

## **Gurcharan Singh And Anr. vs State Of Punjab on 2 November, 1955**

**Equivalent citations: AIR1956SC460, 1956CRILJ827, AIR 1956 SUPREME COURT 460**

### **JUDGMENT**

Sinha, J.

1. This is an appeal by special leave on behalf of two brothers, Gurcharan Singh and Jagir Singh, who have been convicted under Section 302, Penal Code and sentenced to transportation for life by the Second Additional Sessions Judge of Ferozepore. Their convictions and sentences have been upheld by a Division Bench of the Punjab High Court by its judgment dated 30-6-1954.

The petitioners had been placed on trial along with two others, named Harnek Singh and Munshi. All these four had been convicted and sentenced, as stated above, by the learned Sessions Judge; but on appeal, the High Court gave Harnek Singh and Munshi the benefit of the doubt and acquitted them.

2. The prosecution case, shortly stated, is that on 2-9-1953 the two petitioners along with the other two accused, who were acquitted as aforesaid by the High Court, left their village called Sanghu Dhawan, all armed with 'gandasas' and were seen proceeding towards Muktsar town, about three miles away.

A short time after, Inder Singh accompanied by his son, Gurnam Singh (P. W. 2) and Mohinder Singh (P.W. 4), who also belong to the same village, left for Muktsar to purchase some chemical manure on a permit by the agriculture department. Inder Singh proceeded ahead and the other two were behind him at a short distance. As soon as Inder Singh reached a certain bridge on the way to Muktsar, about a mile from the village, the four accused, who were lying in ambush in a neighbouring 'bajra' field, came out of the field and attacked him.

Gurcharan Singh, the first appellant, opened the attack with a 'gandasa' blow on his head. He was followed by Jagir Singh, accused, who dealt some 'gandasa' blows on his leg. Inder Singh fell down and all the four accused were said to have attacked him with 'gandasas' causing as many as 27 injuries on his person. Inder Singh's two companions, Gurnam Singh and Mohinder Singh aforesaid, raised an alarm but were helpless spectators, who being unarmed, could not venture to come to his rescue.

Further it was stated by the prosecution witnesses aforesaid that while there was life still left in Inder Singh, accused Jagir Singh chopped off their victim's head from the body just above the lower

jaw and wrapped the head along with the turban in the 'chaddar' of the deceased.

Raman Singh and Hari Singh (P. Ws.), who were returning from Muktsar, claimed to have seen the last part of the prosecution case, namely, that the four accused were seen making away with the head wrapped in a piece of cloth. Gurnam Singh (P. W. 2) hastened to the police station and lodged the first information report at 5 P. M. the same afternoon, the place of occurrence being noted as a mile and a half towards the east of the police station.

The time of the occurrence is not specified except saying that it was in the afternoon. In the first information report all the four accused persons were named and said to have conspired to kill Inder Singh. The prosecution version as laid in the first information report is substantially as stated above. As regards the motive of the crime, it is said in the first information report "All the four culprits suspected my father of his having given a secret information against them".

3. At the trial Gurnam Singh (P. W. 2) and Mohinder Singh (P. W. 4) deposed as eye-witnesses to the occurrence from beginning to end, whereas Raman Singh (P.W. 6) and Hari Singh (P. W. 7) deposed to the last part of the prosecution case as having witnessed the occurrence on hearing an alarm from about 100 to 150 yards. They claim to have seen all the four accused armed with 'gandasas' and Jagir Singh wrapping the head in a piece of cloth.

4. The defence of the appellants was a denial of their participation in the occurrence and they explained their implication by alleging that they were on inimical terms with the family of the deceased Inder Singh. The appellant, Jagir Singh, set up a case of 'alibi' which may best be stated in his own words in his statement under Section 342, Criminal P. C. before the Magistrate who held the inquiry. He said:

"I am a member of Sanghu Dhawan panchayat. I along with other members of our panchayat came to Muktsar that day at 8 a.m. Chief Minister was here that day. I left Muktsar that day after the oath taking ceremony etc., at about 2-30 p.m. When I reached the local cinema it started raining.

Head Constable Gurbux Singh and Sadhu Singh of Chak Bir Sarkar met me there. I remained there for about 1-1/2 hours and then went to village, when rain stopped. I was accompanied by Nar Singh, member village panchayat; Gitan Singh, Jalaur Singh & Jit Singh were coming to the thana to make the report. Nar Singh, member Panchayat enquired what the matter was. They replied that their father had been killed by an unknown person. Shortly afterwards, S. Bhag Singh, M.L.A. of Bir Sarkar met us. Then we went to the village. I am innocent".

5. It is convenient here to dispose of this particular defence of the accused to which our attention was invited by the learned counsel for the appellants. He urged that this was a very bold defence. It was taken at an early stage of the inquiry against the appellants and it could easily have been verified with reference to the official records.

It has been admitted in the evidence led on behalf of the prosecution that there was a function in the forenoon of the date of the occurrence at which the Chief Minister was present and the members of the Panchayat took their oath of office. According to the evidence, this function came to an end at about 12-30 p.m. The burden of proving the 'alibi' undoubtedly lay on the appellant Jagir Singh. It is true, as urged by his counsel, that this was a bold defence, but the burden to establish that defence, however bold it may have been, lay on the accused.

No attempt was made to call any evidence, oral or documentary, to prove that the appellant Jagir Singh was present at the ceremony and that it came to an end at about 2-30 p.m. as alleged by him. If that defence had been made out, certainly the appellant Jagir Singh would have been entitled to an acquittal because the occurrence could not have taken place much later than 2-30 p.m., though the exact time of the occurrence is not known.

But the indication in the evidence is that it took place at about 3 p.m. As the burden of proving this special defence of alibi has not been discharged, appellant Jagir Singh's case stands on the same footing as that of the other appellant.

