

Sucha Singh and Others Vs. State of Haryana

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Court : Punjab and Haryana

Decided On : Feb-24-1999

Reported in : 1999CriLJ3903

Judge : A.S. Garg and; V.K. Bali, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 300 and 304

Appeal No. : Crl. Appeal No. 594-DB of 1997

Appellant : Sucha Singh and Others

Respondent : State of Haryana

Advocate for Def. : N.K. Sanghi, Dy. Advocate General (Hy.),; Ajai Lamba, Adv.

Advocate for Pet/Ap. : R.S. Ghai, Sr. Advocate and; Bipan Ghai, Adv.

Judgement :

V.K. Bali, J.

1. In this appeal preferred by Sucha Singh and his brother Avtar Singh as also Dilbag Singh against the order of conviction and sentence recorded against them by the Additional Sessions Judge, Hisar dated 7-9-1997 and convicting Sucha Singh under Section 304, Part I of the Indian Penal Code and ordering him to undergo RI for life and to pay a fine of Rs. 2000/- or in default thereof to further

undergo RI for two years as also convicting him under Section 27 of the Arms Act and ordering that both the sentences shall run concurrently and further holding Avtar Singh and Dilbag Singh guilty under section 304, Part I read with Section 109 of the Indian Penal Code and ordering them to undergo R.I. for seven years and to pay a fine of Rs. 2000/- or in default thereof to undergo further R.I. for two years each, the only question that has been raised before us is as to whether Avtar Singh and Dilbag Singh can be held guilty under section 304, Part I with the aid of Section 109 of the Indian Penal Code and that as to whether imposing maximum sentence on Sucha Singh under section 304, Part I is justified or under the facts and circumstances of the case the same should be reduced.

2. For deciding the limited points raised in this appeal as noted above, the need is to give facts in brevity. Sukhwant Singh died on 1-6-1995 when as per the prosecution version, he was hit by a fire arm shot by appellant Sucha Singh. The occurrence had taken place at 6.30 am on 1-6-1995 at village Nakhatia, Police Station Fatehabad. First Information Report with regard to the incident came to be recorded on 1-6-1995 at 10.35 am on the statement Ex. PK of Partap Singh brother of the deceased which was recorded by SI Sardara Singh PW-9 at General Hospital, Fatehabad. Special report with regard to the incident reached the concerned Magistrate at 1.00 pm on 1-6-1995. While unfolding the prosecution version, Partap Singh stated before SI Sardara Singh PW-9 that he was resident of village Nikhatia and was doing cultivation. They were four brothers. Eldest is Gurdial Singh, younger to him is Jagtar Singh and still younger to him was Sukhwant Singh, while he was the youngest. There was a common electric tubewell installed in the Gurdwara of their village. Electric motor of the tubewell had been out of order for about three months. In order to get the motor repaired, the people of the village got together on the basis of brotherhood and formed a panchayat. In that panchayat it was decided that Rs. 150/- per house from land owners and Rs. 100/- from Harijans may be collected as a contribution towards the repair of the electric tubewell. In order to collect this contribution, panchayat had appointed him, Surjit Singh, Kuldeep Singh and Balwinder Singh. They had been collecting the contribution for about one week. A day before the occurrence at about 7 pm when all the four reached the house of Sucha Singh appellant to collect the contribution, appellant Sucha Singh asked them as to who had given

them authority to collect the money. Appellant Sucha Singh gave him a slap and called them bad names. Thereafter they all came back to their respective houses. He narrated this incident to his brother Sukhwant Singh. On the eventful day at about 6.30 am, his brother Sukhwant Singh was going to Sucha Singh to remonstrate this matter. He and Nirmal Singh also accompanied him. When they reached in front of the house of Purshotam member panchayat, they saw Sucha Singh standing armed with his licensed gun. His brother Avtar Singh and Dilbagh Singh were also standing by his (Sucha Singh's) side. His brother asked Sucha Singh as to why he had slapped his brother Partap Singh and it was not good on his part. Thereafter appellants Avtar Singh and Dilbagh Singh incited Sucha Singh appellant to kill the enemy without bothering about consequences. At this stage Sucha Singh fired a shot with his gun at his brother Sukhwant Singh which hit him on his right thigh as a result of which Sukhwant Singh fell down. Sucha Singh and others decamped from the spot along with their respective weapons. He and Nirmal Singh rushed to check Sukhwant Singh and found him unconscious. He took his brother Sukhwant Singh to General Hospital, Fatehabad in the jeep of Baljit Singh where the doctor declared him dead. Partap Singh further stated that appellant Sucha Singh had killed Sukhwant Singh by aiming a fire shot at him with his gun. Therefore, action should be taken.

3. Dr. N. Chakarwari, Medical Officer, General Hospital, Fatehabad who conducted post-mortem on the dead body of Sukhwant Singh found the following injuries :-

'1. An irregular lacerated wound with inverted margins measuring 6 cm x 4 cm in diameter on the front aspect and upper 1/3rd of right thigh. Surrounding the Central wound, there were multiple wounds with irregular and inverted margins each measuring 1/2 cm x 1/2 cm. The wounds were in the area of 10 diameter. The wound was full of blood. On dissection muscles femoral vessels and nervous were lacerated. Card web and 20 pellets were recovered from the wound. The direction of the wound was from anterior to posterior. Corresponding holes were present in the shirt, pajama and kachha.'

4. In the opinion of the doctor, cause of death was due to shock and haemorrhage due to multiple injuries caused by fire arm. All the injuries were ante-mortem and sufficient to cause death in the ordinary course of nature.

