

Sadhu Singh Harnam Singh vs The State Of Pepsu on 8 October, 1953

Equivalent citations: AIR1954SC271, AIR 1954 SUPREME COURT 271

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Bench: B.K. Mukherjea

JUDGMENT

Mahajan, J.

1. This appeal which comes by special leave obtained by the appellant Sadhu Singh, is from a decision of a Division Bench of the High Court of Patiala dated 2-6-1952 by which the sentence of transportation for life passed against him for the murder of one Harbachan Singh was affirmed.

2. The facts are, that on 29-10-1949 Harbachan Singh, deceased, went to village Bihla because he intended to borrow a camel from Nand Singh, P. W. 4. P. Ws. Chand Singh and Amar Singh accompanied him to Bihla and the party reached there between 7 and 8 P.M. On arrival at Nand Singh's house it was found that he had gone to the house of Sadhu Singh. Nand Singh's son was asked to go to Sadhu Singh's house and call Nand Singh from there. Nand Singh's son returned with a message from his father inviting the party to Sadhu Singh's house. Accordingly they all went there and found Nand Singh in the midst of a liquor party. The appellant's father Harnam Singh was also there. It is said that on the arrival of Harbachan Singh who was a Mahant, Sadhu Singh got up and received him respectfully and felt honoured by his visit to his house. The Mahant and his two companions, Chand Singh and Amar Singh were offered drinks. The deceased Mahant accepted the drink but the others did not.

Later on, the deceased Mahant who was addicted to taking opium gave one rupee to a young boy who was there and asked him to get him opium worth that amount. Sadhu Singh at this remarked, that it was not proper that the Mahant should send someone else to bring opium while he was a guest in his house. He therefore asked his father to give opium to the Mahant. This was done. When, however, the deceased took some opium from the small tin given to him by Harnam Singh and returned it to him, the latter thought that very little opium was left in the tin for his own use and this annoyed him and he made some remarks showing his resentment at this. The deceased Mahant did not like this and returned the opium that he had taken and got ready to leave the place along with his companions. As soon as he came out of the room he was hit by gunshot in the chest. He was mortally wounded and fell down.

Chand Singh and Amar Singh went to the police station and lodged the first information report at 12-30 A.M. on the 30th. On the basis of this report a case was registered against the accused under Section 338, I. P. C. It was then thought by the police that the accused was guilty of a rash and negligent act endangering human life and personal safety. During the pendency of this case, Harbachan Singh died as a result of the injuries caused by the accused and the charge against him was then changed into one under Section 304A, I. P. C. Later on, it appears that some further change was made in the chalan and the offence was changed into one under Section 302, I. P. C. The Additional District Magistrate who heard the case, reached the conclusion that there was a 'prima facie' case against the accused under Section 304A, I. P. C. He accordingly framed a charge against him under that section. He also held that there was no 'prima facie' case against the accused under Section 302 and in these circumstances there was no sufficient ground for committing him to the court of session. In the result, the accused was convicted under Section 304A, I. P. C. and as he had already suffered as an undertrial prisoner he was directed to be released on his executing a personal bond for the amount of Rs. 5,000 and on furnishing a surety for a like amount with the undertaking that he will keep the peace and be of good behavior for a period of one year from the date of order.

3. Against this order an application in revision was made to the Sessions Judge, Barnala, by the Public Prosecutor and another similar application was made by the heirs of Harbachan Singh. The learned Sessions Judge was not prepared to allow these applications and rejected them. Then two applications for revision were made to the High Court against both the orders of the Additional District Magistrate, viz., the order discharging Sadhu Singh of the offence of murder and also the order convicting him under Section 304A, I. P. C. The High Court in revision set aside both the orders of the Additional District Magistrate and remanded the case to him with a direction that he should frame a proper charge and commit the accused to the Sessions for trial. In accordance with this direction the Magistrate committed the accused to the Court of Session.

