Nachhittar Singh vs The State Of Punjab on 30 September, 1974

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Bench: P. Jaganmohan Reddy, P.K. Goswami, P.N. Bhagwati, R.S. Sarkaria

JUDGMENT

R.S. Sarkaria, J.

1. Nachhittar Singh, aged 40 years and his son Jagjit Singh, aged 21 years residents of Rurke Khurd were tried by the Additional Sessions Judge, Barnala for the murder of their co-villager Dan Singh. Nachhittar Singh was convicted under Section 302, Penal Code and sentenced to death while Jagjit Singh was convicted under Section 302 read with Section 34, Penal Code and sentenced to imprisonment for life. On appeal, the High Court of Punjab and Haryana acquit ted Jagjit Singh but upheld the conviction of Nachhittar Singh and confirmed the sentence of death inflicted on him.

2. Nachhittar Singh appeals after obtaining special leave, to this Court. The prosecution story was as under:

> About four months before the occurrence in question the police arrested on the basis of secret information given by Dan Singh deceased, Isher Singh, the brother of the appellant for being in possession of illicit opium. For that reason, Nachhittar Singh was nursing a grudge against the deceased.

3. The deceased was being pro secuted in the Court of Judicial Magis trate at Barnala in respect of an of fence under Section 307, Penal Code for causing gun-shot injuries to his brothers, Pritam Singh (P.W. 3) and Nidhan, Singh. December 18, 1971 was the date of hearing fixed in that case. On that day, at about 7 a. m., the de ceased had just stepped out of his house for going to Barnala, when the appellant and his son Jagjit Singh whose house adjoins that of the de ceased, confronted him. Appellant was armed with his licensed 12 bore double-barrel gun. Jagjit Singh proclaim ed that they would avenge the implication of his uncle in the opium case. Thereupon, the appellant fired his gun felling Dan Singh to the ground. Bhagwan Kaur, the mother-in-law of the deceased and Pritam Singh (P.W. 3) came out on hearing the noise. Bhagwan Kaur laid herself on the body of the deceased in order to save him from further injuries. Jagjit Singh pulled her aside, while the appellant fired two more shots at Dan Singh from very close range. Dan Singh died on the spot. The appellant then ran away taking the gun with him. Zora Singh, the father, and Nidhan Singh another

brother of the deceased, had also witnessed the assault. Soon after the incident, Zora Singh went to Kartar Singh, Sarpanch and informed him about the occurrence. Zora Singh went to Police Station, Dhanaula, 13 miles away, and on reaching there at 11 .a.m. , lodged the First Information Report.

4. Assistant Sub Inspector Shiv Kumar commenced the investigation and reached the spot at 1 p.m. He found three empties of 12 bore gun at the scene of murder, two near the dead body and the third on the doorway of the appellant. He took these empties into possession and prepared two seizure memos Exhts. PD/1 and P. K. which were attested by Kartar Singh. Sarpanch (P.W. 4) and Bhag wan Singh, Panch. The investigating officer prepared the inquest report. He recorded the statements of the witnesses. He also seized and sealed into a parcel the blood-stained chadar of Bhagwan Kaur. In due course, this parcel was sent to the Chemical Examiner and the Serologist who found human blood on the chadar. The parcels containing the empties were carried to and delivered in the Forensic Scientific Laboratory, Chandigarh on the 21st December, 1971 by Constable Gurdev Singh. The appellant was arrested by the Assistant Sub-Inspector Shiv Kumar at the bus-stand of the village on December 24, 1971 in the presence of Karnail Singh and Lal Gir of village Kahneke. Appellant was then carrying his licensed gun which was seized and sealed into a parcel. Memo Exh. PE was prepared in this connection. Subsequently, the gun was sent to the Forensic Laboratory at Chandigarh. Mr. J. K. Sinha, Ballistic Expert examined the gun and the empties, received earlier, and opined that the empties had been fired through the barrel of this gun.

5. The defence set up by the appellant was that the deceased had been murdered by his own brothers, Pritam Singh (P.W. 3) and Nidhan Singh who were inimical towards him and wanted to avenge the gun-shot injuries caused earlier to them by the deceased. It was alleged that Pritam Singh P.W. and Nidhan who were the real culprits, had with the aid of P.Ws. Zora Singh and Bhagwan Kaur falsely substituted the appellant and his son to save their own skin. It was further maintained that while the relations of the appellant with his brother Ishar Singh were not cordial, the deceased was always on very good terms with Ishar Singh; that the deceased far from implicating Ishar Singh, had stood surety for the latter in the opium case.

