

Kirpal Singh Vs. the State

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Court : Punjab and Haryana

Decided On : Dec-29-1950

Reported in : 1951CriLJ1517

Judge : Bhandari and; Soni, JJ.

Appellant : Kirpal Singh

Respondent : The State

Judgement :

Bhandari, J.

1. Kirjal Singh has been found guilty of the murder of his brother Partap Singh and his brother's son Waryam Singh and been sentenced to death. He has appealed and the sentence of death is also before us for confirmation.

2 It appears that one Sawan Singh died some six years ago leaving behind him a large plot of land and two sons, namely Partap Singh deceased and Kirpal Singh appellant. This land was split into two by a railway track which ran through it from east to west The land which was towards the north of the railway track was irrigated by a well as well as by a canal, whereas the land towards the south appears to have been irrigated by means of the water of the well on the north which came to the land on the south through a siphon which connected the lands on the north and the south underneath the railway track. Another siphon which lies

towards the west appears to have carried the canal water from the south so the north. The evidence shows that shortly after the death of Sawan Singh his two sons Partap Singh and Kamail Singh came to an arrangement by which half the land came into the cultivating possession of one brother and the other half in the cultivating possession of the other.

3. At about 6 o'clock on the afternoon of the 7th June 1950 Kirpal Singh appellant and his son Kartar Singh, who has since been acquitted, constructed a small channel on land which was in the cultivating possession of Partap Singh with the object of taking canal water from the south to the north through the siphon which is situated towards the east of the land. It is said that Partap Singh and his son Waryam Singh both of whom were murdered in this case came and objected to the construction of the channel. The appellant and his son persisted and it is said that the two dead men started demolishing the channel. Hot words were exchanged between the parties and it is said that the culprits who were armed with spears pounced upon the deceased. Kirpal Singh plunged his weapon into the body of Partap Singh. Waryam Singh son of Partap Singh ran away across the railway line but Kartar Singh pursued him and inflicted a spear blow on his person. Kartar Singh sank to the ground and died almost immediately at the spot. His father Partap Singh, however, lingered on for a while and died shortly afterwards.

4. The occurrence was witnessed by Mt. Sham Kaur, widow of Partap Singh, Joginder Singh, a son of Partap Singh, one Harnam Singh who was not produced in Court and one Haria, partner in cultivation of the deceased who was not cited as a witness and was not examined in Court. Word was carried immediately to the village which is at a distance of about 350 'karams' from the scene of the outrage. Narain Singh Lambardar arrived at the spot shortly afterwards and was informed by the widow and the son of Partap Singh that the two dead men had been done to death by the appellant and his son Kartar Singh. Narain Singh hastened to the Police Station which is at a distance of about five miles from the scene of the outrage, and the first information report was recorded to his dictation at about 8-15 p.m., the same day. Sub inspector Bans Rai arrived at the spot shortly afterwards. After preparing the necessary statements he examined the scene of the occurrence. He found that a 'Khal had been freshly dug on the south of the railway

line about two 'karams' in length and about two feet in width in the field of Partap Singh. The body of Partap Singh was lying at a distance of a 'karam' or two from the 'khar' within the railway boundary. The body of Waryam Singh was lying towards the north of the railway line at a distance of about seven or eight 'karams' from the body of his father Kartar Singh deceased. Kartar Singh was arrested on the day of the occurrence when he went to report the matter to the Police. His father Kirpal Singh was arrested five days later, that is on the 12th June 1950. Both the father and son were prosecuted under Section 302 of the Indian Penal Code. The learned Sessions Judge convicted Kirpal Singh of the offence of murder, but he acquitted Kartar Singh on the ground that the latter was proved to be armed only with a 'kahi' and none of the injuries on the persons of the deceased could be attributed to that weapon.

