

Swaran Singh Son of Tehal Singh Vs. State

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Court : Punjab and Haryana

Decided On : Oct-06-1980

Reported in : 1981CriLJ364

Judge : Harbans Lal and; C.S. Tiwana, JJ.

Appellant : Swaran Singh Son of Tehal Singh

Respondent : State

Judgement :

Harbans Lal, J.

1. Criminal Appeals Nos. 924, 993 and 1073 of 1979, by Swaran Singh; Atma Singh, Malik Singh, Pal Singh, Ajit Singh; and Mukhtiar Singh and Ram Singh appellants, respectively, are directed against the judgment of the Additional Sessions Judge, Amritsar, dated June 6, 1979, whereby all the seven appellants were tried under Section 302 read with Section 149, Indian Penal Code and lesser offences. All of them were convicted under Section 302 read with Section 149, Indian Penal Code, and sentenced to imprisonment for life and a fine of Rs. 1,000 each; in default, to undergo further rigorous imprisonment for six months. They were also convicted under Section 148, Indian Penal Code, and awarded one year's rigorous imprisonment. Besides, Mukhtiar Singh, appellant, was convicted under Section 326, Indian Penal Code, and awarded one year's rigorous imprisonment and a fine of Rs. 500; in default, to undergo further rigorous

imprisonment for four months. The remaining appellants were convicted under Section 326 read with Section 149, Indian Penal Code, and awarded one year's rigorous imprisonment and a fine of Rs. 500, each; in default, they were ordered to undergo further rigorous imprisonment for four months. Maluk Singh, appellant was convicted under Section 324, Indian Penal Code, and awarded six months' rigorous imprisonment. The rest of appellants were convicted under Section 324 read with Section 149, Indian Penal Code, and awarded six months' rigorous imprisonment each. All the substantive sentences were ordered to run concurrently. All the appeals will be disposed of by this judgment.

2. The prosecution case is that on September 16, 1978. Surnek Singh, P.W. 6 and Gurnek Singh, P.W. 7, accompanied by Jagir Singh and Shahbeg Singh had gone to the maize field of Gurnam Singh, P.W. 11, and had worked there throughout the day. At about sunset, they went to the house of Gurnam Singh, P.W. and took their meals there. At about 8 or 9 P.M. all the four left towards their joint tube-well. They had hardly gone about 17 karams away from the pukka road, when all the seven accused emerged from the cotton field of Narain Singh. Mukhtiar Singh, accused, aged 65 years, resident of village Sabhra, was armed with kirpan, Exhibit P-15, Ram Singh, accused, aged 45 years, his brother; resident of another village Sangwan; Atma Singh, accused, aged 61 years; Swaran Singh, accused, aged 70 years; Pal Singh, accused, aged 27 years; and Ajit Singh, accused, aged 50 years, residents of village Bagupura, were also carrying kirpans. Besides their co-accused, Maluk Singh, aged 49 years, resident of village Bagupura, was armed with a gandasi. Mukhtiar Singh, accused, exhorted his companions not to allow their enemies to go. Provoked by the same, Ram Singh, Ajit Singh and Atma Singh, accused, inflicted kirpan blows on the head of Jagir Singh as a result of which, he fell down. Thereafter, Mukhtiar Singh, accused, opened attack and showered blows with his kirpan on the neck of Jagir Singh. Pal Singh and Swaran Singh, accused, also attacked with their kirpans.

3. According to the further prosecution story, Surnek Singh, P.W., in order to protect Jagir Singh, inflicted blows with kirpan on Maluk Singh, accused, who, in turn, made former the target of his gandasi blow. Jagir Singh succumbed to the injuries at the spit. This made Surnek Singh. Gurnek Singh, P.Ws., and Shahbeg

