
(1996) 12 P&H CK 0061
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 52-DB of 1996

Piara Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 11-12-1996

Acts Referred:

Citation : (1997) 1 RCR(Criminal) 418

Hon'ble Judges : K.K.Srivastava, J and H.S.Bedi, J

Advocate : S.S. Randhawa, Chattar, R.S.R. Chai, Advocates for appearing Parties

Judgement

Harjit Singh Bedi, J.

1. This murder reference and the criminal appeal arise out of the following facts as narrated by Swaran Kaur PW5.

2. Swaran Kaur aforesaid had four sons namely, Jasbir Singh, Jagir Singh, Sukhdev Singh and Angrej Singh. The marriage of Angrej Singh was being solemnised on 21st November, 1991 in the house of the complainant in village Baserke Bhaini and the marriage party was to go to village Harsha Chhina on the next day. On 21st November, 1991, at about 9 p.m. the family members of Swaran Kaur had assembled in her house and while some of the guests had already had their dinner, the close relatives were still waiting for their turn. As it was a festive occasion, a shamiana had been erected alongwith electric fittings. Five armed persons came there and out of them three scaled over the wall of the kotha (room) and came inside while the two other persons remained standing at the main gate. Out of the three who had come inside. Piara Singh accused was armed with a double barrel gun, Sarabjit Singh was armed with a service rifle and Gurdev Singh (now declared a proclaimed offender) armed with a selfloading rifle entered the courtyard whereas Jaswinder Singh and Satnam Singh (who has also been declared a proclaimed offender) carrying firearms remained standing at the gate. All the five persons then started firing with their respective weapons and this firing continued for about 1015 minutes. The complainant Swaran Kaur and her son Angrej Singh PW6 managed to save themselves by hiding behind a

heap of fire wood. After the accuse went away, these two witnesses came out into the courtyard and found the dead bodies of 1. Mohinder Singh son of Makhan Singh, 2. Jasbir Singh son of Mohinder Singh, 3. Gurvail Singh son of Bir Singh, 4. Harjit Kaur d/o Jasbir Singh, 5. Bikramjit Singh son of Jagir Singh, 6. Swinder Kaur wife of Buta Singh, 7. Palwinder Kaur d/o Buta Singh, 8. Inder Singh son of Bhag Singh, 9. Sarabjit Kaur d/o Inder Singh, 10. Sarup Singh son of Bhan Singh, 11. Santokh Singh son of Pritam Singh, 12. Bhajan Kaur wife of Gian Singh and 13. Sarabjit Kaur wife of Kabal Singh while eight persons were found to be injured namely, 1. Sardul Singh son of Sarup Singh, 2. Hardip Kaur d/o Inder Singh, 3. Kanwaljit Kaur d/o Jasbir Singh, 4. Baldev Singh son of Jagir Singh PW8, 5. Gurdev Kaur d/o Buta Singh, 6. Harjit Kaur d/o Buta Singh, 7. Kashmir Kaur w/o Lakha Singh and 8. Kashmir Kaur wife of Jagir Singh PW7. Amongst the dead were the husband of Swaran Kaur Mohinder Singh and her son Jasbir Singh and other relatives.

3. After some time a police party headed by Inspector Balbir Singh PW15 arrived at the spot along with the two accused Piara Singh and Sarabjit Singh in their custody and recorded the statement of Swaran Kaur PW5 at 11 p.m. on 21st November, 1991, the formal first information report being registered at the Police Station Chheharta at 11.55 p.m. the same night and the special report being delivered to the Ilqa Magistrate the next day at 1.30 p.m. at Amritsar, 10 Km away from the Police Station. The police had reached the village after ASI Mukhtiar Singh received a wireless message that firing was going on in the village on which he, along with other officials, proceeded to that side and on the way the station house officer, that is Balbir Singh Inspector (PW15) along with more police force had joined him and when the police party was near village Baserke Bhaini they found a three wheeler coming from the side of the village carrying the two accused Piara Singh and Sarabjit Singh. They were accordingly apprehended along with the driver and brought to the place of the occurrence and it was then that the statement of Swaran Kaur PW5 which formed the basis of the first information report was recorded. The motive for the attack apparently was that some time before the occurrence some persons had fired shots at Piara Singh accused and in the course of that occurrence, his servant Landa had been killed and one Buta Singh injured and Piara Singh suspected that Jagir Singh and Sukhdev Singh sons of Swaran Kaur were responsible for that incident and that the present incident was an outcome of an attempt to take revenge. At the end of the investigation, the three accused were challaned for the various offences while the two companions namely Satnam Singh and Gardev Singh were shown as proclaimed offenders.

