General argues that inspite of the fact that the revision petn. is silent on the point, since the convict has appealed it is open to us to examine the legality of his conviction and if we come to the conclusion that he committed a graver offence than the one for which he has been convicted, it is open to us to convict him under the proper section. In support of his contention he relied upon two F. B. decisions of the *Punjab H. C. Bawa Singh v. Emperor*¹, and *Ranjha v. Emperor*², S. Tirath Singh counsel for the applt., does not accept the correctness of the view taken in the above-mentioned cases and contends that a different view was taken by the President of the Judicial Committee of the Ijlas-i-Khas of Patiala in one of the cases decided by him. Since the legality of the applt's conviction under Section 304, Part I has not been questioned in the revision petn. and notice has been issued to the applt. only to show cause why his sentence should not be enhanced, I am of the opinion that even if we had the power to alter the applt's conviction we should not exercise it in the present case. As regards the sentence actually awarded by the Judge of the Ct. below under Section 304, Part I, I have no hesitation in agreeing with the learned Advocate-General that it was very mild and did not take into consideration the gravity of the offence. Even though the deceased was Bhuria's wife in view of the fact that they had been living separate for a number of years and she had in the meanwhile got married to someone else, he had no business to compel her to go with him and when she refused to injure her fatally. There were no extenuating circumstances at all and I do not understand why the maximum penalty leviable for the offence which he was held to have committed should not have been awarded.

7. In the result I dismiss Bhuria's appeal, allow the revision petn. and enhance his sentence under Section 304, Part I, to transportation for life. The sentences awarded to him under the other counts will stand but they shall all run concurrently along with the sentence of transportation for life.

Gurnam Singh, J.

8. I agree.

Order accordingly.

Cases Referred.

¹ a. I. R. (28) 1941 Lah. 465 : (197 I. C. 669 F.B)

² a. I. R. (35) 1948 Lah. 74: (49 Cr. L. J. 106)