

Supreme Court of India

Gurdev Singh And Another vs State Of Punjab on 13 December, 1994

Equivalent citations: AIR 1995 SC 2335

Bench: G Ray, F Uddin

JUDGMENT

1. This appeal is directed against the judgment and Order passed by the Punjab and Haryana High Court on 26th April, 1983 in Criminal Appeal No. 15/DB/83. The said criminal appeal No. 15/DB was directed against the Order of conviction and sentence passed by the learned Sessions Judge. Bhatinda in Sessions Case No. 155 dated 21st of August, 1981. The learned Sessions Judge by his judgment dated 22/23rd November, 1981 convicted the accused No. 2 Gurdev Singh and accused No. 4 Rama Singh under Section 302 read with Section 34 of the Penal Code and sentenced them to suffer rigorous imprisonment for life. The other two co-accused namely, Sham Singh and accused No. 3 Baldev Singh were acquitted by the learned Judge. By the impugned judgment, the High Court has affirmed the said conviction and sentence passed by the learned Sessions Judge.

2. The prosecution case in short is that Harmel Singh deceased was the husband of Surinder Kaur P.W. 2 and father of Ravi rider Kaur P.W. 6. On 31 st May, 1981, the deceased Harmel Singh was sowing normal in the field which he had taken on lease from AjaibSingh P.W. 2 Surinder Kaur after washing her clothes in the nearby canal (minor) was taking tea prepared by her daughter Ravinder Kaur, P.W. 6. The said minor canal was close to the place of occurrence. The four accused persons variously armed came to the spot. According to the prosecution case, accused No. 1 Shyam Singh was armed with a single barrel gun and accused No. 3 Baldev. Singh had a gandhali; accused No. 2 Gurdev Singh was armed with a ghandasa and accused persons emerged from the side of canal minor. On seeing the accused persons, deceased Harmel Singh stopped his tractor. Gurdev Singh opened the attack and gave ghandasa blow on the left side of the Harmel Singh. Baldev Singh gave ghandali blow on his head. Thereafter, Rama Singh gave kasia blow on the left side of the forehead. Then Harmel Singh fell down from the tractor. Baldev Singh gave ghandali blow on Harmel Singh on his back and thereafter all the accused except Shyam Singh inflicted injuries from the sharp as well as from the blunt side of their respective weapon. The said incident was witnessed by Surinder Kaur P.W. 2 and Ravinder Kaur, P.W. 6 and they raised alarm. After inflicting injuries, the accused escaped from the said place with their weapons. Surinder Kaur and her daughter Ravinder Kaur went near Harmel Singh and found him dead. Thereafter, leaving Ravinder Kaur and his minor son Gurpreet Singh near the dead boy, Surinder Kaur went to the village and narrated the incident to her father Kaur Singh who had been residing with her for about two months. Both of them then left the village for lodging the report of the said incident at the police post Bhucho mandi situated' at a distance of about four kilometres from the place of occurrence. On the way, they met ASI Sukhdev Singh P.W. 10 near the gaushala at Bhucho mandi at about 5.00 p.m. and Surinder Kaur made her statement at 6.15 p.m. and on the basis of the said statement First Information Report was recorded at Police Station Nathana at 8.15 p.m. ASI Sukhdev Singh, P.W. 10 accompanied by Surinder Kaur P.W. 2 and her father Kaur Singh and police officials went to the spot on the same day and the inquest report Exhibit P. C. was prepared and he also took blood stained earth from the place of occurrence .vide memo Exhibit. PE. The turban and pair of shoes were also taken into possession and he also took into possession container (dolu), two aluminium cups, one batti, one small kaull

and one empty bottle which were lying at a distance of about 25 yards from the dead body. Soap cakes and thirteen clothes to which soap had been partly applied and one wooden tape from near the canal minor at a distance of 200 yards from the place of occurrence were also seized by the police. The said police officer P.W. 10 inspected the spot and prepared a site plan and recorded the statement of Ravinder Kaur, P.W. 6 and her brother Guipreet Singh minor .son of the deceased. The autopsy on the dead body of Harmel Singh was conducted by Dr. Khem Ram P.W. 1 at Civil Hospital Bhatinda on 1st July, 1981 at 5.15p.m. The doctor found 16 injuries on the body of the deceased, four injuries were incised wounds. He noted four injuries on the head and face. Frontal temporal and parietal bones on the right hand side were found fractured underneath injuries Nos. 1 and 2, which according to the opinion of the said doctor were individually sufficient to cause death in the ordinary course of nature. According to doctor, except injury No. 13, rest of the injuries of the deceased could be caused by sharp-edged weapons like gandasa and takwa used from reverse and sharp sides.

3. The appellant and two other-co-accused were arrested on 4th June, 1981, Shyam Singh co-accused produced his gun and two live cartridges which were seized by the ASI through memo Ex. PJ. According to the prosecution case, pursuant to the disclosure statements of the accused blood stained gandasa Ex. P. 1 gandhali. Ex. P. 2 and kasia Ex. P. 3 were recovered from three different places near the canal minor and the said weapons were seized vide Exhibit its PK/1, PL/1 and PM/1.

