

Balwinder Singh Alias Dalbir Singh vs State Of Punjab on 26 November, 1986

Equivalent citations: AIR1987SC350, 1987CRILJ330, 1986(2)SCALE900, (1987)1SCC1, AIR 1987 SUPREME COURT 350, 1987 CRIAPPR(SC) 29, 1987 CURCRIJ 11, 1986 JT 940.2, (1987) SC CR R 85, (1987) IJR 48 (SC), (1987) 1 CURLJ(CCR) 344, (1986) JT 940(2) (SC)

Author: A.P. Sen

Bench: A.P. Sen, B.C. Ray

JUDGMENT

A.P. Sen, J.

1. Appellant Balwinder Singh @ DalbirSingh @ Billa stands convicted under Section 302 read with Section 34, Penal Code, 1860, for having committed the murder of the taxi-driver Santokh Singh and sentenced to undergo imprisonment for life. The other two co-accused Balwinder Singh and Amar Singh have also been convicted along with him under Section 302 read with Section 34 and sentenced to imprisonment for life, but have not preferred an appeal.

2. The prosecution case, in brief, is as follows. On July 25, 1973 at about 6 p.m. the appellant Balwinder Singh @ Billa came to the taxi-stand Kot Atma Singh in Amritsar along with his three companions Balwinder Singh, Amar Singh and Balkar Singh and hired the taxi of the deceased Santokh Singh, an Ambassador car bearing No. PUA 5885 for going to Batala, some 32 miles away. The taxi was hired in the presence of the other taxi-drivers, namely, Kashmira Singh, brother of the deceased, P. W. 3, Fauza Singh, P.W. 4, Suba Singh and Ajit Singh. The deceased Santokh Singh was not seen alive thereafter. On the next morning, i.e., on 26th at about 5.15 a.m. Gurdarshan Singh, Deputy Superintendent of Police, P.W. 5, who had set an ambush on a road bypass near the town of Malerkotla, some 180 miles from Batala, intercepted the taxi No. PUA 5885 coming from the side of Ludhiana on suspicion of contrabands. The accused Balwinder Singh who was driving the taxi and the accused Amar Singh sitting by his side on the front seat were apprehended because they could not satisfy P.W. 5 about the ownership of the car. But their two companions sitting on the rear seat managed to escape and could not be identified due to darkness. From the taxi P.W. 5 recovered the driving licence of the deceased Santokh Singh with his photograph, registration certificate of the taxi and other related documents showing that the taxi belonged to the deceased Santokh Singh. On interrogation, he also seized from the accused Balwinder Singh a loaded country-made 12 bore pistol and a sandoz wrist-watch worn by him. At that stage it was not known that the deceased Santokh Singh had been murdered.

3. It is in the prosecution case that when the deceased Santokh Singh did not return on the night in question, his brother Kashmira Singh made a search for him at Batala and other places on the 26th but he could not find any trace. On the next day i.e. on the 27th he lodged the first information report at Police Station, Amritsar. In the report he stated that the taxi of his brother Santokh Singh had been taken on hire by the appellant Balwinder Singh @ Billa who was known to him from before, along with his three companions whom he did not know, but gave their general description. It also appears that on the 28th the co-accused Balwinder Singh made a statement leading to the discovery of the dead body of the deceased Santokh Singh from the Aliwal Canal on the 29th, at a place some eight miles from Batala and twenty-two miles from Amritsar. It was buried in the bed of the sand in the Aliwal Canal. The deceased Santokh Singh had apparently been strangled to death by a ligature formed by the portion of a white turban twisted in the form of a rope with a knot tied around the neck. The green turban of the deceased was found stuck in the reeds at some distance. Some eight days thereafter, i.e., on August 2, 1973, on a tip-off Kala Singh, S.I. (CIA), P.W. 7 apprehended the appellant Balwinder Singh @ Billa and the accused Balkar Singh in the vicinity of the District Court at Amritsar. They both refused to participate in the test identification parade.

4. There can be no doubt, nor is it disputed, that the deceased Santokh Singh met with a homicidal death. Dr. D.P. Kansal, Medical Officer, Civil Hospital, Batala, P.W. 1 who performed an autopsy of the dead body of the deceased was of the opinion that the death of the deceased was due to asphyxia caused by strangulation.

5. There is no direct evidence. The prosecution case rests on circumstantial evidence. The circumstances relied upon are : (1) The appellant Balwinder Singh @ Billa along with his three companions Balwinder Singh, Amar Singh and Balkar Singh, hired the taxi of the deceased Santokh Singh PUA 5885 from the taxi-stand Kot Atma Singh in Amritsar for going to Batala. (2) The interception of the taxi No. PUA 5885 at the road bypass near Malerkotla town by Gurdarshan Singh, P.W. 5 early in the next morning, i.e. , on the 26th, some 180 miles; from Batala, and the recovery of the driving licence and other related documents of the taxi showing that the taxi belonged to the deceased Santokh Singh together with a loaded country-made 12 bore pistol, and the wrist-watch worn by the accused Balwinder Singh which has been proved as belonging to the deceased Santokh Singh. (3) The statement made by the co-accused Balwinder Singh leading to the recovery of the dead body of the deceased Santokh Singh found embedded in the Aliwal Canal, some eight miles away from Batala. (4) The fact that the appellant absconded from his village Supariwind and could not be apprehended till he was intercepted at the District court at Amritsar on August 2, 1973 some eight days after the incident. (5) The false denial of the appellant that he was at his village Supariwind both at the time of the occurrence and on the date of his arrest.

