

Nikka Singh Vs. the State

Nikka Singh Vs. the State

SooperKanoon Citation : sooperkanoon.com/613230

Court : Punjab and Haryana

Decided On : Dec-11-1950

Reported in : AIR1952P& H186

Judge : Harnam Singh and; Kapur, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 162,177 and 342; Provinces and States (Absorption of Enclaves) Order, 1950 - Sections 8; [Evidence Act, 1872](#) - Sections 157

Appeal No. : Criminal Appeal No. 36 of 1950

Appellant : Nikka Singh

Respondent : The State

Advocate for Def. : Ram Parshad Khosla, Adv. for;Adv.-General

Advocate for Pet/Ap. : C. Rai and; Hans Raj Sachdeva, Advs.

Disposition : Appeal dismissed

Judgement :

Harnam Singh, J.

1. This order disposes of Murder Reference No. 7 of 1950 and Criminal Appeal No. 36 of 1950.

2. Nikka Singh, Mit Singh and Nihal Singh were tried under Sections 148, 302/149, 395/397/149, 307/149 and 436/149 of the Indian Penal Code, hereinafter referred to as the code. By order dated the 13th of January, 1950, the trial Court has convicted Nikka Singh appellant under Section 302 read with Section 149 of the Code for causing the deaths of Maghar Singh, Mussamat Dani, Nachhitar Singh, Mehar Singh and the infant child of Zora Singh and sentenced him to death subject to the confirmation of the sentence of death by the High Court. The trial Court has then convicted Nikka Singh appellant under Sections 148, 395/397/149, 307/149 and 436/149 of the Code and sentenced him to rigorous imprisonment for two years, seven years, ten years and five years respectively. Giving the benefit of doubt to Nihal Singh and Mit Singh the trial Court has acquitted them.

3. In convicting Nikka Singh the trial Court has ordered the sentences of imprisonment to run consecutively if the sentence of death passed on Nikka Singh appellant is not confirmed by the High Court.

4. Briefly summarised, the prosecution case is that Maghar Singh, brother of Nikka Singh appellant, used to tease Mt. Dani wife of Zora Singh P.W. 19 and in April, 1948 Maghar Singh had stolen the wheel bearings of the 'gadda' of Zora Singh. The matter was reported to the Police and during the investigation that followed the Police Sub-Inspector recovered the stolen articles. A case was put in Court and summonses were issued to the witnesses for appearance in Court. On receipt of summonses by Zora Singh P.W. 19 Maghar Singh came to the house of Zora Singh and threatened him for having received the summons_es. Seeing that Maghar Singh was armed with a rifle Zora Singh P.W. 19 ran into his house for safety. Indeed, Maghar Singh on coming to the house of Zora Singh shot at him. In that incident Maghar Singh who was burnt to death gave Maghar Singh, brother of Nikka Singh appellant, 'soti' blows with the result that the latter died as a result of those blows. In those proceedings no one was prosecuted for the murder of Maghar Singh, brother of Nikka Singh appellant.

5. On the 13th of October, 1948, between 9 and 10 a.m. nine men armed with stenguns, rifles and other deadly weapons shot down Mehar Singh besides setting on fire the house of Narain Singh. Nacchitar Singh, Maghar Singh, Mt. Dani and

Zora Singh's infant child were burnt to death in the house of Narain Singh. The culprits also fired at Jagrup Singh and Narain Singh causing injuries and committed dacoity in the house of Sher Singh. Mt. Rattan Kaur P.W. 14 was also injured in the incident. Nikka Singh, Mit Singh and Nihal Singh were prosecuted for having participated in the incident. Mit Singh and Nihal Singh have been acquitted while Nikka Singh has been convicted as stated above.

6. Nikka Singh appealed from the judgment of the trial Court passed on the 13th of January, 1950.

7. The incident was still in progress when Atma Singh P.W. 9 left for police station Balianwali in Jind State (now in Patiala and East Punjab States Union) for making a report. Learning on the way to Balianwali that the Sub-Inspector Balianwali was at village Dhad, Atma Singh went to village Dhad and reported the matter to Sub-Inspector Surjit Singh P.W. 22 at 10-45 a.m.

8. Sub-Inspector Surjit Singh then went to the spot, the distance being two and a half or three miles between Dhad and Bhundar villages. Before the Sub-Inspector reached village Bhundar the culprits had left the spot. Reaching the spot Sub-Inspector Surjit Singh found that Narain Singh's house was on fire. He, therefore, collected people and put down the fire. Dead bodies of Maghar Singh, Mt. Dani, Nao chitar Singh and the infant child of Zora Singh were recovered from the burnt material, Mehr Singh's dead body was found in the 'chaubara'.