6. But even so, the burden of proving the case against the appellants was on the prosecution irrespective of whether or not the accused have made out a plausible defence. The case for the prosecution against the appellants rests on the testimony, as already indicated, of P. Ws. 2 and 4 who had accompanied the deceased from the village on the journey to Muktsar and P. Ws. 6 and 7 who were on their way back from Muktsar and were attracted to the scene of the occurrence by the alarm raised by those two witnesses.

The courts below have discussed the evidence of these four witnesses in great detail and have found it reliable notwithstanding the fact that Gurnam Singh (P. W. 2), Raman Singh (P. W. 6) and Hari Singh (P. W. 7) are close relations of the deceased. On the face of it, therefore, there is no question of law involved and no grounds for interference have been made out in special appeal.

7. But it has been argued by the learned counsel for the appellants with his usual vehemence that the High Court did not act upon the testimony of those four witnesses in so far as it acquitted two of four accused, namely, Harnek Singh and Munshi. The reasons for the acquittal of those two persons may be stated in the words of the High Court as follows:--

"In regard to the complicity of Harnek Singh and Munshi, I have some doubt and I think that they must be given the benefit of the doubt. Neither Harnek Singh nor Munshi had any motive to murder Inder Singh. In the first information report definite part was assigned to Harnek Singh and Munshi inasmuch as it was said that Harnek Singh and Munshi inflicted gandas blows from right side while Inder Singh was lying down and cut off major portion of his head from the body.

Gurnam Singh who made the first information report stated at the trial that it was not correct that Harnek Singh and Munshi accused had cut off the head of his father. Mohinder Singh, P. W. 4, gave evidence that Jagir Singh chopped off the head of

Inder Singh.

No particular injuries are ascribed to Harnek Singh and Munshi. Raman Singh, P. W. 6, and Hari Singh, P. W. 7, deposed that they saw the four accused from a distance of 60 or 70 karams standing near the dead body of Inder Singh and that they had gandasas with them. Raman Singh stated that the four accused walked away towards Ude Karan. In my opinion, the evidence given by Raman Singh, P. W. 6, and Hari Singh, P. W. 7, does, not necessarily connect Harnek Singh and Munshi with the crime".

8. In this connection reliance was placed on behalf of the appellants on the recent decision of this Court dated 13-9-1955 (unreported) in the case of Mohinder Singh v. State of Punjab (Since ). In that case two persons were placed on trial on a charge of murder and convicted by the trial court.

On appeal, the High Court acquitted one of them giving him the benefit of the doubt but maintained the conviction of the other, as also the sentence of death passed upon him. This Court found that the positive evidence against the convicted person was not stronger than or any different from the evidence led against the acquitted person. But that was not the sole ground of the decision.

This Court further observed that the direct testimony against the accused persons was not free from blemish, in so far as it appeared from the evidence that the first person who originated the theory of the complicity of the accused in that case was almost a blind: person who could not see things, particularly at the dead of the night, and that the other witnesses who turned up at the alarm had readily accepted the opinion of the first witness that it was the condemned person who had been responsible for the murderous assault.

This Court therefore felt a reasonable doubt as to the correctness of the oral testimony and had consequently to give the benefit of the doubt to the accused.

9. The case in hand is similar to the case reported as Dalip Singh v. State of Punjab in so far as it was found in that case, as we are inclined to hold in this case, that the acquittal of the other two accused by the High Court may not have been entirely correct.

Reference to that reported case is only by way of illustration and not by way of an appeal to precedent, because on the facts no two cases can be similar. Each case has its own peculiar facts and it is therefore always risky to appeal to precedents on questions of fact. The highest that can be or has been said on behalf of the appellants in this case is that two of the four accused have been acquitted, though the evidence against them, so far as the direct testimony went, was the same as against the appellants also; but it does not follow as a necessary corollary that because the other two accused have been acquitted by the High Court the appellants also must be similarly acquitted.

In the present case the High Court differentiated the case of the two appellants from that of the other two accused whom it acquitted chiefly on the ground that whereas there was some evidence of motive against the two appellants, there was no such evidence against those two acquitted persons.

On the question of motive the trial court held that it had not been established that the, deceased Inder Singh had given information to the police leading to the recovery of a pistol from Gurcharan Singh, the first appellant, and his conviction for an offence under the Arms Act.

It had only been established that Mohan Singh (P. W. 8), brother of the deceased Inder Singh, had given evidence against the accused in the Arms Act case. If that was the only case of animosity between the two families, the appellants could have greater reasons to be offended against Mohan Singh himself. But it has repeatedly been pointed out by this Court that where the positive evidence against the accused is clear, cogent and reliable, the question of motive is of no importance. As regards the question who gave which blows to the deceased, the prosecution evidence was that after Inder Singh fell from the blows of the two appellants, all the four accused gave gandasa blows to the fallen man.

Be that as it may, we are no more concerned with the case against those two accused persons who have been acquitted by the High Court; but so far as the appellants are concerned, the evidence of the four eyewitnesses referred to above is consistent and has not been shaken in cross-examination. That evidence has been relied upon by the courts below and we do not see any sufficient reasons to go behind that finding. It is true that three out of those four witnesses are closely related to the deceased Inder Singh.

But that, it has again been repeatedly held, is no ground for not acting upon that testimony if it is otherwise reliable in the sense that the witnesses were competent witnesses who could be expected to be near about the place of occurrence and could have seen what happened that afternoon. We need not notice the other arguments sought to be advanced in this Court bearing upon the probabilities of the case because those are all questions of fact which have been adverted to and discussed by the courts below.

10. In our opinion, no grounds have been made out for interference. The appeal is accordingly dismissed.