6. Mr. B. P. Singh, learned Counsel for the appellant contends that since the prosecution had miserably failed to prove that the appellant or his son had any motive or animus to murder the deceased, the courts below should have given due weight to the defence version and disbelived the interested and untrustworthy evidence of the alleged eye-witnesses and accorded the benefit of doubt to the appellant. Firstly, it is argued, it was not satisfactorily established that Ishar Singh was arrested and prosecuted by the police in the opium case on the basis of any information given by Dan Singh deceased; that the mere ipse dixit of Head Constable Amar Singh (P.W. 11) regarding the giving of such information by Dan Singh, uncorroborated by any record, was a highly improbable and unsafe ground for reaching a finding on that point, particularly when it was inconsistent with the conduct of the deceased in furnishing bail for Ishar Singh. Reference in this connection has been made to Ex. DF, a certified copy of that bail bond furnished by Dan Singh deceased. Amar Singh's solitary word, says the Counsel, could not be taken as the last word on the point because it stood contradicted by the evidence of Ishar Singh D. W. 1 himself. Secondly, it is urged, the relations of the appellant with his brother Ishar Singh were strained, and the appellant had no reason to feel aggrieved against Dan Singh if the latter in fact had got Ishar Singh implicated in the opium case.

Our attention on this point has been invited to the evidence of Kartar Singh, P.W. 4, who in cposs examination admitted that about 1 1/2 years before the date of his deposition there was a dispute between the appellant and Ishar Singh. The witness, however, had qualified that admission by adding that they had brought about a compromise. Thirdly, it is stressed that the information, if any given by Dan Singh to the police, was given secretly; and there was no evidence whatever on the record to show that the appellant had come to know of that secret conduct of the deceased, the solitary and tenuous evidence of the lalkara of Jagjit Singh with reference to that fact having been disbelieved by the High Court.

7. Undoubtedly, there is force , in the contention that the motive for the murder, alleged by the prosecution, was not clearly established. Ishar Singh Was arrested in the opium case about four months prior to the murder of Dan Singh. There was no evidence whatever to indicate that Ishar Singh, much less the appellant, had come to know that it was the deceased who had got him implicated in the opium case. There was not a shred on the record to show that during this period of four months preceding the murder in question, there was any incident in which the appellant by any overt or covert act betrayed hostility or ill-will against the deceased. On the other hand it was brought out in the cross-examination of the prosecution witnesses that the relations of the deceased with his brothers Pritam Singh (P.W. 3) and Nidhan Singh were inimical. Pritam Singh (P.W. 3) and Nidhan Singh both had received gun shot injuries. The deceased was on that account being prosecuted for an offence under Section 307, Penal Code in a court at Barnala. He had just proceeded from his house for Bar nala to attend the hearing of the case against him when he was shot dead. Pritam Singh and Ni dhan Singh both were cited as eye witnesses by the prosecution. But it is curious that Nidhan Singh did not appear in the witness box; only Pritam Singh did so. Cross-examined, Pritam Singh (P.W. 3) did not admit the facts about his animosity and criminal litigation with the deceased in a straight forward manner. He prevaricated a good deal, and these facts had to be wrenched out from his unwilling lips after hard questioning.

8. We agree with Mr. Singh that the evidence adduced by the prosecution to substantiate the alleged motive was tenuous, infirm and far fetched. It did not take the matter beyond the penumbral zone of doubt. The learned Judges of the High Court tried to explain the incongruity in the conduct of the deceased in being a police informer against and a surety for Ishar Singh on the ground that "Dan Singh might be playing a double game and stood surety merely as a face-saving device". This was, at best, a conjecture. The learned judges were groping in the realm of "might be" only, far away from the fringe of "must be".

9. Be that as it may, the failure of the prosecution to establish the motive for the crime does not mean that the entire prosecution case has to be thrown over-board. It only casts a duty on the court to scrutinize the other evidence, particularly of the eyewitnesses, with greater care. The High Court was fully conscious of the need for such caution, and rightly observed:

> The absence of proof of motive has this effect only that the other evidence bearing on the guilt of the accused has to be very carefully examined.

> Indeed, the High Court did so. The conviction of the appellant mainly rests on the evidence of Bhagwan Kaur, P.W. 2, which had been corroborated in material particulars by independent evidence including that of the ballistic expert, Mr. J.K. Sinha.

10. Mr. Singh further contends that while Pritam Singh, P.W 3. being inimical to the deceased, had a motive to shift the guilt from him, Zora Singh's statement transferred under Section 33, Evidence Act (he having died before the commencement of the trial) had not been tested by cross-examination. Bhagwan Kaur, P.W. 2, the mother-in-law of the deceased - says the Counsel - was not present in village Rureke Khurd at all; she was at the material time in her village Nainewal. 25-27 kilometers away. According to the Counsel she was brought from her village and inducted as an eye-witness by Assistant Sub Inspector. Shiv Kumar sometime after 1 p.m. and some blood-stained chadar was brought into the picture to fix her presence at the scene of occurrence. In this connection great stress has been laid on the fact that the special report of this case reached the Magistrate at Barnala which is only 7 miles from Dhanaula. as late as 4-10 p.m. on the 18th. It is added that the explanation of the delay invented by Constable Surjit Singh, P.W. 8 who carried the report, hardly carried conviction.