4. The learned Sessions Judge accepted the evidence of the three eye-witnesses, P. Ws. 3, 4 and 9, and held that Sadhu Singh, the accused, fired his gun at the deceased with the intention of causing death or such bodily injury as would suffice in the ordinary course of nature to cause death and that he was guilty of the offence under Section 302, I. P. C. He, however, held that the accused's mind was affected by drink and he more readily gave way to violent passion and that the ends of justice would be sufficiently met if he was given transportation for life. A recommendation was made to the local Government to commute the sentence into a shorter term of imprisonment. On appeal, the conviction of the appellant as well as the sentence were maintained.

5. As already stated, the conviction of the appellant for the offences under Section 302, I. P. C., mainly rests on the version of the incident as given by the three eye-witnesses, P. Ws. 3, 4 and 9. P. Ws. 3 and 4 are the two persons who had accompanied the deceased Mahant and also accompanied him to Sadhu Singh's house, and later on followed him when he got ready to leave the house. Amar Singh and Chand Singh are not in any way connected with or related to Sadhu Singh. They had only gone there in the company of the Mahant and came out with him. Both of them went to the police station and arrived there at 12-30 A.M. on the 30th October, the incident having taken place on the 29th October at about 8 P.M. The Mahant having met his end in the manner stated above, evidently these two persons immediately after the incident could have no possible reason to shield the culprit

in any manner whatsoever or to give a coloured version of the incident in order to minimise his offence.

In the first information report given by Amar Singh in the presence of Chand Singh the version as to how the deceased Mahant met his end is in these terms :

"For about one hour we kept sitting at Sadhu Singh's house, but I and Chand Singh did not drink on account of the quantity of wine being small. Sadhu Singh is a gun licence-holder and he had with him his twelve bore gun. Sadhu Singh tried to cook a cock for us but Mahant Harbachan Singh asked him not to be formal and that we would take what had already been cooked. Then Sadhu Singh came out of the chubara carrying his gun with him and began to stroll. Mahant Harbachan Singh said that he was addicted to taking opium. He then took out a rupee from his pocket and asked for getting opium fetched worth it. Sadhu Singh remarked that it did not look proper on his (deceased's) part to expend for purchasing opium while he was at his (accused's) house, and asked his father Harnam Singh to give opium from his tin. Harbachan Singh Mahant took out some opium (one mawa) of Harnam Singh's tin and gave it to me and then returned the tin to Harnam Singh. Harnam Singh protested that no opium was left in the tin for him to eat. On it Harbachan Singh returned that mawa of opium. This had happened between Harbachan Singh Mahant and Harnam Singh 'Sadhu Singh was strolling outside the chubara carrying his gun with him in a state of intoxication'.

At the behest of Nand Singh, Harbachan Singh got up from the cot and began to tie his turban and added that they would take rest at his house and would buy opium from the contractual shop. I and Chand Singh who were sitting together in the chubara, also began to wear our shoes, 'that all of a sudden we heard the report of a fire'. Harbachan Singh said that the fire had struck him and he had fallen down. Harnam Singh attended to Harbachan Singh. I and Chand Singh got aside. Sadhu Singh decamped on account of his having fired a shot being intoxicated. Pellets of the gunshot hit Harbachan Singh in the left arm and in the left side of the abdomen which are bleeding. Harbachan Singh is lying in the house of Sadhu Singh in an injured condition Sadhu Singh had no previous enmity with Harbachan Singh and the fire went off accidentally on account of his being intoxicated with liquor, by which Harbachan Singh got injured. I and Chand Singh knew Sadhu Singh previously."

Amar Singh's and Chand Singh's version of the incident was that the death of the Mahant was accidental. It was not said in this report that Sadhu Singh was present at the time when Harnam Singh protested that there was no opium left in the tin for him to eat and when the Mahant returned the opium tin to him. On the other hand, it was clearly stated that this happened between Harbachan Singh Mahant and Harnam Singh, while Sadhu Singh was strolling outside the chubara carrying his gun with him in a state of intoxication. It is not even suggested in this report that Sadhu Singh heard this talk or became aware of the altercation between his father and the Mahant and

showed resentment at the Mahant leaving his place in that fashion. Amar Singh did not in this statement say that he had seen the accused aiming at the Mahant and firing at him. All that he said was that all of a sudden report of a gun fire was heard and the Mahant was found to have been shot.