Singh, to take to their heels out of fear. They were chased by the accused. Shahbeg Singh was made the target of blows by Mukhtiar Singh, Ram Singh and Ajit Singh, accused, who hit him on his head. When Shahbeg Singh fell down, he was showered further blows by Pal Singh, Swaran Singh, Atma Singh and Maluk Singh, accused, with their respective weapons, as a result of which, Shahbeg Singh died on the spot. Surnek Singh, P.W., is stated to have inflicted some kirpan blows on some of the accused in self-defence. In turn, he was inflicted blows on his left wrist and the back of his left hand by Mukhtiar Singh, accused. Thereafter, all the accused ran away carrying the weapons of offence with them. On hearing alarm, Gurbej Singh, brother of Surnek Singh P.W., and Mukhtiar Singh reached the spot. They were left at the spot. Surnek Singh, P.W., accompanied by Gurmei Singh, went to the Police Station Patti which was situated at a distance of 2 miles from the place of occurrence. The case was registered by S.I. Pritam Singh, P.W. 17, for the commission of the murders and other lesser offences on the basis of a statement by Surnek Singh, P.W. at 11-15 P.M.

4. According to the prosecution case, though the residence of the Magistrate concerned was situated at Patti itself at a distance of only 2 or 3 furlongs from the Police Station, the special report was received by him at 7 A.M. the next day.

5. It is the prosecution case that there was long standing enmity between some of the accused on the one hand and Shahbeg Singh (deceased) and Surnek Singh, P.W., on the other. According to the prosecution evidence brought on the record, Amar Singh, brother of Mukhtiar Singh and Ram Singh, accused, was murdered in February, 1974, regarding which Surnek Singh, P.W., Shahbeg Singh (deceased) and Gurbej Singh were prosecuted and tried. They were convicted under Section 302 read with Section 34, Indian Penal Code, and awarded life sentence by the Court of Session. In appeal, the conviction of Surnek Singh, P.W. was converted under Section 304 Part I, I.P.C. and he was awarded ten years' rigorous imprisonment, whereas the two other accused were acquitted. One of these two was Shahbeg Singh who was murdered at the present occurrence. Surnek Singh, P.W., had been released on bail during the pendency of the appeal in the High Court. Though his conviction was altered and he was sentenced as above, yet he had not surrendered and was consequently at large on the date of the occurrence.

According to the prosecution version, he received injuries at the spot.

6. Besides, cross security proceedings had also been initiated by the Police authorities on June 27, 1978, against Mukhtiar Singh and his brother Raro Singh, accused, on one side and Surnek Singh, Shahbeg Singh, Gurmej Singh, Gurnek Singh and Gurbej Singh, on the other. On December 29, 1978, that is, after the occurrence, both the sides were bound down permanently. So far as the inter se relationship of the accused is concerned, Mukhtiar Singh and Ram Singh, accused, are real brothers. Similarly, Atma Singh and Maluk Singh, accused, are real brothers, and Ajit Singh accused, is their cousin. Pal Singh, accused, was their friend and was instrumental in bring about the marriage of the daughter of Atma Singh, accused. It is the prosecution case that all the accused were friends to each other.

7. On the complainants' side, Surnek Singh, P.W. had sustained three injuries at the occurrence, as disclosed by Dr. Raj Kumar Jain, P.W. 1, who had examined him on September 17, 1978, at 1-15 A.M. out of them, two were incised wound on the lower part of the left forearm and dorsum of left hand, and one was lacerated wound on the left side of the head. The incised wound on the left fore-arm was also opined to be grievous after x-ray examination. Two injuries had been sustained by a sharp-edged weapon and one by a blunt weapon.

8. Autopsy on the dead bodies of Jagir Singh and Shahbeg Singh had been performed by Dr. Rajinder Singh, P.W. 2, according to his report, Jagir Singh had sustained 26 injuries on various parts of the body out of which 17 were incised wounds, one lacerated wound and 8 abrasions. According to the doctor, death was due to shock and hemorrhage as a result of injuries Nos. 1, 2, 3, 4, 5, 6 and 9 which were collectively sufficient to cause death. Injuries Nos. 1, 3, 5, 6, and 9 were also opined to be individually sufficient to cause death in the ordinary course of nature. Incised wounds were further opined to have been caused by a sharp-edged weapon and the remaining nine injuries by a blunt weapon. 15 ounces of semi-digested food was also found in the stomach.

9. The post-mortem examination of Shahbeg Singh disclosed that he had sustained as many as 24 injuries on various parts of the body out of which 20 were

incised wounds, one was an incised stab wound and three were abrasions. The cause of death was stated to be due to injuries Nos. 12, 13, 14, 17 and 18 collectively out of which injuries Nos. 12, 13 and 17 were held to be individually sufficient to cause death in the ordinary course of nature. The incised wounds were further opined to be caused by a sharp-edged weapon and the abrasions by a blunt weapon. In his case also, the stomach contained 16 ounces of semi-digested food.