5. At the 'post-mortem' examination the Medical Officer found two injuries on the body of Partap Singh deceased, one being a perforating wound 1' x 1' on the left side of the chest and the other a similar wound on the left side of the abdomen. Death was due to the loss of blood on account of an injury to the aorta caused by injury No. 1 mentioned above. The 'post-mortem' of the body of Waryam Singh also revealed two injuries, one being a perforating wound 3/4' x 1/2' on the right side of the chest and the other an incised wound 1 1/3' x 1/2' on the front and inner side of the arm corresponding to injury No. 1 on the chest. It appears that the arm of this man went instinctively to his chest when blow was aimed on that part of the body.

6. Nor did the accused escape unhurt. Kirpal Singh, appellant had an incised wound 2' x 1/2' skin deep on the tail of the shoulder. His son Kartar Singh had two injuries, one being an incised punctured wound on the front of the right arm and the other a contused wound on the front of the right leg.

7. The appellant disclaimed responsibility for the crime. He declined to make a statement before the Committing Magistrate, but when he was questioned by the learned Sessions Judge he gave his own version of the incident. He stated that he had not dug any new 'khar', that it was his turn to take water from the canal that day, that his son Kartar Singh and his 'sanjhi' Haria both went ahead on the day of

the occurrence to clear the 'khal' for the purpose of getting water through it, that that 'khal' was in the land which was in the cultivating possession of Partap Singh, that it was an old 'khal' and had been used by the parties for eleven years preceding the date of murder, that when Kartar Singh and Haria were in the land Partap Singh deceased abused them, that Partap Singh did not like the appellant or his son to cultivate the land, that Partap Singh had sold his land towards the north of the railway track and was anxious that the appellant and his son should not irrigate their own land in the north, that Partap Singh delivered a blow with his sheathed kirpan on the person of his son Kartar Singh, that the appellant was working in the adjacent field when he heard the alarm and went to the spot armed with a spear, that Partap Singh shouted to his son Waryam Singh and asked him not to let Kartar Singh escape, that as both Partap Singh and Waryam Singh were armed with spears and as both of them were trying to encircle Kartar Singh with a view to kill him the appellant plunged his spear into the body of Partap Singh, that Waryam Singh also delivered a blow with his spear on the person Kartar Singh, that when Kirpal Singh inflicted the injury on the person of Partap Singh and attempted to return to his 'pir' Waryam Singh deceased delivered a spear blow on the person of Kirpal Singh which hit him on the shoulder, that his son Kartar Singh finding an opportunity escaped with his life, that Waryam Singh deceased again tried to attack the appellant because Partap Singh deceased had already fallen on the other side of the railway track and that on seeing that Waryam Singh had delivered a 'barchha' blow and intended to harm the appellant, the appellant inflicted injuries on the person of Waryam Singh. The appellant stated that his son Kartar Singh was armed only with a 'kaiii' but that he did not cause any injuries to any person even with that weapon. Kartar Singh's statement is similar to that of his father Kirpal Singh but there is one important discrepancy in the statements of these two accused persons, namely that whereas Kirpal Singh states that Waryam Singh inflicted injuries on the person of Kartar Singh, Kartar Singh himself states that both the injuries on his person were caused by Partap Singh deceased. No evidence was produced in defence.

8. The principal point for decision in the present case is whether the appellant and his son had constructed a new channel on the land belonging to Partap Singh deceased as alleged by the prosecution or whether they were endeavouring

