

Ram Singh Vs. the Crown

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Court : Himachal Pradesh

Decided On : Nov-09-1949

Reported in : 1951CriLJ99

Judge : Das, C.J. and; Harnam Singh, J.

Appellant : Ram Singh

Respondent : The Crown

Judgement :

Harnam Singh, J.

1. This order disposes of criminal Appeals nos. 623 and 682 of 1948 and Criminal Revision No. 180 of 1948.

2. Piara Singh, son of Dalip Singh, caste Jat, resident of Mahal Khurd in Jullundur district, and Earn Singh son of Mahla Singh caste Jat, resident of Panch Malla in district Hissar, have been convicted under Sections 302 and 379, Penal Code, and sentenced to transportation for life each under Section 302, Penal Code, and to three yeats' rigorous imprisonment each under Section 379, Penal Code, Both the sentences have been ordered to run concurrently Piara Singh and Ram Singh appeal while the Crown has applied for the enhancement of the sentences imposed upon the appellants under Section 302, Penal Code,

3. Briefly stated, the facts are that in the middle of October, 1947 Gurbachan Singh approver p, W. 14 was called to village Lambi Dhab by Bachan Singh of that village. He went there and on going to Lambi Dhab, he met Bam Singh and Piara Singh who were staying at the time with the said Bachan Singh. At the house of Bachan Singh all of them conspired to commit robbery and in pursuance of that conspiracy they left for village Mansinghwala on 17.10.1947 to commit robbery in the house of one Ajmer Singh. They were lost in the way during that night and in the morning they reached village Kanewali and remained there during that day. Late in the afternoon of 18-10-1947 they left village Kanewali for village Mansinghwala situated at a distance of one kos from village Kanewali. Reaching Mansinghwala they went to the house of Ajmer Singh and found Sadhu Singh sitting outside the house along with two or three other persons. The case states that on a signal given by Bachan Singh, Gurbachan Singh approver and Bam Singh and Piara Singh appellants took hold of Sadhu Singh and asked him to lead them to his house. In the meanwhile, Ajmer Singh came from his house and protested against the treatment meted out to his son Sadhu Singh. Ajmer Singh further said that they had come from the West Punjab and had nothing with them. Sadhu Singh was then let off by the culprits who slipped inside his house and on account of fear taking the other members of his family with him he concealed himself. On the protest of Ajmer Singh, he too was let off but Bam Singh appellant and Bachan Singh of Lambi Dhab went inside the house of Ajmer Singh and fired shots from that place, but they did not find anything inside that house. Just then, firing began from other houses as well and thereupon, the two appellants, Gurbachan Singh approver and the said Bachan Singh took to their heels and returned to village Kanewali. The approver continues to state that Bachan Singh was reprimanded by them for taking them to the house of Ajmer Singh where nothing could be found, whereupon Bachan Singh suggested that they should proceed to the house of Sardara Singh of village Gulabe Wala who possessed large amount of cash and gold. The party then proceeded to village Gulabe Wala. Reaching Gulabe Wala Bachan Singh who was armed with a 12 bore double barrelled gun and Gurbachan Singh approver entered the house of Sardara Singh at about 10-80 p. m. Ram Singh and Piara Singh stayed outside the house of Sardara Singh Baohan Singh then fired a shot with his gun hitting Sardara Singh

in his chest, but then firing began in that village from neighbouring houses and the culprits took to their heels from that village and proceeded towards village Lambi Dhab.

4. After the incident at village Gulabe Wala Bam Singh and Piara Singh appellants and Gurbachan Singh approver again reprimanded Bachan Singh for having unnecessarily brought them to Gulabe Wala. Bachan Singh thereupon remained in village Lambi Dhab while Bam Singh and Piara Singh appellants and Gurbachan Singh approver proceeded during the night towards village Thande Wala and hid themselves in a sugarcane field in that village,

5. After the incident at Gulabe Wala, a track party was organised to follow the foot-steps of the culprits towards village Thande Wala which followed the foot prints of the culprits to the sugarcane field in village Thande Wala.

6. Seeing the track party Gurbachan Singh approver who was washing his feet at a small channel passing by that field went to his companions in the sugarcane field and informed them of the pursuit party. Earn Singh and Piara Singh appellants and Gurbachan Singh approver then left the sugarcane field. The members of the track party who were at a distance of 100 yards from them challenged them saying that they were dacoits. The two appellants and Gurbachan Singh approver, it is stated, then fired a shot in the air to frighten the members of the track party who fled away and the two appellants and the approver then continued their journey along side a stream of water slowly on a normal way and reaching further they went to a jawar field. The two appellants and the approver sat under a beri tree in the jawar field and found there a young grazier boy. The jawar field is stated to be situate at a distance of one mile from the sugarcane field mentioned above. The approver and the appellants asked the grazier boy to bring food for them. The grazier boy agreed and after about an hour he brought some chapatis and gur from the village for them. According to the approver they partook of the chapatis and gur at about 1 P, M.