10. Regarding abrasions on the persons of both Jagir Singh and Shahbeg Singh (deceased), the opinion of the doctor was that the same could not be caused by the blunt side of the gandasi and that they could be caused only by a danda. However, it was opined that the incised injuries could be caused by Kirpan.

11. It is also the prosecution case that on the side of the accused, Maluk Singh, accused, had also sustained injuries at the occurrence. He had not got his injuries examined before arrest. He was medically examined by Dr. Raj Kumar Jain, P.W., on September 28, 1978, at 8-45 P.M. who noticed two nearly healed wounds with dry scabs, linear vertical, just to the right of midline of fore-head and to the left of midline of top of head and also a nearly healed wound with dry scabs on the back of the left elbow. According to the doctor, at that stage, no opinion could be given with regard to the weapon with which these injuries may have been caused.

12. After the arrest of the accused, the weapons of offence with which the 7 accused were alleged to have been armed at the time of the occurrence, were recovered as a result of the disclosure statements from the places of concealment, at their instance. These weapons were found to be stained with human blood, according to the reports of the Chemical Examiner, and the Serologist.

13. The prosecution evidence comprises of the statements of the two eye-witnesses, namely, Surnek Singh, P.W. 6 who had sustained injuries at the occurrence and Gurnek Singh, P.W. 7. However, Mukhtiar Singh and Gurtej Singh, who were alleged to have reached the place of occurrence immediately after the occurrence, were given up. According to the conclusion of the trial Court, the prosecution case for the commission of the two murders and infliction of injuries on Surnek Singh, P.W., stands satisfactorily proved from the statement of

Surnek Singh, P.W., who is a stamped witness and Gurnek Singh, P.W. This has been strongly assailed by both Mr, Jagan Nath Kaushal and Mr. Dara Singh, the learned Counsel for the appellants. It was urged that the first information report, in fact, was not recorded at 11-15 P.M. on the night of the occurrence as is sought to be made out by the prosecution, but much later after deliberation and as a result of fabrication of a false case in which false implication cannot be ruled out. It was highlighted that according to the prosecution version, the occurrence had taken place at 9-30 P.M. in the field at a distance of only two and a half miles from Police Station Patti. If the first information report had actually come into existence at 11-15 P.M., on the basis of a statement by Surnek Singh, P.W., the special report ought to have been delivered to the Magistrate not later than 12 in the night because it is the undisputed case that the residence of the Magistrate was in Patti town itself which was at a distance of not more than two or three furlongs from the Police Station. However, according to the endorsement of the Magistrate the special report reached him at 7 A.M. the next day, that is, after about 7 hours of the alleged registration of the case. This delay was sought to be explained by the prosecution, in the statement of Constable Raghbir Singh, P.W. 13. According to him he was entrusted with the copy of the special report in the police station at 12-30 midnight, but he could not deliver the same to the Magistrate before 7 A.M. as, in spite of his efforts, and knocking at the door of the house of the Magistrate, the same was not opened. However, he could not withstand the cross-examination wherein he stated that he had offered this explanation in his statement under Section 161, Code of Criminal Procedure, which was recorded after five or six days. According to the statement of the investigating officer, S.I. Pritam Singh, P.W., the statement of this witness was recorded by him during investigation as late as on October 28, 1978, that is, after about one month and 11 days. It was thus an afterthought. Consequently, there is no escape from the conclusion that the special report reached the Magistrate after considerable unexplained delay. In these circumstances, the version as given in the first information report, cannot be held to be a prompt one and without deliberation. This aspect of the matter has to be borne in mind while assessing the prosecution evidence.

14. The importance of prompt despatch of a copy of the first information report to a Magistrate empowered to take cognizance of such offence as provided under

Section 157, Code of Criminal Procedure, especially in cases involving commission of murder can be hardly overemphasized. Detailed and specific instructions in this regard have been issued in Rule 24.5 of the Punjab Police Rules, 1934, Volume III, the relevant part of which is reproduced below:

24.5 First Information Report Register.

(1) * * *The original copy shall be a permanent record in the police station. The other three copies shall be submitted as follows:

(a) One to the Superintendent of Police or other gazetted officer nominated by him.

