

Supreme Court of India

Sukhmandar Singh vs State Of Punjab on 4 October, 1994

Equivalent citations: AIR 1995 SC 583

Bench: A Anand, S Bharucha

JUDGMENT

1. The appellant along with his father Jang Singh and mother Surjit Kaur were tried for offences under Sections 302 and 302/34 I.P.C. by the Special Judge, Ferozepore. While Jang Singh, father of the appellant, and Surjit Kaur, mother of the appellant were acquitted, the appellant was convicted for the offence under Section 302 I.P.C. and sentenced to suffer imprisonment for life. Through this appeal, under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984, he has questioned his conviction and sentence.

2. The prosecution case is that the field of Gurdev Singh, PW3, father of Harcharan Singh (deceased) adjoins the field of Jang Singh, father of the appellant and over the water channel, there is a small bridge which was being used by both the parties. On May 4, 1984, at about 5 p.m. Gurdev Singh PW 3, his wife Gurjit Kaur PW4 and Harcharan Singh (deceased) were proceeding to their field in a trolley driven by the tractor and when they reached at a distance of about 7 feet from the bridge, Surjit Kaur, Sukhmandar Singh armed with gandasa and Jang Singh armed with a lathi, after raising a lalkara that they would not allow the complainant party to cross over the bridge, attacked them. Sukhmandar Singh is alleged to have given a gandasa blow on the head of Harcharan Singh who fell down. Gurjit Kaur tried to intervene and was given a dang blow by Jang Singh. On alarm being raised, the appellant and his co-accused ran away with their respective weapons. Gurdev Singh, PW 3 proceeded to the police station to lodge the report and his statement was recorded by Mohinder Partap, ASI, PW6 at about 6.30 p.m. The statement was sent to the police station and a formal FIR Ex. P. 8/B came to be registered on the basis thereof. The Investigating Officer Mohinder Partap PW 6 went to the house of Gurdev Singh where the dead body of Harcharan Singh was lying and after preparing the inquest report Ex. P 2, he despatched the body for post-mortem examination. The rough site plan of the place of occurrence was prepared by PW 7 Major Singh Inspector who has also collected blood stained earth from the place of occurrence vide seizure memo Ex. P. 9.

3. Dr. Sant Parkash Singh, Senior Medical Officer, Civil Hospital, Muktsar performed the autopsy on the dead body of Harcharan Singh and found an incised wound 4 cm x 1 cm on the middle of scalp, 11 cms from anterior hair-line. On exploration, fracture of the bone of the skull was detected. The Doctor opined that the death was due to shock and haemorrhage as a result of the aforesaid injury. Dr. Sant Parkash Singh, PW 1 also examined Gurjit Kaur at 8.30 p.m. on May 4, 1984 and found one incised wound on her wrist joint and an abrasion on the front of the right knee joint. After completion of investigation, the appellant and his co-accused were tried, as already noticed.

4. The prosecution examined Dr. Sant Parkash Singh, PW 1, Jorawar Singh, PW 2, Gurdev Singh, PW 3, Bhajan Singh, PW5, Mohinder Pratap ASI, PW6, Major Singh Inspector, PW7 and filed the report of the chemical examiner. The accused in their statement recorded under Section 313 Cri PC pleaded the right of self defence. Sukhmandar Singh, appellant gave the following statement: I have no right foot and cannot walk without a support. I was grazing cattle and had a takwa for my

support and for cutting Datons. Gurdev Singh, Harcharan Singh wanted to pass their tractor through our land. My father objected to it. Thereafter, my father and Gurdev Singh abused each other. Gurdev Singh and Harcharan Singh gave gandasa blow to my father. My mother also received injuries from them when she tried to intervene. I also intervened to save my father and mother. Harcharan Singh gave a gandasa blow on my hand and I in self defence gave a takwa injury to Harcharan Singh. I then fell down. Gurcharan Singh, brother of Harcharan Singh is married at Dhok to the sister of Balraj Singh. That Balraj Singh is married to the niece of Major Singh PW. Major Singh falsely challaned us under Section 107/151 Cr. P.C. Major Singh did not interrogate me during investigation. I did not sign any statement. I am innocent. Major Singh got my signatures on blank papers.