5. In view of the points raised by the learned counsel representing the appellants in support of the appeal, there is no need at all to give further details of the evidence that came to be recorded by the learned trial Judge.

6. From the narration of events as have been fully detailed above, Mr. R. S. Ghai, the learned Senior Advocate who represents the appellants vehemently contends that in so far as appellants Avtar Singh and Dilbag Singh are concerned, they cannot be convicted with the aid of Section 109 of the Indian Penal Code. We find considerable merit in the aforesaid contention of the learned counsel. It may be recalled at this stage that a day prior to the occurrence, first informant along with three others had gone to the house of appellant Sucha Singh when Sucha Singh had told them as to who had given them authority to collect the money. Sucha Singh also gave slap to the first informant and called all of them bad names. It is this action of Sucha Singh that was not to liking of the first informant and his brother who was informed of the incident. It is with a view to talk over the matter with Sucha Singh on the next day that the first informant and his brother Sukhwant Singh deceased were going to Sucha Singh. When they had reached in front of the house of Purshotam member panchayat, they saw appellant Sucha Singh armed with his licensed gun. His brother Avtar Singh and Dilbag Singh son of Chhinda were also standing by his side. Brother of first informant Sukhwant Singh asked appellant Sucha Singh as to why he had slapped his brother Partap Singh. Thereupon, it is the prosecution case that appellants Avtar Singh and Dilbag incited Sucha Singh to kill the enemy. It is clear from the narration of events given in the F.I.R. that minor dispute, as mentioned above, was between Sucha Singh on one side and first informant or at the most his brother on the other side. In so far as appellants Avtar Singh and Dilbag Singh are concerned, they had nothing at all to do with this dispute. Further, it was not at all known to appellants Avtar Singh and Dilbag Singh that in the eventful day at 6.30 am the first informant along with his brother would come to remonstrate with Sucha Singh. The occurrence had taken place in a short span and there was no occasion at all for appellant Avtar

Singh and Dilbag Singh to instigate Sucha Singh. Further, the allegation made against appellants Avtar Singh and Dilbag Singh that they had incited Sucha Singh to kill the enemy does not appear to be true. The words used by them which might have incited Sucha Singh to kill Sukhwant Singh have not been mentioned in the F.I.R. Appellant Avtar Singh and Dilbag Singh were empty handed and no evidence has been brought on the records to show that they knew about the incident that took place a day earlier between Sucha Singh and the first informant. Even if they had known about the altercation that had taken place a day earlier between appellant Sucha Singh and Partap Singh, it was a very minor incident and therefore, the deceased could not be said to be enemy of appellant Sucha Singh and others, namely, Avtar Singh and Dilbag Singh. It may be mentioned here that Avtar Singh and Dilbag Singh are stated to have incited Sucha Singh to kill the enemy. It appears to us that the two appellants Avtar Singh and Dilbag Singh have been involved in this case in tune with the normal tendency of the aggrieved party to rope in as many members of the family of the aggressor as may be possible. Avtar Singh and Dilbag Singh are given benefit of doubt.

7. In view of what has been said above, we allow the appeal preferred by appellants Avtar Singh and Dilbag Singh and acquit them of the charges framed against them. The order of conviction and sentence recorded against them by the Additional Sessions Judge, Hisar is set aside and the appeal preferred by them is allowed.

8. In so far as Sucha Singh is concerned, sufficient evidence has been brought on record to prove the guilt against him. It was for this precise reason that the learned Counsel representing Sucha Singh only pleads for reducing the sentence. He contends that appellant Sucha Singh has caused only one injury even though with fire arm on the leg of Sukhwant Singh. It is no doubt true that the injury sustained by Sukhwant Singh proved to be fatal and the doctor described the injury as sufficient to cause death in the ordinary course of nature, however, appellant Sucha Singh had aimed the shot at the leg of Sukhwant Singh deceased and as mentioned above, he did not repeat the same and therefore only one injury was caused. The learned counsel relies upon the judgment of the Supreme Court in *Sital Singh v. State of Punjab*, 1983 SCC (Cri) 612 : (1983 Cri LJ 1042) to contend

that in the circumstances as are available in this case, sentence imposed upon Sucha Singh is too harsh. We have considered the contention of the learned counsel and find considerable merit therein. We are of the firm view that it is not a case of giving maximum sentence to appellant Sucha Singh under Section 304, Part I of the Indian Penal Code. As mentioned above, the deceased had remonstrated with appellant Sucha Singh with regard to the incident of an earlier day. It is on account of this that Sukhwant Singh was going to Sucha Singh along with others that incited later who caused one injury and that too on the leg of Sukhwant Singh. In our view, interest of justice would be met if Sucha Singh is held guilty under section 304, Part I of the Indian Penal Code and sentenced to undergo RI for a period of seven years besides fine imposed by trial Judge. So ordered. He is, however, ordered to pay an amount of Rs. 10000/- as compensation to the legal heirs of Sukhwant Singh failing which he shall further undergo RI for a period of three years. The sentence awarded to appellant Sukhwant Singh under Section 27 of the Arms Act is maintained. Both the sentences are however, ordered to run concurrently.

9. The appeal is, thus, partly allowed as indicated above.

10. Criminal Revision No. 79 of 1998 preferred by Partap Singh was ordered to be heard with Criminal Appeal No. 594-DH of 1998 preferred by the appellants. We do not find any merit in the revision petition except to the extent that Sucha Singh should pay compensation to the legal heirs of Sukhwant Singh as has already been ordered by us.

11. Order accordingly.