(b) One to the Magistrate empowered to take cognizance of the offence as is required by Section 157, Criminal Procedure Code. In murder cases, the following procedure shall be followed: -

(i) The F.I.R. shall be sent to the Magistrate concerned immediately in his Court during Court hours and at his residence thereafter.

(ii) In case the Magistrate concerned is out of station, the F.I.R. shall be submitted to the Duty Magistrate.

(iii) If the Magistrate is not available after Court hours, the copy of the F.I.R. shall be left at his house by the messenger noting the date and hour of delivery on the cover with the contents.

(iv) If on account of difficulties of communication or other causes the delivery is delayed, the reasons and delay shall be noted on the cover.

(v) As soon as F.I.R. is received by a Magistrate he shall affix his initials therefore and note thereon the date and hour at which the report has been received by him. In the case of a delayed F.I.R. if he disagrees with the reasons given by the Police Officer for such delay, he shall also give his own reason for the same, if any.

(vi) In cases where the Police Station is not situated in the same place where the Magistrate resides or where the Police Station is situated in an out-of-the way

place, the carbon copy of the F.I.R. after it has been recorded, shall be posted at once at the nearest post office addressed to the Magistrate by name before the first clearance of the dark. In such cases the Magistrate shall check that the F.I.R. has been dispatched by the earliest post after its registration in the Police Station as shown by the time recorded on it. (c) * * *(2) to (5) * * *

The time, at which the special report is received by the Magistrate concerned, goes a long way in coming to the proper conclusion as to time at which the first information report may have been written, lodged or registered. Prompt registration of the first information report without delay immediately following the commission of the offence, ensures that the complainant party did not have the time to deliberate and consult before bringing the earliest prosecution version on the record. In case conclusion is reached that the first information report was the result of some deliberation, an argument is available to the accused to show that no importance could be attached to the prosecution version as disclosed in the first information report as time was utilized to concoct and fabricate the prosecution story wholly or partly. In cases where the number of accused against whom the commission of heinous crimes is alleged, is large, promptness of the first information report is all the more essential as, otherwise, the Court is likely to be persuaded to come to the conclusion that the possibility of false implication of one or more accused cannot be ruled out. It is high time that the prosecution agency should be well aware of the adverse consequences flowing from the late receipt of the special report by the Magistrate. If the Magistrate concerned is not available to receive the special report whether in the Court or at his residence, when the same is sought to be delivered, it is incumbent upon the official concerned to take necessary steps in accordance with the rule, reproduced above. In the absence of strict compliance of this rule, the endorsement by the Magistrate regarding the time at which the special report was received by him, will be decisive.

15. So far as the present case is concerned as discussed above, Constable Raghbir Singh, P.W. 13, did not make any report, as was expected from him, if his explanation was correct, on the envelope through which the special report had been sent to the Magistrate or on his return by making a statement immediately.

His statement, on the other hand, was recorded after about one month and H days. It appears that before the chalan was put up, the Public Prosecutor may have pointed out the lacuna in this regard and it was only for the purpose of making well the deficiency that this statement was thought of as the only contrivance. No importance can be attached to such a belated explanation.

16. The next attack by the learned Counsel on behalf of the appellants is that out of the two eye-witnesses, the presence of Gurnek Singh, P.W., at the occurrence was doubtful and the other eye-witness Surnek Singh, P. W., was highly inimical and interested.

17. According to the prosecution case, cross-security proceedings had been initiated by the Police on June 27, 1978, against Mukhtiar Singh and Ram Singh, accused, on the one hand and Gurnek Singh, P.W., Shahbeg Singh (deceased) and Gurbej Singh on the other. Thus, clearly, bad blood had developed between two of the accused and Gurnek Singh P.W., prior to the occurrence. According to the prosecution version, though Gurnek Singh, P.W., was present at the occurrence, and even effort was made on behalf of the accused to make him the target of their attack, still he did not receive any injury. According to the statement of Gurnek Singh, P.W., whenever the accused, though seven in number and all armed with lethal weapons, attempted to strike at him, he was successful in evading the attack by slipping a karam or two away each time. This part of his version does not stand to reason. Gurnek Singh, P.W., after the occurrence, he did not take any steps to remove Gurnek Singh, injured, to the hospital or to lodge the complaint in the Police Station, but went to his house and did not inform anybody about the occurrence. It was only at about 7 A.M. the next day that his statement was recorded by the Police, keeping this background in view the additional fact that his name did not find mention as an eye-witness in the daily diary in which the substance of the first information report was recorded, as disclosed by S. I. Pritam Singh, P.W., makes his presence at the occurrence as highly doubtful. As the accused were equally aggrieved against him, if he were present at the spot, he was not likely to escape without any injury.