5. The statements of Jang Singh and Surjit Kaur, the co-accused of the appellant, were also to the same effect.

6. The prosecution did not explain the injuries on the person of the appellant and the two co-accused. Dr. Sant Parkash Singh, Senior Medical Officer, who had conducted the autopsy on the dead body and also examined Gurjit Kaur had examined Sukhmandar Singh appellant on May 4, 1984 at 7.20 p.m., Jang Singh at 7.30 p.m. and Surjit Kaur at 7.40 p.m. on the same day. The following injuries were found on Sukhmandar Singh:

1. Incised wound 4.5 cm x 1/2 cm on the right side of the head, bone deep, 5 cms above anterior hairline, 8.5 cms. from right ear.

2. Red contusion covering the whole of the right eye with congestion of conjunctiva and flow of water from the eye.

7. The injuries on Jang Singh were as follows:

1. Incised wound 3 cms. x 1 cm on the top of the head, bone deep.

2. Incised wound running obliquely on the back of the right fore-arm 11 cms below right elbow joint, bone deep.

3. Abrasion 2.5 cms x 1 cm on poster-lateral aspect of the left leg 4 cms above ankle joint.

8. PW1, Dr. Sant Parkash Singh had also found the following injuries on Surjit Kaur.

1. Red contusion 4.5 cms x 2 cms on the right side of the scalp 7.5 cms above right ear and 1 cm above anterior hair line.

2. Red contusion 4 cms x 3 cms on the top of the left shoulder joint.

3. Red contusion 10 cms x 6 cms on the poster lateral aspect of left elbow joint.

9. Since, the appellant has given a counter version of the occurrence, it is obvious that the occurrence is not in dispute. The only question that requires to be considered is whether the appellant acted in the exercise of the right of self defence.

10. The learned Special Judge disbelieved the version of the appellant, claiming the right of self defence, by observing:

It appears that after Sukhmandar Singh accused found that Harcharan Singh had left for the other world, the accused thought of arranging injuries on their persons to get Sukhmandar Singh exculpated.

11. We are unable to appreciate the reasoning of the learned special judge. The appellant as well as his parents had been examined promptly by the Senior Medical Officer, PW 1 who had also examined Gurjit Kaur at 8.30 p.m. Looking to the nature of the injuries suffered by the accused party, which have been extracted above, it appears to us to be far fetched to say that those injuries could be self inflicted or suffered from a friendly hand. The observations of the learned trial judge are not based on any material whatsoever.

12. After giving our careful consideration to the facts and circumstances of the case, it appears to us that the appellant on finding that his parents were being beaten, gave one gandasa blow to the deceased which resulted in a fracture of his skull and ultimately his death. The appellant appears to us to have exceeded the right of self defence. The nature of injuries inflicted on him or his parents could not justify his inflicting such an injury which could result in the death of the deceased. The appellant, however, cannot be held guilty for murder.

13. While causing the injury to the deceased, the appellant could be clothed with the knowledge that the injury that he was causing to the deceased was likely to cause his death or such bodily injury as was likely to cause his death. The offence of the appellant would, therefore,, be one under Section 304 Part-II I.P.C. and not under Section 302 I.P.C. We, accordingly, allow this appeal to the extent of setting aside the conviction of the appellant for the offence under Section 302 I.P.C and instead hold him guilty of the offence under Section 304 Part-II, I.P.C. In our opinion, the interest of justice would be met if the appellant is sentenced to five years rigorous imprisonment for the said offence. We make an order accordingly. In case the appellant has already undergone the sentence imposed by us, his bail bond shall stand discharged otherwise he shall surrender to the jail authorities to undergo the remaining part of his sentence.