9. Sub-Inspector Surjit Singh prepared inquest reports, P.S. P.T., P.V. P.W. and P.X. and the injury statements of Jagrup Singh, Narain Singh and Mt. Ratto, Exs. P.Y., P.Z. and P.A.A. He also recovered empty cartridges of stengun and .303 and 12 bore guns from the roof of Narain Singh. He sent the report, Ex. P.R., to Shehna Police Station and on the 14th of October, 1948, the Station House Officer, Shehna, arrived when Sub-Inspector Surjit Singh handed over the investigation to him.

10. On the 14th of October, 1948 Doctor Amar Singh performed 'post mortem' on the dead body of Mehar Singh and found two bullet wounds on that body. The cause of the death of Mehar Singh was rupture of right lung and heart with a bullet

fired from a firearm causing shock and haemorrhage.

11. On the same day Doctor Amar Singh performed 'post mortem' on the dead bodies of Maghar Singh, Mt. Dani, Nacchitar Singh and the infant child of Zora Singh and found those dead bodies to be completely burnt.

12. In the opinion of Doctor Amar Singh the cause of deaths of Maghar Singh, Mt. Dani, Nacchitar Singh and the infant child of Zora Singh was the burning of the bodies with fire causing shock.

13. In the case of Mt. Dani, Doctor Amar Singh found no faecal matter in the small and large intestines, while in the case of the other dead bodies Doctor Amar Singh found faecal matter in the small and large intestines.

14. On the 13th of October, 1948 at 9 p.m. Doctor Lashkari Parshad examined Jagrup Singh P.W. 17, Narain Singh son of Hira Singh and Mt. Ratto P.W. 14 and found them injured. The expression '9 a.m.' occurring in line No. 20. at p. 5 of the paper book is a mistake in print.

15. Atma Singh P.W. 9, Kaur Singh P.W. 13, Mt. Rattan Kaur P.W. 14, Mt. Nihal Kaur P. W. 15, Bachitar Singh P.W. 16, Jagrup Singh P. P.W. 17, Pritam Singh P.W. 18, Zora Singh P. W. 19, Chand Singh P.W. 21 and Surjit Singh P. W. 22 gave evidence at the trial. Barring Doctor Amar Singh and Doctor Lashkari Parshad the other prosecution witnesses gave formal evidence at the trial and it is not necessary to deal with the evidence given by them in the judgment.

16. Of the witnesses mentioned in the preceding paragraph Pritam Singh was tendered for cross-examination and Zora Singh P.W. 19 gave evidence as to the motive for the crime. Surjit Singh Sub-Inspector P.W. 22 gave evidence as to the early stages of the investigation while the other witnesses gave evidence as to the participation of the accused in the crime.

17. In these proceedings Shri Ram Parshad Khosla, appearing for the State, urges a preliminary objection that this Court has no jurisdiction to decide the appeal. The argument is that as village Bhundar where the crime was committed has, with effect from the 25th of January, 1950 ceased to form part of the Punjab State and

has been included in the Patiala and East Punjab States Union this Court has lost jurisdiction to decide the appeal.

18. It is a general principle of law that all crimes are local. In other words, the jurisdiction to try a person for an offence depends upon the crime having been committed within the area of such jurisdiction. Section 177 of the Criminal P. C. enacts:

'Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.' Section 177 of the Criminal P. C. embodies the ordinary or general rule of jurisdiction. The word 'ordinarily' occurring in Section 177 of the Criminal P. C. means 'except in the cases provided hereinafter to the contrary'. The rule in Section 177 of the Criminal P. C., should, therefore, be read subject to any special provision of law which may modify it. Counsel agree that the exceptions contained in the Criminal P. C. do not govern the point in controversy in these proceedings.

19. As stated above, Nikka Singh was convicted and sentenced to death penalty and varying terms of imprisonment on the 13th of January, 1950. Nikka Singh appealed in this Court on the 21st of January, 1950, and it was with effect from the 25th of January, 1950, that village Bhundar ceased to form part of the Punjab State and was included in the Patiala and East Punjab States Union.

