

## **Bishan Singh And Ors. vs State Of Punjab on 3 May, 1983**

**Equivalent citations: AIR1983SC748, 1983CRILJ973, 1983(1)SCALE773, AIR 1983 SUPREME COURT 748, (1983) 2 APLJ 5.1, (1983) CHANDCRIC 120, (1983) CHANDCRIC 92, 1983 SCC (CRI) 578, 1983 UJ(SC) 591, 1983 CRILR(SC MAH GUJ) 327**

**Bench: Syed M. Fazal Ali, E.S. Venkataramiah**

### **JUDGMENT**

Fazal Ali, J.

1. The above criminal appeal arises out of a criminal trial held in Sessions Case No. 61 of 1981 on the file of the Sessions Judge, Feroze-pore in which the four appellants Bishan Singh, Teja Singh, Jullundur Singh and Gurdial Singh were found guilty of offences punishable under Section 302/34, I.P.C. and each of them was sentenced to death. On appeal, in Criminal Appeal No. 197-DB of 1982 the High Court of Punjab and Haryana confirmed the convictions of all of the four appellants and the sentences of death imposed on three of them viz. Bishan Singh, Teja Singh and Gurdial Singh. But in the case of Jullundur Singh, the sentence of death was commuted into one of imprisonment for life. The above appeal by special leave is filed by the appellants. Special Leave Petition (Criminal) No. 2538 of 1982 is filed by one Balbir Singh against Jullundur Singh one of the appellants herein for imposing on Jullundur Singh the sentence of death.

2. The four appellants Bishan Singh, Teja Singh, Jullundur Singh and Gurdial Singh were tried on a charge of committing the murder of four persons, namely, Dhankaur, Malkiat Singh alias Gurmit Singh, Surinder Singh alias Chhinda and Tejkaaur. The offence took place at about 7.00 P.M. on June 20, 1981 in village Nurpur Sethan. It was alleged that in the course of the assault, Bishan Singh was armed with a kirpan, Teja Singh with a gun, Jullundur Singh with a rifle and Gurdial Singh with kappa. The facts of the case have been detailed in the judgment of the High Court and the Sessions Court. It is not necessary for us to repeat the same. We have gone through the judgment of the High Court and the Sessions Court and also through the important evidence of the case and we find that the judgment of the High Court is substantially correct. However, there are some telling circumstances which raise a considerable doubt regarding the involvement of Teja Singh in the crime. It is true that it is stated Teja Singh was found along with a gun and the gun was recovered and pellets were found on the spot but that by itself would not establish the actual participation of Teja Singh in the crime. According to the prosecution all the four accused went with object of liquidating the entire family of Surinder Singh and were variously armed but Teja Singh was the only person who was unarmed. This aspect of the case suffers from an inherent improbability. If all the accused intended to kill all the members of the family there was no reasons why Teja Singh would not have armed himself with some weapon. The prosecution wants us to believe that Teja

Singh went to the house of the deceased with the hope of finding a gun at the house of Gurmit Singh alias Malkiat Singh and using it at the time of the assault. The learned Sessions Judge noticed the improbability of this part of the prosecution case when arguments were advanced before him, but instead of giving the benefit of it to the accused concerned, he tried to solve it by the following observations:

It was added by the counsel that since Teja Singh accused is an Ex-army official and, therefore, was presumed to be an expert shot, he would not have gone empty-handed but would have carried a weapon with him in case he had, in fact, accompanied the co-accused. The counsel, therefore, maintained that the prosecution case that Teja Singh also accompanied his co-accused is highly implausible. In my opinion, it was not for the prosecution to explain as to why Teja Singh had accompanied empty-handed with his father co-accused Bishan Singh and other accused.

3. The explanation given by the learned Sessions Judge does not give any convincing answer to the question raised on behalf of Teja Singh. The High Court also tried to get over this question by observing.

It seems that the commission of murders being pre-meditated, Teja Singh, the Ex-Army man left empty handed so tha. by some tactical manoeuvre he would disarm Malkiat Singh. Luckily for him the gun was seen hanging on peg on the wall of the courtyard of the house.

4. It would thus appear that even the High Court was not able to give any reasonable explanation for the absence of any weapon in the hands of Teja Singh in the beginning. Admittedly the gun traced to him later on belonged to the deceased Malkiat Singh. Mr. Kohli appearing for the complainant and the State argued with all the vehemence at his command that the recovery of the gun at the time of the arrest of the accused Teja Singh clinches the issue and shows that Teja Singh himself must have participated in the assault and must have used the gun in the commission of the offence. The search witness P.W. 5 Sohan Singh has clearly stated that he and Gura Singh had joined in the investigation of this case with the police. The evidence of this witness cannot be relied upon without any corroboration to prove the factum of recovery. The evidence given by this witness is too good to be true and contains an element of artificiality. Indeed, if Teja Singh had taken the gun from the house of Malkiat Singh he would have concealed it in some place from where it was difficult to recover it. It is difficult to believe that after four murders he would be walking about with the gun which was a weapon of one of the deceased. We are, therefore, unable to believe the version given by Sohan Singh that when he was going with the police on investigation, Teja Singh and the other accused came towards them and Teja Singh was armed with the gun in question. In view of these circumstances, we are unable to believe that the case against Teja Singh has been proved beyond reasonable doubt. The appellant Teja Singh is entitled to be acquitted of the charge of murder framed against him as reasonable doubt arises about his participation in the occurrence. In view of the acquittal of Teja Singh under Section 302/ 34 I.P.C. on the ground that he had not participated in the occurrence and not used the arms, his convictions under Section 308 I.P.C. and Section 25 of the Arms Act have also to be set aside. So far as the other appellants are concerned there is sufficient evidence to warrant their conviction as found by the High Court.

5. The last question that remains to be considered is the question of sentence to be imposed on the remaining three accused. Having regard to the peculiar facts and circumstances of the case we do not think that the extreme penalty of death is called for in the present case. We do not think that this is a rarest of rare cases in which death sentences should be confirmed.

6. For these reasons the appeal of Teja Singh is allowed and he is acquitted of all the charges framed against him. The sentences imposed on him are set aside. The appeals of the other three accused against their conviction are dismissed but the sentences of death imposed on Bishan Singh and Gurdial Singh are commuted to imprisonment for life. The Special Leave Petition filed for enhancement of sentence of Jullundur Singh from life imprisonment to death is dismissed. The sentence of imprisonment for life imposed upon him by the High Court is maintained. The appeal is disposed of accordingly and the Special Leave Petition is dismissed.