merely to clean an existing watercourse with the object of irrigating their fields as alleged by the accused. In the first information report which was recorded to the dictation of Narain Singh at 8-15 p.m., on the day of the occurrence, it was stated clearly that Partap Singh deceased had demolished the 'khal' of water by which the fields of both Kirpal Singh and Partap Singh used to be irrigated. In his statement before the trial Court Narain Singh deposed that Kirpal Singh had on the day of the occurrence constructed a 'khal' and that this khal' had been demolished by Partap Singh as a result of which the appellant and his son attacked Partap Singh and his son Waryam Singh. Mt. Sham Kaur, widow of Partap Singh, stated categorically that the channel over which the dispute arose had been newly dug up by the appellant and his son. Joginder Singh, son of Partap Singh, makes a similar deposition. After going carefully through the records of the case it seems to me that although there was probably an existing channel by means of which the fields of the parties were irrigated that channel was used only for bringing water from the well situate in the north of the railway track. It is in evidence that Kirpal Singh was anxious to irrigate his fields by means of water from the canal which was situated towards the west of the fields of the parties. With this end in view he was anxious to dig up a new channel, or at any rate to widen the channel which had already been constructed. I am therefore of the opinion that Kirpal Singh either dug up an entirely new channel or merely widened an existing channel with the object of enlarging it and making it fit for receiving the water from the canal. This conclusion appears to me to be fully supported by the testimony of the Sub-Inspector of Police who, as I have said already, arrived at the spot on the day of the occurrence and found that a 'khal' had been freshly dug on the south of the railway line about two 'karams' in length and about two feet in width. If Kirpal Singh and his son Kartar Singh did in fact dig a new channel on land which was in the cultivating possession of Partap Singh or if they widened the existing channel and made it broader which is equivalent to having constructed a new channel they were in my opinion clearly in the wrong, for it was not open to them even though they were co-owners in the plot of land in question to disturb the possession of Partap Singh. It is true that Kirpal Singh and Kartar Singh had a right to irrigate their fields by means of the channels which were already in existence, but they had no right whatsoever to enter upon the land belonging to Partap Singh and

constructing new channels or widening the existing ones.

9. The Patwari who was examined in this case has stated that there are two fields bearing 'khasra' No. 266 min, one on the east being in the possession of the deceased and that on the west being in the possession of the accused. They are separated by a channel which has been indicated in the plan as running from north to south. The Patwari stated that the 'khal' which was being dug was in the field of Partap Singh deceased and is shown red in the plan. The only inference which may reasonably be drawn from this statement is that the occurrence took place as the appellant and his son constructed a new 'khal' running from north to south in the land which was in the cultivating possession of Partap Singh deceased. This statement is clearly at variance with the testimony of the several persons who were present at the spot at the time of the alleged occurrence, for all of them are unanimous in stating that the occurrence took place because the appellant and his son had constructed a new channel from 'west to east' with the object of transporting canal water from the southern to the northern field through the eastern siphon under the railway line, x have no hesitation in holding that the Patwari made his statement under a misapprehension and that the dispute really arose as a new channel was constructed from west to east.

10. There is not much dispute in regard to the occurrence itself. It is in evidence that on the 7th June Kirpal Singh and Kartar Singh were making a new 'khal' in the portion of the land which is in the cultivating possession of Partap Singh when Partap Singh appeared on the scene and objected to the new construction. Hot words were exchanged between Kirpal Singh and Kartar Singh on the one hand and Partap Singh and Waryam Singh on the other. Kirpal Singh and his son challenged the deceased and Kirpal Singh actually delivered a spear blow on the person of Partap Singh. Waryam Singh son of Partap Singh, took to his heels, but Kartar Singh accused ran after him and delivered a spear blow on his person. This evidence is supported by the testimony of Mt. Sham Kaur wife of Partap Singh and Joginder Singh son of Partap Singh. Mr. Sethi who appears for the appellant contends that both these witnesses are closely related to the deceased and are naturally interested in putting forward a version which is most favourable to the prosecution, that Mt. Sham Kaur was probably not present at the spot as her