6. The version given by Amar Singh, P. W. 9, in court during the trial and on which the conviction of the appellant is based is wholly inconsistent and contradictory to the version he narrated at the time he made the first information report within a few hours of the incident. The narrative given by him during the trial is in these terms :

"The Mahant then asked his brother-in-law to fetch opium worth Re. 1 and he gave him one rupee coin. Sadhu Singh accused, who at that time was standing outside the chubara near the door on the roof of the adjoining room, asked the Mahant not to expend for purchasing opium and the accused asked his father Harnam Singh, to give opium to the Mahant. Harnam Singh then gave the dabbi containing opium to the Mahant, who took out one mawa from the dabbi and returned the dabbi to Harnam Singh. Harnam Singh retorted that no opium was left in the dabbi for him to eat. The Mahant resented that remark and returned the mawa of opium of Harnam Singh. Sadhu Singh accused was standing just outside the door and 'was witnessing the happening'. The Mahant then asked Nand Singh to get up and added that they would go to the house of Nand Singh P. W. The accused asked the Mahant as to whether he would leave his house in that manner. The Mahant replied emphatically 'Yes'. The accused repeated his query and the Mahant his answer. The accused who was then carrying his gun, loaded the same and fired it at the Mahant after levelling the same at him and shot the shot of which struck the Mahant in the left arm and in the left side of the abdomen Chand Singh P. W. and myself went to police station Bhadaur where I made the statement which was not then recorded by the police. The police came along with us by motor lorry to the place of occurrence. We reached the village at about 11 or 12 P.M. (Again said) We reached with the police at about 2 or 3 A.M. We reached Bhadaur station again at about 10 or 11 A.M. on the next day when my statement was recorded."

As the witness deposed that when he went to the police station his statement was not recorded, in cross-examination he was asked the following question :

"Q.: In your previous statement recorded by the committing magistrate, Ex. P. W. 9/1 you stated that after the occurrence Chand Singh and yourself jumped down into the lane and went to the house of Nand Singh where the lambardars and Nand Singh met you, that they sent you for lodging the report on reaching the police station Bhadaur; that the report Ex. P. A. was the same which was thumb-marked by you and today you have stated that the report was not recorded on your first reaching the police station Bhadaur. Can you explain this discrepancy?

A.: The truth is that the report was not recorded by the police before proceeding to the spot. What I have stated today is correct."

To further questions in cross-examination the witness stated as follows :

"When we reached the chubara of the accused, the latter touched the knees of the Mahant out of respect. At that time, 3 or 4 pegs of liquor remained in the bottle. At that time Nand Singh P. W. had his gun and cartridges with him. Sadhu Singh accused did not say to the Mahant: 'Give me permission to be absent for 10 or 15 minutes. I shall prepare chicken meat for you'. I did not state in the F. I. R. Ex. P. A. that Sadhu Singh accused tried to prepare chicken meat for us. After asking the Mahant for meals, the accused had gone out with his gun to the roof of the adjoining room and began to loiter there over the roof. When the talk about the opium took place, the accused was present and hearing the same from a close distance. When the talk about the opium took place, the accused was strolling with his gun and was standing in the door of the chubara. I have now heard the portion marked B to B of the F. I. R. Ex. P. A. to the effect: 'This talk took place between the Mahant and Harnam Singh. Sadhu Singh accused was at that time strolling with his gun outside the chubara'. I had made this statement and the same is correct.

I did not state in the F.I.R. that the accused leveled gun at the Mahant and fired the same in the left arm and the abdomen. I do not know whether the accused had any previous enmity with the Mahant. I have now heard the portion marked D to D of the F. I. R., Ex. P. A. to the effect: 'We heard the sound of an accidental gun fire'. I had never made this statement and the same is incorrect. I have heard the portion marked E to E of F. I. R., Ex. P. A. to the effect: 'Harbachan Singh received injury due to the accidental fire by Sadhu Singh accused while he was labouring under the intoxication of liquor.' I never made this statement and the same is incorrect."