7. As the appellants and the approver finished their meals they saw a police lorry coming towards them. The lorry stopped at about 800 harams from the place where they were sitting. Seeing the police lorry the appellants and the approver fell

on their bellies and took positions in that condition. Out of the police party Ramji Lal police constable coming towards the appellants and the approver asked the grazier boy as to whether he had seen the culprits. At first the boy denied but later on being frightened he pointed out the field where the appellants and the approver were lying. Ramji Lal had reached about 10 yards from them when Gurbachan Singh approver fired at Ramji Lal hitting him. Ramji Lal then left the place but while turning from that place he continued to fire at them and they fired at him. Finally the appellants and the approver took position on a mound of sand and Ramji Lal took position in a khal of canal near by. The appellants and the approver began to fire at Ramji Lal and Ramji Lal was firing at them when suddenly the trigger of Ramji Lal's rifle ceased functioning. Just then Ramji Lal asked the two appellants and the approver not to injure him but Ram Singh appellant fired a shot at him hitting him on his leg and Piara Singh fired at him on his thigh. Ram Singh fired another shot hitting Ramji Lal in his stomach. Ram Singh then took hold of the rifle and the bandolier of Ramji Lal and then the appellants and the approver went on the mound and from there seeing that three or four persons were coming towards them they went inside a bajara field. Ram Singh then fired at the constables from a distance of 200 yards. The pursuit party then fled away except two persons who alighted from their horses. Of them one was a military man and the other Jagir Singh police constable. Firing started from both sides but one of the shots fired by Ram Singh hit Jagir Singh police constable. On receipt of the injury Jagir Singh fell down at the spot. Ram Singh appellant then went near him and took hold of the rifle and bullets of Jagir Singh police constable Ramji Lal and Jagir Singh died at the spot.

8. Gurbachan Singh, approver, has then given a lengthy account of what happened after they had killed Ramji Lal and Jagir Singh till he appeared at the Muktsar police station in company with Pritam Singh on 15.12-1947. The prosecution case is that at the time Gurbachan Singh approver surrendered himself at the Muktsar police station he produced before the police a rifle also.

9-12. Doctor Kuldip Sethi performed post mortem examination on the body of Ramji Lal constable No. 1293 on 20-10-1947, at 1.30 P. M. He found the following injuries on that body: [Description of injuries is omitted.] Death of Ramji Lal, in the

opinion of Doctor Kuldip Sethi, was due to shock, haemorrhage, perforation, of small intestines, large intestines and liver and smashing of the sacrum and lumbar vertebrae. On the same day Doctor Kuldip Sethi performed post mortem examination on the body of Jagir Singh police constable no 310 and found the following injuries on that body. [Description of injuries is omitted.] Death of Jagir Singh, in the opinion of Doctor Kuldip Sethi, was due to shock, multiple fractures, haemorrhage and perforation of vital organs like liver and lung.

13. Bakhshi Sain Das P. w. 1, S. Pritam Singh p. w. 2, S. Bhag Singh p. w. 3, Tirath Ram p. w. 4, Pt. Rup Lal p. v. 5, S. Sant Singh p. w. 6, Banwari Lal p. w. 7, Kishan Singh p. w. 8, Indar Singh P. W. 9, S. Mul Singh P. w. 13, Gurbachan Singh, approver, P. w. 14, Ramditta Singh P. W. 15, Kamira P. w, 17, Jagira P. w. 18 and Bhag Singh P. W. 19, have appeared at the trial in support of the prosecution case. The defence of the accused was denial simpliciter, They examined no evidence in defence.

14. Before proceeding to the discussion of the prosecution evidence examined at the trial I may here mention that on 80-12-1947 at 7.45 a. M. an identification parade was held in the tehsil compound at Muktsar. Kamira P, w. 17 and Jagira p. w. 18 were taken to the parade and asked to identify the culprits whom they had seen in the sugarcane field of Thandewala village. Jagira P. W. 18 was called first. He correctly pointed out Piara Singh and Ram Singh stating that about a month or 11/2 months ago they had come to the sugarcane field and taken meals from them. He added that there was another man with them and all three of them had rifles or guns. Kamira p w. 17 was then called and he also pointed out Ram Singh and Piara Singh saying that 11/2 months or a months ago they had taken their meals in the sugarcane field at Thandewala. He also added that there was another man with them. They had two rifles and one gun with them.