4. The prosecution in support of its case relied on the evidence of PW1 Ashok Chanana, Assistant Professor of the Medical College, Amritsar, who had conducted the postmortem examination on the dead bodies of Bikramjit Singh, a child of seven years and had found four injuries on his person; that of Inder Singh aged 40 years and had found three injuries on his person; Bhajan Kaur aged 60 years and had found five injuries on her person and Gurvail Singh aged

16 years and had found six injuries on his person. The doctor also opined that the injuries had been caused by rifle fire and that some were the wounds of entry and others of exit. The prosecution also produced in evidence PW2 Dr. Gurmanjit Rai, Lecturer, Forensic Medicine, Medical College, Amritsar, who had conducted the postmortem examination on the dead bodies of Harjit Kaur, Palwinder Kaur aged 15 years, Sarup Singh aged 30/32 years, Gural Singh and Sher Singh and had found 2,4,8,4 and 6 injuries respectively on their persons, all having been caused by bullets some being the wounds of entry and the others of exit. In addition, the prosecution also produced in evidence PW3 Dr. Nirmal Dass who had conducted the postmortem on the dead bodies of Mohinder Singh and had found four injuries on his person, Swinder Kaur aged 35 years with four injuries on her person; Sukhdev Singh aged 18/19 years with four injuries on his person; Sarabjit Kaur aged 15 years with two injuries on her person and opined that the same could have been caused by firing from a rifle. The prosecution also relied on the evidence of PW4 Dr. R.K. Gorla, Assistant Professor, Forensic Medicine, Medical College, Amritsar who had conducted the postmortem examination on the dead body of Sarabjit Kaur wife of Kabul Singh aged 30 years and had found two injuries on her person; on the dead body of Inder Singh and had found two injuries on his person; Santokh Singh aged 22/23 years with eight injuries on his person; and Jasbir Singh with four injuries on his person. This doctor also deposed that all the injuries had been caused by rifle shots. Dr. Amrik Singh Randhawa was produced as PW 14 who deposed to the injuries suffered by Baldev Singh son of Ajit Singh and stated that he had admitted him to the hospital in the Surgical Ward on 21st November, 1991, with gun shot wounds. The prosecution also placed reliance on the evidence of Swaran Kaur PW5 who deposed in the manner as already indicated above; Angrej Singh PW6 whose marriage had been arranged for 22nd November, 1991 who corroborated the evidence given by his mother; Kashmir Kaur PW7 daughterinlaw of Swaran Kaur and the wife of her son Jagir Singh also an injured witness; PW8 Baldev Singh son of Jagir Singh also an injured witness; PW9 Sarabjit Singh who deposed to the killing of his father Gural Singh and brother Sukhdev Singh by the accused in his house at 9.15 p.m. on 21st November, 1991 some distance away from Swaran Kaur's house after the earlier incident; ASI Ashok Kumar appeared as PW12 and he deposed that on 21st November, 1991 he had been posted at Police Station, Chheharta and he was in the police party of Inspector Balbir Singh when the Inspector had received some wireless message about the firing in village Baserke Bhaini on which they had gone in that direction and apprehended two of the accused along the way. This witness further deposed that he had taken 13 of the dead bodies for the purpose of postmortem examination and it was on 27th November, 1991 that he along with ASI Swinder Singh had arrested Jaswinder Singh accused from his house and that on a disclosure statement made by him, a rifle and some ammunition had been recovered. ASI Sawinder Singh was produced as PW13 and he corroborated the version given by the earlier witness and narrated the sequence of events leading to the arrest of Piara Singh and Sarabjit Singh accused. Inspector Balbir Singh was produced as PW15 and he

corroborated the version given earlier and further stated that at the time of his apprehension, Piara Singh accused was carrying a double barrel gun Exhibit P2 whereas Sarabjit Singh accused was carrying a .303 rifle Exhibit P.15 and that these two weapons had been taken into possession by the police party. This witness further stated that from the place of incident he had recovered nine fired cartridge cases of a .303 rifle, six of a selfloading rifle and four of a .12 bore gun and these too had been taken into possession. In cross-examination, this witness further deposed that the second name of Sarabjit Singh accused was, in fact, Satnam Singh and that he was the son of Hazara Singh but he had been identified as the son of Piara Singh accused as he had been adopted by him. The prosecution also produced ASI Mukhtiar Singh as PW16 and this witness also deposed to the manner of arrest of Piara Singh and Sarabjit Singh accused and also stated that the latter was the adopted son of Piara Singh and was also known as Satnam Singh. Some other witnesses were produced but as their evidence was of a formal nature it does not require elaboration.

5. The prosecution case was then put to the accused and their statements under Section 313 of the Code of Criminal Procedure were recorded and they made a denial simpliciter. They, however, produced two defence witnesses namely, DW1 Harjinder Singh, A.M.H.C. of Police Station Chheharta who was asked to bring the Rojnamcha of November 1991 but he stated that the same had been destroyed and DW2 Sub Inspector Randhir Singh who stated that he had recorded the statement of Kashmir Kaur Exhibit DG and was forced to concede that her supplementary statement Ex.DH had been recorded on 18th October, 1993.