name was not mentioned in the first information report, that her statement before the police contradicts her statement before the trial Court, that the statement of Joginder Singh cannot be accepted at its face value as he is a boy of about 14 or 15 years of age and could be induced to say almost anything against the accused, that he stated before the trial Court that both Kirpal Singh and Kartar Singh were armed with spears, that the trial Court came to the conclusion that Kirpal Singh was armed with a spear and that Kartar Singh was armed with a 'kahi' that this witness stated on oath that the accused had; constructed 'khals' on the land of Partap Singh, on previous occasions and that that statement has not been corroborated by his mother Mt, Sham Kaur. I regret I am unable to concur in the contention that the statements of these two witnesses, the mother and the son, are not worthy of credence. It is true that both of them are closely related to the deceased but that fact alone would not render the evidence given by them open to doubt and suspicion. It is true also that the name of Mt. Sham Kaur was not mentioned in the first information report as an eye-witness, but the concluding portion of the report shows that as soon as Narain Singh appeared on the scene of the occurrence he was told by Mt. Sham Kaur and Joginder Singh that Kirpal Singh and Kartar Singh were the perpetrators of the crime. It is obvious therefore that both Mt. Sham Kaur and Joginder Singh were present at the spot when Narain Singh arrived on hearing of the occurrence. The discrepancies which occur in her statements before the Police and before the trial Court are Of a minor nature. Nor can I see any reason for disregarding the testimony of Joginder Singh son of the deceased. He is a boy of about 14 or 15 years of age. His name was clearly mentioned in the first information report. He has given a very clear and straightforward account of the occurrence and although he was subjected to a very searching cross-examination the learned counsel for the accused was unable to shake the evidence given by him. I can see no reason whatsoever for holding either that Mt. Sham Kaur and Joginder Singh were not present at the spot at the time of the alleged occurrence or that they are not telling the truth.

11. The evidence on record satisfies me that Kirpal Singh and Kartar Singh accused went to the land of Partap Singh on the day of the occurrence, that they started constructing either a new channel or widening an existing one, that Partap Singh and Waryam Singh appeared on the scene and prevented them from

interfering with his possession, that hot words were exchanged between the parties and that as a result of the abuses which were exchanged Kirpal Singh who was armed with a spear and Kartar Singh who also is alleged to have been armed with a similar weapon pounced upon the deceased and killed them instantly at the spot, indeed the evidence shows that as soon as the fight started Waryam Singh took to his heels but was pursued by Kartar Singh and was killed by him at a considerable distance from where his father Partap Singh was attacked and killed. If that story of the attack on Waryam Singh is true, it seems to me that the Court below was not justified in acquitting Kartar Singh. No appeal has been preferred by the State in regard to the acquittal of Kartar Singh and I need only say that Kartar Singh has been very fortunate in securing the verdict of acquittal.

12. The only question which needs to be considered at this stage is whether the appellant was rightly convicted of an offence under Section 302 of the Indian Penal Code or whether the facts of this case do not indicate that he should have been given the benefit either of Exception 2 or of Exception 4 to Section 300 of the said Code.

13. The plea that the appellant inflicted injuries on the person of Partap Singh deceased in order to defend his son Kartar Singh cannot bear a minute's scrutiny. Not a single witness has come forward to state that either Partap Singh or his son Waryam Singh initiated the attack on Kartar Singh and not an iota of evidence has been produced in support of the plea of self-defence other than the unsworn testimony of the appellant and his son. On the other hand, the persons who were present at the spot at the time of the alleged occurrence have stated on oath that when Partap Singh demolished the new 'khal' which had been constructed on his land both the appellant and his son pounced upon him; that Partap Singh delivered a 'kahi' blow on the person of Kartar Singh with the object of warding off the spear blow which was aimed at him; and that Waryam Singh deceased who had taken to his heels on account of fear was pursued a considerable distance by Kartar Singh accused and killed with a spear. The allegation that Waryam Singh was pursued and killed is supported by the fact that the body of Waryam Singh was found at a distance of 7 or 8 'karams' from the body of his father Partap Singh. It is an accepted proposition of law that a person cannot avail himself of the

plea of self-defence in a case of homicide when he was himself the aggressor and wilfully brought on himself, without legal excuse the necessity for the killing. It would be strange indeed if a person who provokes an attack, brings on a combat and then slays his assailant were to take shelter behind the plea of self-defence in justification of the blow which he struck during the encounter.