15. Mr. R. L. Kohli contends that the statement of Gurbachan Singh, approver, was not recorded at the trial in accordance with provisions of Section 353, Criminal P.C. He points out that the examination-in-chief of Gurbachan Singh P. W. 3 recorded at Trial no. 15 of 1948 on 15-3-1948 appears to have been adopted as the examination-in-chief of Gurbachan Singh p. w. 14 at Trial No. 14 of 1948.

Gurbachan Singh appeared in the last mentioned case on 18-9-1948. There appears to be substance in the contention raised. New on 16-9-1948 Gurbachan Singh stated:

About 11 months ago, accused No. 1 (Bachan Singh alias Bhapa) resident of village Lambi Dhab, who is my relative also, being the son of my father's mother's sister's daughter sent his young nephew, aged about 16/17 years to me and called me. My village is about 7/8 kos from the village of the above accused. I went to the house of one Koer Singh in that village. All the three accused, present, whom I identify now, were also present in that house. Koer Singh was also present there I reached in the evening....

16. Gurbachan Singh approver appeared at Trial no. 14 of 1948 on 18 9.1948. Bachan Singh was not an accused at Trial no. 14 of 1918 but the record of the statement of the approver as contained in lines 6 to 13 at p. 23 of the printed record is a verbatim copy of the portion of the statement of the approver set out in the preceding paragraph.

17. From what is stated above, two inferences are deducible: (1) that the examination-in-chief of Gurbachan Singh recorded at Trial No. 15 of 1913 on 15.9-1948, was adopted as the examination-in-chief of Gurbachan Singh at Trial-no. 14 of 1948; or (3) that the record of the deposition of Gurbachan Singh at Trial NO. 15 of 1948 was lead out to Gurbachan Singh at Trial no. 14 of 1948 and he was merely asked if the statements made therein were true.

18. Now Section 353, Criminal P.C., provides that all evidence in enquiries and trials should except as otherwise expressly provided, be taken in the presence of the accused. The exceptions to this rule are contained in Sections 205, 428, 509, BIO, 512 and 540 A, Criminal P.C. For other exceptions to this rule, reference may be made to the provisions of Sections 32 and 33, Evidence Act and Section 17, Extradition Act, 1903. Subject to the exceptions enumerated above, the rule enacted in Section 353 is imperative that all evidence in any enquiry or trial shall be taken in the presence of the accused. That being so it is not sufficient under the section to read out to a witness his previous deposition in a former case and ask him if the statements made therein are true nor is it permissible to consider at all

the evidence given in one case for the purpose of reaching conclusions in the other case. The two cases should be tried independently and determined on evidence recorded in each case.

19. Finding as I do that there appears to have been a contravention of the imperative provisions of Section 353 at Trial No. 14 of 1948. I would have sent back the case for a fresh trial but for the fact that on a perusal of evidence I find that in the first place the testimony of the approver suffers from defects and in the second place there is no reliable evidence to corroborate the testimony of the approver in so far as it relates to the identity of the accused who participated in the crime.

20. Mr ,R, L. Kohli next contends that no reliance can be placed in this case on the evidence given by the approver. He points out that the statement made by the approver that he voluntarily appeared before the police on 15-12-1947 is not credible and in any case it does not stand to reason that when Gurbachan Singh decided to surrender himself to the police he would have produced the rifle that he carried on his person. He next points out that of the witnesses who have been examined at the trial not one of them has been able to identify Gurbachan Singh approver Ajmer Singh, Sadhu Singh of Mansinghwala and Sidhu Singh of Gulabewala have not been examined at the trial. Indeed, it is in evidence that the said Ajmer Singh and Sadhu Singh failed to identify Gurbachan Singh approver at the identification parade.

21. Again it is pointed out that according to his own showing, Gurbachan Singh approver was not known to Piara Singh and Rim Singh previous to the occasion when he met them at village Lambi Dhab at the house of Bachan Singh. It is significant, however, that as soon. as the said Bachan Singh mentioned to Gurbachan Singh P. W. 14 the fact that they should commit robbery at Mansinghwala he agreed to join in the plan although he did not know Ram Singh and Piara Singh previously.

22. Then, it was pressed upon us that the evidence of Gurbachan Singh P.W. 14 suffers from a fatal defect, namely, that in his statement recorded in the Court of Mr. V.P. Malhotra, Magistrate 1st Class, Ferozepore, on 23-7-1947 he stated that

he had joined in the commission of the various crimes with Bhaba Singh, Piara Singh and Ram Singh. In cross-examination, he stated that Bhaba Singh who was his associate in the various crimes was not Bachan Singh alias Bachana alias Bhaba of village Lambi Dhab. In re-examination in that statement he expressly stated that Bachan Singh son of Kehar Singh of Lambi Dhab was not with them on the night between 18th and 19th October 1947 when they committed the offences in villages Man Singhwala and Gulabewala. For all these reasons, I find that the evidence given by Gurbachan Singh approver suffers from defect³ and very strong corroboration would be required to act upon the evidence of Gurbachan Singh.

