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Court : Punjab and Haryana

Decided On : May-02-1951

Reported in : AIR1952P& H375

Judge : Khosla and; Falshaw, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154

Appeal No. : Criminal Appeal No. 334 of 1950

Appellant : The State

Respondent : indar Singh and ors.

Advocate for Def. : H.R. Sachdev, Adv.

Advocate for Pet/Ap. : H.S. Gujral, Adv. for;Adv. General

Judgement :

Falshaw, J.

1. Indar Singh, Gurmej Singh and Teka Singh were tried by the Additional Sessions Judge at Ferozepore on. charges under Sections 302, 325 and 324 read with 34, Indian Penal Code, on the allegation that on the evening of the 31st of May 1949, in pursuance of their common intention they murdered Mst. Harnam Knur and Kartar Singh deceased and caused injuries to Sewa Singh, Puran Singh,

Man Singh and Labh Singh P. Ws. It seems that there was some delay in the trial owing to the fact that although Gurmej Singh and Indar Singh were arrested within a short time of the occurrence. Teka Singh remained absconding until February 1950. The result of the trial was that on the 5th of May 1950, all the accused were acquitted and the present appeal has been filed by the State against their acquittal.

2. The prosecution story is that there was enmity between Indar Singh accused and the family to which the deceased and the injured P. Ws. belong. Sewa Singh P. W. is the father of Man Singh. Labh Singh, Puran Singh and Kirpal Singh P. Ws. and Kartar Singh deceased, and Mst. Harnam Kaur deceased was Sewa Singh's wife. The enmity was due to the fact that sometime in 1948 Kirpal Singh P. W., who seems to have escaped injury or death by reason of the fact that at the time of the occurrence he was serving in the P. A. P. in Amritsar district, ran away with the wife of Indar Singh who is apparently getting on for 50 years of age, Kirpal Singh being only about 20. This elopement reflects no credit on Kirpal Singh or his family, since it appears that Indar Singh's wife was Kirpal Singh's niece, being the daughter of his sister. According to the evidence, Indar Singh had made several unsuccessful attempts to secure the return of his wife.

3. Gurmej Singh and Teka Singh belong to different villages, but it is alleged that they had accompanied Indar Singh on more than one occasion when he had come to the family in connection with the return of his wife, and it has also been stated by Gurmej Singh that he used to live in the same village as Indar Singh before the partition in the West Punjab.

4. The occurrence took place on the 31st of May 1949, a little after sunset when Mst. Balwant Kaur P. W., the wife of Man Singh P. W., was busy preparing the evening meal for the members of the family at their 'jhuggi' at a well called 'Manewala' where they all lived. Other members of the family who were present there were Mst. Harnam Kaur, Sewa Singh, Labh Singh, Man Singh, Puran Singh and Mst. Bachan Kaur and Mst. Chanan Kaur the wives of two of the other sons of Sewa Singh. Suddenly the three accused came there, Indar Singh being armed with a spear, Gurmej Singh with a 'Kirpan' and Teka Singh with a 'hhunda'. With

their weapons the accused forthwith began beating the members of the family, of whom Mst. Balwant Kaur, Mst. Bachan Kaur and Man Singh took refuge inside a room, but even then some blows were given to Man Singh by Indar Singh through a crevice as the door did not fit very well. Kartar Singh deceased came back to the well while the attack was going on and the accused turned their attention to him and killed him a few yards away from the well although he tried to defend himself with a kirpan which he was carrying. The accused then ran away.

5. Mst. Balwant Kaur first went to the village of Dhandian, which is about half a mile from the well, and, taking with her Bachan Singh Lambardar, she went to the police station at Zira four and a half miles away from the spot where her report was recorded half an hour after midnight.

6. A. S. I. Shiv Singh P. W. reached the spot as soon as he could and found the body of Kartar Singh lying near the well, and Mst. Harnam Kaur died not very long after his arrival. A search was made for the accused at whom Gurmej Singh was arrested on the 2nd of June and Indar Singh on the 19th of June. Teka Singh was not arrested until the 15th of February 1950, and a parade was held in jail at Ferozepore on the 10th of March for his identification at which only Man Singh P. W. was successful in identifying him.