14. Nor can the appellant claim the benefit of Exception 4 to Section 300 of the Penal Code. The help of this Exception can be invoked if and only if death is caused (a) without pre-meditation, (b) in a sudden fight, (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner. To bring a case within this Exception all the ingredients mentioned in it must be found. According to the English law if the homicide was committed in a sudden heat of passion on account of provocation and not of express malice, it amounts only to manslaughter; but if the killing was the result of malice and of deliberate and pre-meditated intent it is murder. Thus even to the case of a sudden quarrel where the parties immediately fight, the case may be attended with such circumstances as will indicate malice on the part of the party killing, and then the killing would be murder and not merely manslaughter. If, for example, the parties at the commencement attack each other upon equal terms, and afterwards, in the course of the fight, one of them in his passion snatches up a deadly weapon and kills the other with it, this would be manslaughter only. 'The King v. William Snow' (1730-1815), 1 Leach 151. But if the use of a deadly weapon was intended from the first, the killing is murder: 'R. v. Kessal, 1824 1 C & P 437. The position is more or less the same under the law as it obtains in this country. Exception 4 comes into play only if death is caused Without pre-meditation. To constitute a premeditated killing it is necessary that the accused should have reflected with a view to determine whether he would kill or not; and that he should have determined to kill as the result of that reflection; that is to say, the killing should be a pre-determined killing upon consideration and not a sudden killing under the momentary excitement and impulse of passion upon provocation given at the time or so recently before as not to allow time for reflection. Premeditation may be established by direct or positive evidence or by circumstantial evidence. Evidence of premeditation can be furnished by former grudges or previous threats and expressions of ill-feelings; by acts of preparation to kill, such as procuring a deadly weapon or selecting a

dangerous weapon in preference to one less dangerous, and by the manner in which the killing was committed. For example, repeated shots, blows or other acts of violence are sufficient evidence of premeditation. Premeditation is not proved from the mere fact of a killing by the use of a deadly weapon but must be shown by the manner of the killing and the circumstances, under which it was done or from other facts in evidence. (15) The question which arises in this case is whether the appellant killed the deceased in the heat of passion aroused by the demolition of the 'kanal' or whether there was a design to kill before the 'khal' was demolished. I am of the opinion that the appellant had formed a deliberate design to kill Partap Singh and Waryam Singh and that the death was in consequence of previous malice and not of the sudden provocation, it is true that the appellant is a brother of Partap Singh and an uncle of Waryam Singh, but it is in evidence that immediately after the death of their father disputes arose between Kirpal Singh and Partap Singh in regard to the partition of land as they would not agree to its proper distribution. The appellant was aware that he was constructing a new channel in the land which was in the cultivating possession of his brother Partap Singh deceased, and he knew or should have known that the deceased would object to this new construction. Notwithstanding this knowledge he armed himself with a 'kirpan' and took his son to the scene of the occurrence and started digging up a new channel with the object of taking canal water from the fields in the south to the fields in the north. Partap Singh came to the spot and, as was to be expected, he objected to the new construction and proceeded to demolish it. The appellant knew that this would happen and he was prepared for it. He pounced upon Partap Singh. Waryam Singh son of Partap Singh took to his heels but Kartar Singh who was armed with a spear ran after him and overtaking him at some distance plunged this deadly weapon into the body of the victim. In the circumstances it seems to me that neither the appellant nor his son was prompted to kill the deceased as a result of passion suddenly aroused. On the other hand I am inclined to think that the occasion was not sudden but as pointed out by an eminent Judge in another case, was urged only as a cloak for pre-existing malice. The provocation was not of a character as would be naturally calculated to excite or arouse the passion and, in any case, it was not sufficient to reduce the offence of murder to culpable homicide not amounting to murder.

16. For these reasons, I would uphold the order of the learned Sessions Judge and dismiss the appeal preferred by the appellant. The sentence of death is confirmed.

17. Soni, J: I. agree. ,

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