18. If the evidence of Gurnek Singh, P.W., is excluded from consideration, as discussed above, the prosecution case hinges on the solitary testimony of Surnek Singh, P.W. Though his presence at the spot cannot be disputed as he sustained some injuries at the hands of some of the accused at the occurrence, there can be no doubt that he is not a disinterested witness. He is one of the three accused who had been tried for the murder of Amar Singh brother of Mukhtiar Singh and Ram Singh, accused, and was convicted under Section 302 read with Section 34, Indian Penal Code, and awarded life sentence by the Sessions Court. Even in appeal, his conviction was altered and the life sentence awarded to him was reduced to 10 years. He is, thus, clearly an inimical witness. He is not even a truthful witness as he went to the extent of deposing that he had been acquitted by the High Court though according to the judgment dated May 1, 1978, Exhibit DC, conviction had been maintained, in appeal, and only his sentence had been reduced to ten years' rigorous imprisonment under Section 304, Part One, I.P.C. Besides, his ocular account is also in conflict with the medical evidence. According to his statement, no blow had been caused by Maluk Singh, accused, who was armed with a gandasi on the person of Jangir Singh. According to the post-mortem report of Jagir Singh, the victim had sustained as many as 26 injuries out of which 17 were incised wounds; one was a lacerated wound and 8 were abrasions. Thus, nine injuries could not possibly be caused by kirpan. However, according to his version, none of the accused had a blunt weapon with him. Similarly, Shahbeg Singh (deceased) had also 3 abrasions out of 21 injuries sustained by him. This sharp variance between the ocular account and the medical evidence leads to the only conclusion that Surnek Singh, P.W., cannot be held to be a wholly truthful witness.

19. According to the prosecution case, the weapons of offence were recovered from all the seven accused as a result of disclosure statements during investigation and bloodstains on the same were found to be of human origin. In these recoveries, Gurnam Singh, P.W. 11, was the recovery witness so far as Ajit Singh, Ram Singh and Pal Singh, accused, are concerned. It is the prosecution case that Balkar Singh, the real brother of this witness, was murdered on November 15, 1977, in which case Ajit Singh, accused, in the present case and his son Sukha Singh were tried for the murder. Ajit Singh, accused, out of them

was, however, acquitted. From this, it is evident that even for the purpose of proving the recoveries of weapons of offence, the services of inimical witnesses were relied upon.

20. According to the learned State counsel, both the deceased, and the injured had sustained quite a large number of injuries on their persons, which were by a sharp-edged weapon or a blunt weapon. This showed that the number of the accused must be quite large. On the face of it, it does appear that the infliction of so many injuries on the persons of two deceased and one injured could not be the act of one or two accused, but from this phenomenon there is no warrant for the inference that all the seven accused must have participated. In view of the large number of the accused, the deeply inimical relations between the complainant and the accused and the first information report being the product of deliberation, possibility of false implication of some of the accused cannot be ruled out. In this situation, it is not safe to rely on the uncorroborated testimony of one eye-witness, Surnek Singh, P.W., when he himself was also inimical to some of the accused and the others were dubbed as belonging to one party faction. In the prosecution evidence, as it stands, all the seven accused have been attributed active participation in the occurrence and it is not possible to pick and choose. In view of the same, there is no alternative but to give the benefit of doubt to all the accused. It is unfortunate that due to the glaring infirmities in the prosecution case, as discussed above, two murders and the serious injuries on the third should go unpunished, but the result is inevitable when the prosecution case is not proved beyond reasonable doubt.

21. For the reasons mentioned above, all the three appeals are allowed and the appellants are acquitted.