7. The results of the attack were as follows : Mst. Harnam Kaur died as the result of extensive fractures of the skull under a contused wound on the left frontal-parietal region. She also had marks of blows with a blunt instrument on the upper part of the left eye, left thigh and the left side of the chest. Kartar Singh deceased had 14 injuries of which six were incised wounds caused by some sharp-edged weapon on the left leg, both arms and the left side of the neck, while the rest were punctured wounds from some weapon like aspear on the chest and abdomen. Four of these spear injuries were necessarily and immediately fatal. Sewa Singh P. W. had six injuries of which four were stick marks on various parts of his body and two were scratches, One injury was grievous as his left ulna bone was fractured. Puran Singh P. W. had been given repeated blows on the left leg and knee. Labh Singh P. W. had 16 injuries including nine stick marks on various parts of his body and a contused wound on the head, four incised wounds and two

scratches. Man Singh P. W. had nine injuries, a contused wound on the head, three bruises on other parts of his body and five scratches and a small cut.

8. The accused denied their guilt. Indar Singh denied that he had any enmity with the family of the deceased and said that in fact he and his wife were voluntarily separated. The only reason he could suggest for the case against him was that his wife was living with Kirpal Singh and that she had taken with her ornaments worth about a thousand rupees, and that he had been implicated in order to deter him from asking for the return of those ornaments. In the Sessions Court he admitted that he had been bound down on one side while Kirpal Singh and Mst. Kartar Kaur had been bound down on the other side about two years before the present case. Gurmej Singh said that he did not know Teka Singh accused but that he and Indar Singh came from the same village in Pakistan. The only reason he gave for his implication was that Bachan Singh P. W. had illicit connection with some unnamed woman of Gurmej Singh's village, and that on some unspecified date Gurmej Singh and others had caught Bachan Singh at the house of the woman in question and beaten him. Teka Singh said that he did not know why he had been implicated in the case, but that he could not have joined Indar Singh in any such enterprise, as Indar Singh's cousin had been murdered by Teka Singh's cousin Mangal Singh who had been sentenced to a term of imprisonment. He denied that he had absconded and said that all along he had been living at a village called Hasil in Amritsar district where he had come as a refugee after the partition. He alleged that after his arrest he had been produced before the Tahsildar at Zira on the 27th of February 1950, and that 'he had then been shown to the prosecution witnesses. No defence evidence was produced, and all the four assessors expressed the opinion that the guilt of the accused had been proved.

9. The learned Additional Sessions Judge, however, came to a contrary conclusion. His judgment is quite a brief one covering about 3 1/2 pages of the printed book and out of this nearly a page and a half is filled with a reproduction of the medical evidence. In fact the operative part of the judgment in which the evidence is discussed occupies only about a page. In this brief discussion he came to the conclusion that the murders could not have taken place before about 1 a.m. and that the first information report had not been recorded at the police

station half an hour after midnight but at the spot several hours after the occurrence, and that therefore the prosecution witnesses could not be relied on at all. It is, however, quite clear that the learned Additional Sessions Judge has not seriously applied his mind to the fact of the case, and has altogether failed to give due weight to the strong parts of the prosecution case as well as exaggerating or inventing weaknesses in it. (His Lordship then while dealing with the defects of the judgment of the Additional Sessions Judge examined the evidence on record and discussed the question whether the first information was recorded at the police station or at the scene of the occurrence of crime.) However, there remains the difficulty arising out of the statements of Mst. Balwant Kaur and Man Singh for the prosecution to get over. As I have already mentioned, these witnesses gave evidence at the trial eleven months after the occurrence and there can be no doubt that at the spot the investigating officer must have prepared many documents and obtained many thumb-impressions in connection with inquest reports and injury statements and the taking into possession of blood-stained earth and so on. In the circumstances there is certainly a possibility that the statements of Mst. Ealwant Kaur and Man Singh on this point were mistaken, and I should certainly not be prepared to hold on the strength of these statements and the other evidence referred to above by the lower Court that it was conclusively proved that the report was recorded at the spot. I would, however, go further than this, and I am of the opinion that even in a case in which the circumstances indicate that the police officer concerned has recorded the report at the spot and not at the police station, it does not necessarily follow that the whole prosecution case is to be thrown aside.

