

Supreme Court of India

Gurdial Singh vs State Of Punjab on 13 January, 1993

Equivalent citations: AIR 1994 SC 1072, 1994 CriLJ 1231

Bench: K J Reddy, N Singh

JUDGMENT

1. This is an appeal under the provision of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, Nobody appears for the appellant. However, in order to satisfy ourselves we have examined the entire record, including the judgment of the High Court with care and caution and we have also heard the learned Counsel Mr. Sushil Kumar Bajaj, appearing for the State.

2. The sole appellant before us was tried along with four others for offence punishable under Sections 147, 148, 449, 302/149 I.P.C. and 27 of the Arms Act. The trial court acquitted all of them. The State preferred an appeal against the order of acquittal. The Division Bench of the Punjab and Haryana High Court, while confirming the acquittal of A-2 to A-5, convicted the appellant (A-1) under Section 302 I.P.C. and sentenced him to life imprisonment. He is also convicted under Sections 449 I.P.C. and 27 of the Arms Act, but no separate sentence is awarded. The prosecution case is as follows :

The appellant and the deceased Ujagar Singh were real brothers. One Saudagar Singh was also the brother of the appellant and the deceased, who had been living in England for the last 13/14 years. The three brothers had effected private partition of the ancestral land and the land of the share of Saudagar Singh was being cultivated by the appellant. The land which fell into the share of the deceased adjoins the land under cultivation of the appellant and there were disputes regarding the footpath across the field of the deceased. On 22-6-79, at about 4/5 P.M. , the deceased and his son Hari Singh (P.W 10) were present in their field. The appellant came that way and was proceeding on the footpath to his field and he was checked by the deceased and warned him not to cross the field. The matter developed into an exchange of harsh words between them. However, Hari Singh (P.W 10) intervened and pacified them and separated them from each other. The deceased and Hari Singh (P.W 10) then came back to their house. At about 9 P.M. , after taking dinner the deceased was lying in his cot. Hari Singh (P.W 10) and Gurcharan Singh (P.W 11) are the neighbours of the deceased and they were sitting in another cot and gossiping. A lantern was burning in the court yard. It is alleged that at that time Gurdial Singh, the accused, armed with a double barrel gun of .12 bore trespassed into the courtyard and had raised a lalkara challenging the deceased and then shot at the deceased from his gun which hit him in the back. The pellets passed through the abdomen. Hari Singh (P.W 10) and Gurcharan Singh (P.W 11) raised cries for help. Thereupon, the appellant retreated into the land when he was in the company of the other accused. It is further alleged that he also shot 3/4 times into the air in the land. The injured was taken in the tractor-trolley to the Civil Hospital by one Lachman Singh and on the way the deceased succumbed to the injury. However, at about 12.35 on the same night P.W 10 gave a report to the police which is registered as FIR and investigation was taken. The Investigating Officer held the inquest and an inquest report was made which was attested by Hari Singh and Bhajan Singh. The SHO, Gurbachan Singh, arrested the appellant and had recovered a .12 bore gun from him. After completion of the investigation, the charge-sheet was laid against the accused. The prosecution examined a number of witnesses, which

included doctor (P.W 1), Pharmacist (P.W 2), Licence Clerk (P.W 3) etc. and among others, Hari Singh (P.W 10) and Gurcharan Singh (P.W 11) were also examined.

3. The medical evidence establishes that the deceased died due to the gun injuries. The accused, however pleaded not guilty and stated that Hari Singh (P.W 10) was not living with the deceased and his testimony is doubtful. He was living in a separate house thereby suggesting that Hari Singh (P.W 10) could not witness the occurrence. On examination it is found that Hari Singh was living in a separate house. In his defence he also examined P.W 2 which shows that there was hostility between the deceased and the appellant and all the members of the family were interested in implicating the appellant falsely.

4. The trial court was not impressed upon with the prosecution evidence. However, the motive established was not important when there are eye-witnesses. Now coming to the evidence of P.W 10 of the principal witness, the trial court having considered the same in detail, however, came to the conclusion that his presence is doubtful at the scene of occurrence inasmuch as the trial court found from the defence version that he lived in a separate house and in his cross-examination Hari Singh (P.W 10) admitted that his father, the deceased had enmity with other villagers and had litigations over lands. The trial court in this context also considered the size of the injury and in the manner in which it could have been inflicted and found that the version given by Hari Singh (P.W 10) conflicts with the medical evidence. Therefore, the trial court gave fairly valid reason for doubting the presence of Hari Singh (P.W 10) at the scene of occurrence. Now, coming to P.W 11, his presence at the scene of occurrence, viz., at the house of the deceased is not supported by any reason in the sense as to why he should be present at that point of time when the deceased went to sleep? The view taken by the trial court does not appear to be un reasonable. While that being the position, we have also to examine the view taken by the High Court. The High Court merely proceeded on the logic that Hari Singh (P.W 10) is undoubtedly the son of the deceased and he would not falsely implicate. It is established that there was hostility between the two families and to some extent the same is the case of the prosecution. Therefore, the evidence of P.W 10 cannot be accepted on its face value.

5. The High Court, as a matter of fact, was not prepared to accept the evidence of P.W 11. Therefore, the whole reliance was placed on Hari Singh (P.W 10) in convicting the appellant. The discrepancies pointed out by the trial Court are quite material and introduce fairly serious infirmities in the evidence of P.W 10. In such circumstances, the view taken by the trial court, even though another view is possible could not have been disturbed by the High Court. In the result, the appeal is allowed. The conviction and sentence are set aside. If the appellant is on bail, his bail bond stands cancelled.,