23. Now, illus. (b) to Section 114, Indian Evidence Act, requires corroboration in 'material particulars' to rebut the presumption of untrustworthiness which ordinarily attaches to the testimony of an accomplice. It is not possible, indeed, it would be in a high degree dangerous, to attempt to formulate the kind of evidence which would be regarded as sufficient corroboration in a particular case. The nature and extent of the corroboration would depend upon, and vary with, the circumstances of each case, particularly the nature of the offence charged, the character and antecedents of the approver and the degree of suspicion attaching to his evidence. Suffice it to say, that it is now well settled that the minimum amount of corroboration required to make it safe to act on the testimony of an approver is that his evidence must be corroborated not only as to the corpus delicti but also as to the identity of the accused persons. The corroborative evidence must show or tend to show that the story of the approver that the accused committed the crime is true, in other words, the corroborative evidence must be such which confirms not only the evidence that the crime has been committed but also the evidence that the accused committed that crime.

24-25. Bearing in mind the principles set out in the preceding paragraph, I now pass on to consider the corroborative evidence examined at the trial. [After discussing evidence his Lordship concluded.] From the resume of evidence given above, it appears that the evidence examined by the prosecution to corroborate the testimony of the approver is not sufficient to connect the appellants with the crime.

26. But it was contended that Pt. Rup Lal Sub-Inspector police station Mallanwala when he arrested Ram Singh on 14-12-1947 recovered from Ram Singh service rifle no. 276. Kaka Singh, a companion of Ram Singh, was found in possession of service rifle no, 393. In the service rifle no. 276 there were four live cartridges and one fired cartridge in the magazine 25 live cartridges in chargers and 20 fired cartridges were also recovered from the bag found on the person of Ram Singh. Now, the evidence given by Sardar Bhag Singh p. w. 3 establishes that on 19-10-1947 he issued rifle No. 276 to Jagir Singh Foot Constable No. 310 and rifle No. 393 to Ramji Lal Foot Constable No. 1293. On this evidence it is reasonably clear that service rifles of Ramji Lal and Jagir Singh were found with Bam Singh appellant and Kaka Singh on 19.10-1947, The question that remains for determination is whether the recovery of service rifle No. 276 from Ram Singh appellant is sufficient to connect him with the murder of Ramji Lal and Jagir Singh.

27. As stated above, the double murder of Ramji Lal and Jagir Singh took place on 19-10-1947, and rifle No. 276 was recovered from Ram Singh appellant on 14-12-1947. Kaka Singh, who was found in possession of rifle no. 393 of Ramji Lal, has not been prosecuted. Ram Singh, however, stated on 17-9-1948 that on 14-10-1947 he was on his way back to his village in Tehsil Sirsa from village Malan in Ferozepore district when the police party met him adding that he carried at that time a rifle with fifty rounds. The recovery of rifle No. 276 from Ram Singh appellant is, therefore, established but the recovery of service rifle No. 276 from Ram Singh appellant about two months subsequent to the murder of Jagir Singh does not in my view connect him with the murder of Jagir Singh or Ramji Lal. From Piara Singh no recovery has been made in this case.

28. Giving the matter my very careful consideration, I find that the evidence produced at the trial to corroborate the testimony of the approver does not connect, the two appellants with the double murder of Ramji Lal and Jagir Singh. That being so, I set aside their convictions and sentences under Sections 302 and 379, Penal Code, and acquit them.

29. From Ram Singh appellant, however, service rifle no. 276 has been recovered. This rifle was stolen on 19-10-1947 from the person of Jagir Singh Foot Constable.

Ram Singh, has, however, not been able to give any explanation as to how he came in possession of the stolen rifle No. 276, On these facts, an offence under Section 411, Penal Code, has been brought home to him and I convict Ram Singh under Section 411, Penal Code, and sentence him to rigorous imprisonment for three years.

30. In the result, the appeal of Piara Singh is allowed in toto and I direct his immediate release. The appeal of Ram Singh however, is allowed to the extent indicated above, namely, that his convictions and sentences under Sections 302 and 379, Penal Code, are set aside and he is acquitted of those charges. But, finding as I do that he has been found in possession of stolen rifle No. 276 he is convicted under Section 411, Penal Code, and sentenced to three years' rigorous imprisonment.

31 Criminal Revision No. 180 of 1948 fails and is hereby dismissed.

Das, C.J

32. I agree.

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