11. All these points now pressed into argument were canvassed before the High Court, also, and were for sound reasons held to be untenable. Counsel for the appellant took us through the evidence of Bhagwan Kaur, P.W. 2. There is nothing improbable in her testimony that she had come to village Rureke Khurd to visit her daughter, Gurdev Kaur. and was at the time of the incident at the house of her son-in-law. It was winter season and she had swathed herself in the chadar P-l (also described as Khessi). When Dan Singh dropped on receiving the first gunshot she rushed out and laid herself on him to shield him from further harm. This was the natural conduct of a mother-in-law. The Serologist found human blood on this chadar. The blood on the chadar lent assurance to her statement and fixed her presence at the time of the incident. Moreover. Kartar Singh, Sar panch (P.W. 4) and other persons of the village who had come on the scene soon after the murder found her there near the dead-body. Very rightly, the High Court observed that she could not be brought to the spot from her village which at a distance of 25-26 kilometers immediately so as to be seen at the site of crime by P.W. Kartar Singh and others. The High Court found Bhagwan Kaur credit-worthy and we have no good reason to differ from that conclusion. Bhagwan Kaur's version with regard to the nature of the inflicting weapon and the manner of causing the fatal injuries to Dan Singh stood corrobated by the medical testimony. Dr. Jagjit Singh, P.W-1, who conducted the autopsy noted six gun shot wounds on the body of the deceased. He found wadding and card board pieces embedded in injuries 1 & 2, and blackening on the margins of injury 3, indicating that those injuries were caused from close range.

12. Then, there was the testimony of Mr. J. K. Sinha, ballistic expert who after examination of the empties (which were found at the scene of murder on the 18th December) and the licensed gun of the appellant, opined that those empties had been fired through the barrel of this gun.

13. Mr. Singh however, con tends that no empty cartridges had. in fact, been found at the spot, and that this circumstantial evidence had been fabricated after the arrest of the appellant and seizure of

the gun which took place on the 19th December.

14. In his examination at the trial, the appellant had asserted that he was produced before the police by Shri Sukhdev Singh, M.L. A. on the 19th December, and was arrested and lis gun also was taken away from him by the police at that time. Shri Sukh dev Singh, M.L. A. was not examined to support this bare assertion of the appellant. The prosecution case was that the arrest of the appellant and the seizure of his gun were made on the 24th December while the empties found on the spot had been sent earlier to the Forensic Laboratory. Chandigarh on the 21st December.

15. The courts below have for cogent reasons rejected the defence contention and accepted the prosecution version that the appellant was taken into custody alongwith his gun, on the 24th December. We find no fault with that reasoning. The gun having been seized by the police on the 24th, there was no scope for fabrication, nor any ground for doubting the genuineness of the empties picked up from the scene on the 18th December, and which on the 24th December were no longer in the possession or control of the investigating officer. They were, as deposed to by Shri J. K. Sinha. P.W. 12, in the possession of the Forensic Laboratory since the 21st December.

16. The testimony of Shri J. K. Sinha had not been seriously challenged in cross-examination. In his opinion the crime cartridges had been fired from the gun of the appellant. Thus the ballistic evidence confirmed the connection of the appellant with the crime

17. We do not intend to examine the other points canvassed such as the delay in. registering the case etc. or to reappraise the evidence in detail. Suffice it to say, that excepting the evidence with regard to the motive, the appellant has not been able to assail the appreciation of the evidence done by the High Court on any solid ground. We therefore, confirm the finding that the appellant was the person who had shot dead Dan Singh in the manner alleged by the prosecution.

18. Now remains the question of sentence. In this connection Mr. Singh has emphasised two circumstan ces: namely, the absence or obscurity of the motive for the crime and the prolonged period for which the spec tre of death penalty has been brooding over the head of the appellant. In view of these twin circumstances, it is urged, the capital sentence should be commuted to that of imprisonment for life.

19. The appellant was convict ed and condemned to death by the trial court on 23-4-1973. His appeal was dismissed by the High Court on 13-9-1973. He then on 22-10-1973 made an application under Article 134 of the Constitution in the High Court for the grant of a certificate of fitness for appeal to this Court. This application was rejected by the High Court on 26-10-1973. Thereafter he moved this Court on 10-12-1973 for the grant of special leave to appeal under Article 136. After its completion the case was put up before the Court on 21-1-1974 and the leave sought for was granted.

20. From the above data, it is clear that there has been no inordinate delay. Much of the period that has elapsed since the conviction of the appellant, consists of the time taken by the judicial process invoked by him at the appellate stages. We therefore, ' think that the circumstances pointed out by Mr. Singh do not constitute a ground sufficiently compelling for interference in the exercise of our

special jurisdiction with the discretion of the courts below in the matter of sentence. We may however add that if there are any commiserative factors which can be taken into consideration by the Executive Government in the exercise of its prerogative of clemency it is for that Government to do so.

21. The appeal fails and is dismissed.