7. It is clear from this statement that as regards the nature and character of the act of Sadhu Singh there was a complete change from the version given by this witness immediately after the occurrence and the one given by him in the court of the committing magistrate and at the trial. This change in the chain of events as to how they happened goes to the root of the case. According to the earlier version, the death was accidental or in all likelihood, caused by a rash and negligent act on the part of the accused, while according to the later version, it was a clear case of intentional murder. Herein it was made out that after an altercation between Sadhu Singh and the Mahant, Sadhu Singh loaded the gun, aimed it at the Mahant and fired at him.

As we have already said, Amar Singh was not connected in any way with Sadhu Singh. He was one of the persons who formed the party of the deceased Mahant and no satisfactory explanation whatsoever has been furnished on the record why he of all persons would have given a garbled or coloured version of the incident in order to protect or shield Sadhu Singh from the natural consequences of his act. The only explanation the witness attempted to give during the trial was that the statement recorded in the first information report was not recorded at the time when he gave the report but was taken subsequently. This explanation is, on the face of it, untrue and has been proved to be so by the statement of his companion Chand Singh, P. W. 3, and the Sub-Inspector of Police, who positively stated that the first information report was signed by Amar Singh at 12-30 A.M. on

the 30th morning. The cross-examination of the witness shows the extent of his prevarications on very material aspects of the incident, and the manner in which it happened.

8. Chand Singh, P. W. 3, who accompanied Amar Singh, at the trial supported in the main the narrative of the incident given by Amar Singh. This is what he said about the actual act and conduct of the accused in firing with his gun :

"The Mahant then asked Nand Singh P. W. to leave the place for Nand Singh's house. Thereupon Sadhu Singh accused, who was a gun licence holder, picked up the gun and went out of the chubara. We then all stood up. The Mahant began to tie his turban. The accused had taken along with him his bag or belt. The accused then stood up at a distance of about 5 or 6 karms from the door of the chubara, on the roof of a Sabat, and addressed the Mahant that he would not let us go. The Mahant replied that we would go. The accused repeated his question and the Mahant repeated the reply. The accused then fired his gun after aiming the same at the Mahant."

This witness has not supported the version of Amar Singh that the gun was loaded at that very moment before it was fired and in the presence of the witnesses. In cross-examination this witness made the following significant statement :

"When we went to the chubara of the accused, the latter touched the knees of the Mahant and said 'It is good luck that you have graced our house.' After about 5 or 10 minutes, Sadhu Singh accused took leave of the Mahant saying 'Give me leave, I will prepare chicken for you.' The Mahant, however, asked the accused not to indulge in formalities and that he would be glad to take whatever was ready at that time in the house.

Q.: I put it to you that the truth is that when Harnam Singh and the Mahant canvassed with each other regarding opium, 4 or 5 minutes before that Sadhu Singh, while intoxicated with liquor, was patrolling on the roof of his house outside the chubara and was carrying his gun with him?

A.: It is wrong. Before that talk, the accused was strolling outside the chubara while intoxicated with liquor but he was not carrying gun with him. When the accused went out of the chubara with the gun and the belt, we did not ask him as to why he was taking the gun."

He further said-

"I had stated before the tehsildar that the accused had fired the gun after aiming the same at the Mahant. I do not know as to why the same has or has not been recorded by the tehsildar. (Ex. D. B. was read over to the witness and his attention was drawn to this omission). (The words that the gun was fired after aiming are not mentioned in Ex. D. B.). (The shot was aimed at and fired) are not mentioned in the statement of

the witness recorded by the Magistrate."

In the statement of the witness recorded under Section 164, Cr. P. C. on this important question, he said as follows :

"The Mahant then asked Nand Singh to leave the place for his house. Sadhu Singh remarking, 'would you go, would you go', loaded his gun and fired a shot at the Mahant."