4. The accused denied their complicity in the case and they pleaded false implication. No witness, however, was examined by the accused in their defence except tendering documents Exhibit DE, a certified copy of the complaint filed by Jit Singh and Exhibit DB, a copy of the Order in appeal filed by Harmel Singh deceased against Order of discharge of Jit Singh in a proceeding under Section 107 read with Section 151 of the Criminal P.C. Surinder Kaur P.W. 2, the widow of the deceased, and Ravinder Kaur P.W. 6 were examined. They stated that they had seen the said occurrence from a close quarter because they had been near the minor canal for washing clothes and were present at that time. The learned Sessions Judge accepted the depositions of the said eye witnesses and came to the finding that the depositions of the said eye witnesses were convincing and stood corroborated by the medical evidence. Accordingly, he convicted the appellants under Section 302 read with Section 34, I.P.C. As the accused No. 1 Shyam Singh did not take part in the commission of crime and it was only alleged that he gave lalkara, the learned Sessions Judge acquitted Shaym Singh. So far as Baldev Singh accused "No. 3 is concerned, the eye-witnesses stated that he inflicted injuries by ghandali. Since the medical evidence was that such injury might have been caused by ghandasa, the learned Sessions Judge gave benefit of doubt to the said Baldev Singh and the said two accused were acquitted by the learned Sessions Judge.

5. On appeal before the High Court of Punjab and Haryana, the High Court held that the prosecution case was proved by the evidence given by Surinder Kaur P.W. 6 and such depositions stood corroborated by the medical evidence and did not suffer from any infirmity. Hence, no interference was called for against the judgment passed by the learned Sessions Judge.

6. At the hearing of this appeal, the learned Counsel for the appellant has contended that in the instant case, solely on the basis of the depositions given by the widow and the minor daughter of the

deceased namely, Surinder Kaur and Ravinder Kaur, the conviction of the appellants has been based. But there is serious contradiction in the depositions of the said eye-witnesses and such evidence do not stand corroborated by medical evidence as wrongly indicated by the Courts below. The learned Counsel has submitted that although P.W. 2 has specifically stated that accused No. 3 Baldev Singh inflicted ghandali blow on the head and on the back of the deceased, in the medical evidence such injury caused by a ghandali has not been noted by the doctor performing post mortem examination. He has submitted that as a matter of fact, Baldev Singh has been acquitted by the learned Sessions Judge because his involvement in causing injuries on the deceased was held doubtful. According to the learned Counsel for the appellant, it is evident that Surinder Kaur, the widow of the deceased intended to falsely implicate Baldev Singh because of ill feeling between the deceased and the accused particularly the accused No. 2. It has been submitted that between the families of the deceased and some of the accused, litigations were pending. The learned Counsel has submitted that if the witnesses have given false evidence with an intention to implicate innocent person because of the ill feeling or grudge against the accused, the Court should not accept the deposition of such interested witnesses as worthy of credence. In the facts of the case, the evidence of the alleged eye witnesses should have been discarded by the Courts below.

7. The learned Counsel for the appellant has also contended that in the site plan, the place where the clothes were taken for washing has not been shown and the bucket and the clothes taken for washing had also not been seized and exhibited in this case. Such articles if actually found after the incident, might have indicated that the said eye-witnesses were present at the spot and they had occasion to see the occurrence. In this case, because Harmel Singh was found murdered, the accused persons were falsely implicated out of family rivalry and ill feeling. The learned Counsel has also submitted that FIR was not lodged promptly and the learned Magistrate only received the copy of the FIR at about 1.00 a.m. on the next date. It has also been submitted by the learned Counsel that when four persons attacked the deceased in the field, it was quite likely that their foot marks be present at the spot but the Investigation Officer did not notice any foot mark near the place of occurrence. The learned Counsel has submitted that the medical evidence runs counter to the prosecution case about the manner in which the murder had been committed. Hence, the entire prosecution case must be held to be false and should have been discarded by the learned Sessions Judge. He has therefore submitted that the conviction passed against the appellant should be set aside and they should be acquitted.

8. We have considered the depositions given by P.W. 2 Surinder Kaur and P.W. 6 Ravinder Kaur. It appears to us that they have given evidence consistently and we do not find any contradiction in their evidence. Such evidence in our view, does not run counter to the medical evidence given by doctor performing the postmortem examination. As a matter of fact, the doctor has stated that one of the injuries was also likely to be caused by a ghandali. Learned Sessions Judge has indicated that since the injury caused on the deceased might not have been caused by ghandali but it was also likely to have been caused by a ghandasa as stated by the doctor, the benefit of doubt should be given to Baldev Singh. It, therefore, does not appear to us that there was any attempt to falsely implicate the accused. On the contrary, it appears to us that Surinder Kaur and Ravinder Kaur have deposed in a straight forward manner and they have not implicated Shyam Singh although Shyam Singh was also present there. So far as absence of foot prints near the place of occurrence is

concerned. We do not find any force in the criticism made by the learned Counsel for the appellant. It is no body's case that the place was otherwise wet or soft enough to have footprints. The incident occurred on 31st of May in an agricultural field. Normally, in hot summer season the agricultural field is expected to be absolutely dry. Accordingly, there was no occasion to note foot prints in the site plan. So far as the bucket of wet clothes and the soap cakes seized by the police is concerned, such seizure has been proved by the report of the Head Constable. Such fact has been noted by the learned Sessions Judge. Simply because the place where clothes were partly washed by Surinder Kaur was not noted in the site plan, we do not find that any serious lacuna is there against the prosecution case. Admittedly the place where the clothes were taken for washing was minor canal and murder was committed not at the bank of the canal but in the agricultural field. Hence, in the site plan, the place of murder was only noted. It also appears to us there was no unusual delay in lodging FIR in this case. The copy of FIR was also promptly dispatched too the illaka Magistrate. We therefore, find no reasoned decisions rendered by the Courts below. This appeal therefore fails and is dismissed. The appellants have been released on bail by an Order dated 26th August, 1985, passed by this Court. The appellants should be taken into custody to serve out the sentences.