10. There is no doubt that in recent years there have been a number of cases in which direct or circumstantial evidence has pointed to the conclusion that police officers to whom reports of serious crimes have been made at their police stations have merely entered the time of the informant's arrival at the police station in the first information report book, but have not filled in the body of the report until after holding some sort of preliminary enquiry at the spot. The reason why police officers like to act in this manner is quite obvious. The Courts as a whole, including this Court, have always been inclined to attach very great, and perhaps on some occasions undue, importance to the first information report, and there is no doubt

that on many occasions trustful investigating officers who have recorded the complainant's story as told to them have, on reaching the spot, found indications of a very different state of affairs, which at times has led to the breakdown of cases when subjected to judicial scrutiny. In these circumstances it is not surprising, although it involves grave irregularities and breaches of police rules, that police officers, before committing themselves to recording what is bound to be the prosecution case, like, where it is possible, to satisfy themselves at the spot that the complainant is not telling obvious lies when he comes to the police station. Even where this is done, however, I do not consider that it necessarily reflects any discredit on the complainant and the witnesses Who support the prosecution story and this is certainly not so in a case like the present one in which there could be no doubt whatever that a dastardly attack had been carried out by a number of assailants on several members of the same family gathered together at their house and there must obviously be a large number of persons available who must have seen the assailants. The recording of a report at the spot instead of at the police station seems to me to be seriously damaging to the prosecution case only where it can be shown that there is a possibility that evidence at the spot has been fabricated by the investigating officer either by manufacturing clues or by procuring the evidence of eye-witnesses who are not likely to have been present at the spot. The present case is one in which there were undoubtedly at least seven members of the family present besides the deceased, and the only question is whether their evidence can be relied on for the purpose of proving that they correctly identified the assailants.

No scope at all existed in the present case for manufacturing evidence and obviously no attempt has been made to introduce so-called independent eye-witnesses, the prosecution being content to rely on the evidence of the immediate members of the family who must have been present at their house at the time the attack took place. In the circumstances, I am of the opinion that even if it were to be held in the present case that the Assistant Sub-Inspector refrained from writing down the story of Mst. Balwant Kaur at the police station and went to the spot to see the situation there for himself before recording the prosecution version, it does not seriously affect the strength of the prosecution case or in anyway detract from the value of the evidence of the members of the family produced as witnesses.

11. I, therefore, consider that the two main grounds on which the learned Additional Sessions Judge threw out the prosecution case did not at all justify such a course, and the only other ground that Gurmej Singh and Teka Singh had no adequate motive for joining Inder Singh in the attack on the family of the deceased is not of much importance. The obvious; answer is that the witnesses also had no motive for implicating these two accused falsely.

12. It is clear from the statements of the accused that they have really no reply to the evidence against them, Indar Singh accused clearly had a serious grievance against the family of the deceased, and his denial of this fact and suggestion that he has been falsely implicated simply to deter him from asking for the return of the ornaments taken away by his eloping wife hardly deserve serious consideration. The reason given by Gurmej Singh for his alleged implication apart from being unconvincing is not supported by any evidence. The witness whose enmity is alleged to be responsible, the Lambardar Bachan Singh, was merely tendered for cross-examination and no questions were put to him. In the circumstances I cannot see any reason for not accepting the prosecution evidence as against Indar Singh and Gurmej Singh. (His Lordship then considered the case of Teka Singh and concluded.) I would accordingly dismiss the appeal of the State so far as it concerns Teka Singh and order his release, but accept the appeal in the cases of Indar Singh and Gurmej Singh and convict them under Section 302, read with Section 34, Indian Penal Code. I do not think it is necessary to record any separate convictions against them under the minor charges. As regards the sentence, it is clear that a cowardly attack was made on the family of the deceased of whom two, including an old woman, were mercilessly killed, and others injured. I thus see no occasion for leniency and would therefore sentence Indar Singh and Gurmaj Singh to death.

Khosla, J.

13. I agree.