It is apparent that from the stage of the first information report to the final stage of the trial the witness has been giving different accounts of the actual happening. At the earlier stage it was not said that Sadhu Singh was present at the talk between his father and the Mahant which created some resentment between them, or that Sadhu Singh aimed the gun at the Mahant after loading it in the presence of the witness, or that he told him that he would not let him go as in the past he had not allowed anybody to leave his house in this fashion. There is a clear attempt on the part of the witness to make it appear that the firing which was either accidental or an act of bravado on the part of the accused in order to stop the Mahant from leaving his house, was an act of intentional killing.

9. The last witness on this point is Nand Singh, P. W. 4. On the point as to how the incident actually happened he stated as follows:

"The deceased then stood up and began to tie his turban. Sadhu Singh accused then went out of the chubara taking the gun and bag of cartridges with him. The accused then stood up on the roof of the adjoining room at a distance of 4 or 5 karms from the chubara. Sadhu Singh accused asked 'would you go.' The Mahant emphatically replied: 'Yes'. The accused repeated the query and the deceased gave the same answer. The accused said 'I have not allowed anybody to go away like this in the past. Be prepared then'. At the same time the accused leveled his gun at the Mahant and fired a shot hitting the Mahant in the left arm and the left side of the abdominal region."

In cross-examination the witness, however, said as follows:

"My statement was recorded by S. Haqiqat Singh A. D. M. Barnala on 16-12-1949. I have now heard the portion marked A to A. I do not remember if I had made this statement or not.....On the day of occurrence we started drinking from the morning. It is incorrect that we started drinking about two hours before the occurrence. I have now heard the portion marked B to B of my previous statement Ex. DD to the effect, 'We were drinking for about 2 hours preceding the occurrence'. I do not know whether I made that statement or not. It is a fact that we started drinking by sunrise. It is correct that the accused welcomed the Mahant by touching his knees and saying 'It is good luck that you have honoured us by your visit'. I did not hear him saying 'Please sit here, I will go and prepare chicken meat for you'.

I have now heard the portion now marked Ex. D. A./1 of my police statement to the effect 'Sadhu Singh stood up in order to make arrangements for the meals:. He said whether he should prepare chicken meat. The Mahant, however, replied that he should not take the trouble of preparing the chicken meat. Whatever has been cooked in the house shall be acceptable to me'. I do not remember if I had made that statement or not. I have now heard the portion marked Ex. D. A/2 of my police statement to the effect: 'I asked Mahant Harbachan Singh to go to my house and be comfortable there. I also added that we should take some opium on the way from the contractor's shop.' I did not make this statement.

The truth is that this was said by the Mahant. The accused was wearing the gun in his sling. When the Mahant came to his house. During the period the Mahant remained with us, the accused went out of the chubara several times. He also went downstairs several times. I might have stated to the Police that the accused had said: 'Be prepared. I had not allowed anybody to go like this in the past and I shall not allow you to go away'. My statement was recorded by S. Mohan Lal, Magistrate 2nd class Under Section 164, Cr. P. C. I had stated to that Magistrate what the accused had said to the deceased before firing. (Note: The statement under Section 164, Cr. P.C. was read out to the witness and his attention was drawn to this omission)."

In his statement before the police, Ex. D. A., the version given by this witness is as follows:

"Harbachan Singh returned the small dose of opium and got up and began to tie his turban. He had been sitting opposite to the door of the chubara. Sadhu Singh armed with his gun was strolling outside on the roof of his house. When Mahant Harbachan Singh stood up and began to tie his turban. Sadhu Singh said to him twice: 'would you go now'. Saying so Sadhu Singh at once stopped and fired a shot".

It is apparent that this witness also tried to exaggerate and made a deliberate effort to improve on the earlier story so that the offence of murder against the accused might be held proved.

10. On a careful reading of the evidence of the eye-witnesses and the different statements that have been made by them it is quite clear that the incident happened in a very short time and suddenly. There was no previous enmity between the deceased and the accused. On the other hand, the accused was very respectful to the Mahant and was over-anxious to show all hospitality to him. It seems that he was anxious that the Mahant should not go away from his house without taking meals and spending the night with him, and seeing that the Mahant was going away, in all probability he let go his gun without aiming it at the Mahant in order to prevent him from leaving his place by terrifying him to some extent. It is not possible to believe the embellished version of the witnesses that Sadhu Singh was present at the altercation between his father and the Mahant or that he loaded the gun after he himself had intervened in the altercation, or that there was the conversation alleged by the witness between him and the Mahant. It also appears that the story that the accused took aim before firing at the Mahant or that he said that he had never allowed in the past anybody to go like that from his house is a subsequent introduction in the case to add gravity to the offence committed

by the accused.