20. A similar point arose in 'Emperor v. Mahabir', 33 All 578. In that case the three applicants were charged under Section 325 of the Code. Applicants Nos. 1 and 3 were sentenced to two years' rigorous imprisonment and Rs. 100/- fine, and applicant No. 2 to one year's rigorous imprisonment. The particular place where the offence was committed was on the date of the commission of the offence in British India, but by virtue of a notification of the Government of India certain territory, including the place where the offence was committed, was constituted as independent Indian State. The applicants appealed from the conviction to the learned Sessions Judge prior to the constitution of the Indian State. Before, however, the appeal came on for hearing the transfer of the territory had been actually carried into effect. On those facts Richards, C.J., and Tudball, J. said:

'The offence was committed in British India, the appeal was presented to the proper Court, the appellants are at present confined in a jail in British India. Under these circumstances we consider that the learned Sessions Judge had jurisdiction to entertain the appeal. The learned Sessions Judge says, 'it' (that is, the Court of Sessions Judge of Mirzapur) 'is no longer a Court of appeal for which persons convicted of offences committed outside British India can ordinarily come'. The learned Sessions Judge has overlooked the fact that the alleged offence in the present case was committed in British India. We do not think that the mere fact that the particular locality has ceased to be British India before the appeal has been determined, takes away the jurisdiction of the learned Sessions Judge.'

21. 'Emperor v. Mahabir', 33 All 578, was followed in 'Emperor v. Ram Naresh', 34 All 118, decided by Karamat Hussain and Chamier, JJ. and in 'Emperor v. Ganga', 34 All 451, decided by Knox, J.

22. In the case of 'Emperor v. Ram Naresh', 34 All 118, it was held that the Sessions Court was not deprived of jurisdiction to dispose of the case which had been committed to it for trial inasmuch as the place at which the offence had been committed had in the meantime been transferred to an Indian State.

23. In the case of 'Emperor v. Ganga', 34 All 451, the offence was committed at a place which was then part of the Mirzapur District. Subsequently one of the persons alleged to have taken part in the offence was arrested in Bengal, and sent to Mirzapur where he was committed by the joint Magistrate to take his trial before the Court of Session. In the meantime the place where the offence was committed had ceased to be British territory. It was held that this fact did not oust the jurisdiction of either the Magistrate or the 'District Judge of Mirzapur.

24. More recently this very point was examined by the Calcutta High Court in 'Emperor v. Sayeruddin', ILR (1938) 2 Cal 357. In that case it was held that a commitment properly made is not invalidated by reason of the transfer of the place where the offence was committed to another District subsequent to the taking of cognizance but prior to the commitment.

25. Clearly, if the case is to be governed by Section 177 of the Criminal P. C. and the authorities under that section the decision in the case would be that this Court has jurisdiction to decide the appeal.

26. Shri C. Rai points out that Section 8 of the Provinces and States (Absorption of Enclaves) Order, 1950, hereinafter referred to as the Order, enacts an exception to Section 177 of the Criminal P. C. and this Court has no jurisdiction to decide the appeal. The relevant portion of Section 8 of the Order reads: 'All laws in force in an enclave immediately before the appointed day shall, as from that day, cease to be in force in that enclave, and all laws in force in the absorbing unit shall, as from that day, extend to, and be in force in that enclave:

Provided that anything done or any action taken under the laws in force in the enclave before the appointed day shall be deemed to have been done or taken under the corresponding law extended to, and in force in, that enclave as from the appointed day.'

27. In applying Section 8 of the Order to the present proceedings we have to bear in mind that the continuation of a duly instituted appeal is a right which cannot be taken away except by a clear indication to that effect in the new enactment. In my opinion such an indication does not appear in Section 8 or in any other provision of the Order. That being so, this Court continues to possess jurisdiction to decide Murder Reference No. 7 of 1950 and Criminal Appeal No. 36 of 1950. On this point 'VenuGopala Reddiar v. Krishnaswami Reddiar', AIR (30) 1943 F C 24, may be seen. In such cases, the true position, is not whether there is an express provision in the new enactment permitting the continuance of pending proceedings, but whether there is any clear indication in the new enactment against the continuance of pending proceedings to their normal termination.

28. In these proceedings it is, however, not necessary to elaborate the point set out in the preceding paragraph for admittedly on the point in controversy before us the law in force in village Bhundar immediately before and after the 25th of January, 1950 is Section 177 of the Criminal P. C. 1898. Indeed, on this point there is no conflict between the law in force in the Patiala and East Punjab States Union, and the law in force in the Punjab State. Applying then the law in force in

village Bhundarj immediately before the appointed day or the corresponding law in force in village Bhundar as from the appointed day to these proceedings the Court of appeal from the judgment] passed by the Sessions Judge, Ludhiana, on the 13th of January, 1950, is the Punjab High Court and not the High Court of Patiala.