6. In cases in which the evidence is purely of a circumstantial nature, the facts and circumstances from which the conclusion of guilt is sought to be drawn must be fully established beyond any reasonable doubt, and the facts and circumstances should not only be consistent with the guilt of the accused, but they must be such in their effect as to be entirely incompatible with the innocence of the accused and must exclude every reasonable hypothesis, consistent with his innocence. In the light of these well-settled principles, the learned Sessions Judge as well as the High Court, during the course of their carefully written * judgment, have ably marshalled the evidence and come to the

conclusion that the circumstances alleged have been fully proved, and they are consistent only with the hypothesis of the guilt of the appellant. There was no reason for the learned Sessions Judge and the High Court not to have relied upon the testimony of Kashmira Singh, PW3, brother of the deceased. This witness was closely cross-examined but nothing has been brought out to impeach his credibility as a truthful witness. Both he and his brother Santokh Singh owned a taxi and both used to ply their taxis from the taxi-stand Kot Atma Singh in Amritsar. It appears from his evidence that the appellant Balwinder Singh @ Billa was known to him from before as he used to come to the taxi-stand to hire a taxi. His version is that on that evening the appellant Balwinder Singh along with his three companions came and hired the taxi of his brother Santokh Singh for going to Batala and that they all got into the taxi and left towards Batala. He states that when his brother Santokh Singh did not return that night, or the next morning, i.e., on the 26th, he left for Batala in search of him but could find no trace. On the next day, i.e., on 27th, he lodged the first information report. The testimony of this witness is corroborated by the first information report, the testimony of the taxi-driver Fauza Singh, PW 4 and other attendant circumstances.

7. The preponderance of probability is that the deceased Santokh Singh was brutally murdered by being strangled to death while the taxi was on its way from Amritsar to Batala. The facts give rise to an inference that the accused had committed the murder for the sake of the taxi for commission of other offences. The manner in which the car was driven long distances after the commission of the murder of the deceased Santokh Singh does give rise to that inference. After committing his murder, the anxiety of the accused was to get rid of the dead body and they therefore took the taxi to a deserted place near the Aliwal Canal at a spot some eight miles away from Batala. The body was embedded deep into the sand-bed on the expectation that it would not be recovered. The taxi was intercepted on the next morning at about 5.15 a.m. by PW 5 near the town of Malerkotla at a distance of approximately 180 miles from Batala. The co-accused Balwinder Singh was driving the taxi and the accused Amar Singh sitting beside him on the front seat could not get away and were apprehended by PW 5 because they could not give satisfactory answer about the ownership of the taxi. But their two companions sitting on the rear seat managed to escape under the cover of darkness and could not be identified. The reasonable probability is that the two persons sitting on the rear seat of the taxi who escaped were the appellant Balwinder Singh @ Billa and the accused Balkar Singh who were apprehended about a week after, i.e., on August 2, 1973 moving in suspicious manner near the District Court, Amritsar. The fact remains that the appellant Balwinder Singh had absconded from his village, Supariwind after commission of the murder.

8. Learned Counsel for the appellant strenuously contends that the only circumstance established against the appellant is proof of the fact that he was the person who hired the taxi i.e. the circumstance of being 'last seen together'. According to him, the incriminating circumstance of being 'last seen together' without more is not sufficient to raise an inference of guilt of the appellant. It is said that the Court could not discard the possibility of the appellant having left the taxi after reaching Batala. We are not at all impressed with this argument. It is not merely that the prosecution has proved the circumstance of the appellant being 'last seen together' but there are other circumstances as well. These circumstances may be briefly recalled. The testimony of Kashmira Singh, PW 3 clearly shows that the co-accused Balwinder Singh and Amar Singh who were apprehended by PW 5 were two of the three companions of the appellant when he came and hired

the taxi of the deceased Santokh Singh. It is a matter of common knowledge that taxi-drivers are prone not to go long distances at the instance of a stranger. It is because the appellant Balwinder Singh was the person known to the deceased Santokh Singh that he agreed to take the appellant and his three companions to Batala that evening. These two companions of the appellant were apprehended with the taxi on the outskirts of Malerkotla town armed with a loaded country-made 12 bore pistol. Further, the fact that the appellant absconded from his village Supariwind and could not be traced for about a week till he was apprehended near the District Court, Amritsar on August 2, 1973 along with the accused Balkar Singh. His false plea of alibi and denial of the fact of his arrest at the District Court, Amritsar are also incriminating circumstances giving rise to an inference of guilt. These circumstances taken together with the fact that the appellant was the person who hired the taxi lead to no other inference than that of guilt of the appellant and they are wholly inconsistent, with his innocence.

9. The appeal is accordingly dismissed.