11. In --'Pritam Singh v. The State', , this Court held that it will not grant special leave to appeal under Article 136(1) of the Constitution unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against and that only those points can be urged at the final hearing of the appeal which are fit to be urged at the preliminary stage when leave is asked for. It is well established that this court does not by special leave convert itself into a court to review evidence for a third time. Where, however, the court below fails in apprehending the true effect of a material change in the versions given by the witnesses immediately after the occurrence and the narrative at the trial with respect to the nature and character of the offence, it seems to us that in such a situation it would not be right for this court to affirm such a decision when it occasions a failure of justice. While dealing with this question the High Court made the following significant observations:

"So far as the F.I.R. is concerned, all that can be said is that it was not stated therein in so many words that the deceased was fired at by the appellant and further that the firing was accidental. As regards the first point, it is no doubt true that the F. I. R. does not contain clear words that Amar Singh saw the appellant firing at the deceased, but reading the document as a whole there can be no doubt that it was as a result of the shot fired by the appellant that the deceased was hit and ultimately died. Then as I have already observed, S. Dara Singh, counsel for the appellant, has not been able to convince us that there is 'a single difference which goes to the root of the case'. The following are the main features of the story:

(i) That the deceased went to the chubara of the appellant accompanied by Chand Singh and Amar Singh.

(ii) That the appellant was then present at the chubara and was having a drink party which consisted of himself, Nand Singh and his father Harnam Singh.

(iii) That for some time everything went off quite smoothly until the deceased took a bit of opium out of the dabia offered to him by Harnam Singh at the instance of the appellant. The remark made by Harnam Singh was resented by the deceased and he at once got ready to leave the place.

(iv) That the appellant expressed his annoyance at the conduct of the deceased in leaving his house so abruptly and his efforts to persuade the deceased to stay on were not successful; and

(v) That the appellant went out of the chubara with his gun and cartridges and when he thought that the deceased had made up his mind to go away he fired a shot at him.

On all these points the testimony of the eye-witnesses is consistent and unanimous. The only difference between their statements is that they are not all agreed as to the exact stage at which the appellant went out of the chubara and the precise words that he and the deceased exchanged. In my opinion, the differences are not only not material but they can be easily explained."

12. It seems to us that the High Court was in error in thinking that there was not a single difference between the statements made by the witnesses in the first information report and the statements made at the trial, which went to the root of the case. As above pointed out, the whole version as to the nature and character of the act of the accused had been completely changed. An act which on the facts stated in the first information report and on the statements made to the police may well be regarded either accidental or rash and negligent, has been deliberately made to look like an act of deliberate murder. If such a difference does not go to the root of the case it is difficult to conceive what else can fall within that class of cases. We are therefore of the opinion that the High Court was clearly in error in holding that the accused was guilty of the offence of murder under Section 302, I. P. C. On the materials placed on the record it could not be held proved that he had any intention of firing at the Mahant. He seems to have pulled the trigger without aiming at the Mahant in a state of intoxication in order to see that by the gun fire the Mahant was prevented from leaving his place. It was a wholly rash and negligent act on his part or at the worst was an act which would amount to manslaughter. It could not be held to constitute an offence of murder. No intention of causing death or an intention of causing such bodily injury as being sufficient in the ordinary course of nature to cause death could be ascribed to the accused or readily inferred in the circumstances of this case.

13. The result therefore is that we allow this appeal, set aside the decision of the courts below and hold the appellant guilty of the offence under Section 304A, I. P. C. In our opinion, the sentence already undergone by him is sufficient to meet the ends of justice and we therefore direct that he be released forthwith. Even if the offence were to be regarded as falling under Section 304, I. P. C., we would not have awarded him a severer punishment than the imprisonment that he has already undergone.