29. For the foregoing reasons, I find that this Court has jurisdiction to decide the appeal.

30. Before dealing with the merits of the case, I wish to notice that the judgment under appeal proceeds 'inter alia' upon Exs. D.A., D.B., D.C. and D.D., statements of Kaur Singh, 'Mussammat' Nihal Kaur, Bachittar Singh and Jagrup Singh made to the police during investigation. That this is so is plain from the judgment of the trial Court printed at p. 46 of the paper book. In my opinion, it was not open to the trial Court to use Exs. D.A., D.B., D.C. and D.D. for the corroboration of evidence given by Kaur Singh, 'Mussammat' Nihal Kaur, Bachittar Singh and Jagrup Singh. Section 162 of the Criminal P. C. enacts that the police statement of a witness who has been called by the prosecution can be used by the accused for the purpose of contradicting that witness under Section 145 of the Indian Evidence Act and that such a statement cannot be used by the prosecution for the purpose of corroborating the statement of that witness under Section 157 of the Indian Evidence Act. 'Hazura Singh v. Crown', 51 Pun L R 327, may be seen on this point.

31. Turning now to the merits, I find that the extra-judicial confession of Nikka Singh appellant cannot be taken into consideration in determining his guilt, Chand Singh P. W. 21 stated at the trial that about 10 or 11 a.m. on the 15th of October, he was at the 'bassi' in village Dhad when he heard from village Bhundar sound of firing. After some time nine men including Nikka Singh appellant passed by him in that 'kassi'. Nikka Singh appellant then told him of his own accord 'that he had taken the revenge for his brother's murder'. This statement was not put to Nikka Singh appellant in his examination under Section 342 of the Criminal I P. C. That being so, I find that the extra-judicial confession of Nikka Singh appellant ought not to have been taken into consideration, in] determining the guilt of Nikka Singh appellant. On this point 'Dwarkanath v. Emperor', AIR (20) 1933 P C 124, may be

seen.

32. But quite independently of the objection mentioned in the preceding paragraph the statement of Chand Singh, P. W. 21 in so far as it concerns the extra-judicial confession of Nikka Singh appellant suffers from a serious defect. In the cross-examination of Chand Singh it was proved by the defence that Chand Singh had made no such statement in the Court of commitment. That being the case, it will be highly unsafe to act on the evidence of Chand Singh that soon after the incident Nikka Singh appellant had told him 'that he had taken the revenge of his brother's murder'.

33. And this brings me to the consideration of evidence given by Atma Singh P. W. 9, Kaur Singh P. W. 13, 'Mussammat' Rattan Kaur P. W. 14, 'Mussammat' Nihal Kaur P. W. 15, Bachitar Singh P. W. 16 and Jagrup Singh P. W. 17.

(After discussing evidence of these witnesses his Lordship came to the following conclusion:)

34. Giving- the matter my very best consideration I find that there is no justification for rejecting the evidence of Atma Singh, Kaur Singh, 'Mussammat' Rattan Kaur, 'Mussammat' Nihal Kaur, Bachitar Singh and Jagrup Singh.

35. And here I wish to mention that the statement of Chand Singh P. W. 21, that soon after the incident he saw 9 persons including Nikka Singh appellant passing the 'kassi' where he was working is relevant to the present enquiry- Considering, however, that the 'kassi' is situated at a distance of 2½ miles from village Bhundar and Chand Singh P. W. 21 does not state that persons who passed by him in that 'kassi' were armed, I am not taking into consideration the evidence given by Chand Singh in determining the guilt of Nikka Singh appellant.

36. From- what I have said above, the participation of Nikka Singh appellant in the crime is established beyond any reasonable doubt and I find that Nikka Singh appellant has been rightly convicted and sentenced.

37. In the result I confirm the sentence of death imposed upon Nikka Singh appellant and dismiss criminal appeal No. 36 of 1950 'in toto'.

38. Before leaving this judgment I wish to mention that Nikka Singh appellant was convicted on the 13th of January, 1950 and the appeal has been put up before us for disposal on this 11th day of December, 1950. Clearly, the sentence of death has been hanging over Nikka Singh appellant for about a year. In these circumstances it is for the State to consider whether the case of Nikka Singh appellant is a fit case for the commutation of the death penalty imposed upon him.

Kapur, J.

39. I agree that the appeal should be dismissed and the sentence of death confirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com