6. On a consideration of the evidence the trial court came to the conclusion that Piara Singh and his family had a strong motive to commit the murders in question as there was a marriage in the family, the fixation of the lights was probable and the accused could be properly identified in that light; that the manner of arrest of the two accused Piara Singh and Sarabjit Singh, already narrated above, soon after the occurrence was proved on record; that though Avtar Singh son of Joginder Singh who was stated to be the driver of the threewheeler would have been a good witness but it was not necessary that this witness should have been produced by the prosecution; that though the name of Satnam Singh son of Piara Singh had been mentioned in the police proceedings Exhibit PW5/B (and that Satnam Singh aforesaid had been declared a proclaimed offender in the present case along with Gurdev Singh his brother) yet that would not alter the position as in the endorsement aforesaid the name had been inadvertently mentioned as Satnam Singh whereas in her statement Ex.PW5/A which formed the basis of the first information report Swaran Kaur PW5 had clearly stated that Sarabjit Singh was one of the accused. The court also found that the first information report and the special report had not been delayed inordinately and the fact that the eyewitnesses had refused to join the identification parade could not be taken against them as they were scared as Satnam Singh and Gurdev Singh who had also been involved in these killings

were at large; that the two applications said to have been moved by Swaran Kaur and Sarabjit Singh PWs for getting compensation from the Government on account of their relatives having been killed by terrorists could not be taken against them as the authenticity and authorship of these documents was in doubt; that minor discrepancies in the statements of the witnesses were bound to occur in the light of the enormity of the incident and the horror that they had witnessed; that though as per the medical evidence the shots allegedly fired by Piara Singh accused from his .12 bore double barrel gun had apparently not hit anybody as the injuries on the persons of the deceased and the injured were from rifle shots yet the fact that some empties of .12 bore gun had been recovered from the spot indicated that shots from such a weapon had in fact been fired but as the report from the Forensic Science Laboratory with regard to the matching of the empty cartridges with the weapons recovered had not been produced on record, the necessary inference was that the same had been withheld as it was not in favour of the prosecution, but in the light of the fact that the incident had taken place in the residential house of Mohinder Singh deceased and his wife Swaran Kaur PW5 and that there was cogent eyewitness evidence, this fact by itself would not have any bearing on the outcome of the case. The court also observed that merely because all the injuries had not been examined as witnesses was a matter which would not come in the way of the prosecution. The court nevertheless found that there was no evidence to connect the accused with the murders of Inder Singh and Sher Singh as the two witnesses namely Manjit Singh and Amrik Kaur whose statements had been recorded during the course of the investigation in connection with these murders had not been produced in evidence. The court nevertheless accepted the statement of Sarabjit Singh PW9 to hold that the case with regard to the killings of Gurpal Singh and Sukhdev Singh stood proved. The court further held that the involvement of Jaswinder Singh was somewhat suspect as he had no connection with Piara Singh's family and in fact belonged to a different village and that in addition his name did not figure in the first statement of Swaran Kaur nor in the inquest report and that his name came to be mentioned for the first time in the statement of Kashmir Kaur which had been recorded on 24th November, 1991 wherein she had described him as Jassa and not as Jaswinder Singh and that the manner in which he had been arrested and the recovery made at his instance was also suspect and having held as above, acquitted Jaswinder Singh of all the charges by giving him the benefit of doubt and convicted Piara Singh and Sarabjit Singh for having committed the murders of 15 persons and having caused injuries to eight others in addition to various other offences and having held as above, sentenced them to death on 15 counts and to various terms of imprisonment for the lesser offences. Hence this murder reference forwarded by the Sessions Judge as provided by Section 366 of the Code of Criminal Procedure and the criminal appeal at the instance of the accused.

7. Before we embark upon a discussion on the points raised by Mr. R.S. Ghai, the learned Senior Advocate appearing in support of the appeal, it has to be noticed

that the enormity of the crime and the manner of its execution was blood curdling in its extreme. In such a situation, the judicial approach can often get clouded. We have nevertheless attempted to examine the matter in its correct perspective without being influenced by the number of deaths that have occurred. It is equally true that in a situation where the witnesses (who happened to be very close relatives of the deceased) had seen the horrendous way in which their relatives had been killed were likely to let their imaginations wander and to run wild and to introduce certain items in evidence which perhaps would not fit in with the facts of the case, when examined in the impersonal atmosphere of a court room. It is equally true that the investigating agency would also have been overwhelmed by the sheer weight of the investigation involving so many dead and injured and in the event if some loose ends were left untied it was but natural in the circumstances. It is in the light of the above observations that we now proceed to examine the arguments of Mr. Ghai.

8. It has been contended by Mr. Ghai that there was an inordinate delay in the lodging of the first information report and this factor by itself cast a doubt on the prosecution case. Giving the facts again Mr. Ghai has argued that the incident had taken place on 21st November, 1991 at about 8.55 p.m. in village Basserke Bhaini, 5 Km away from the Police Station Chheharta, the FIR purported to have been lodged at 11.55 p.m. on the same day after the statement of Swaran Kaur PW5 had been recorded in the village at 11 p.m. and the special report delivered the next day at 1.30 p.m. at Amritsar, at a distance of 10 Km from the Police Station Chheharta by Constable Sewa Singh PW11. He has urged that the above facts read along with the evidence of PW1 Dr. Ashok Chanana, PW2 Dr. Gurmanjit Singh Rai, PW3 Dr. Nirmal Dass and PW4 Dr. R.K. Gorla which was unanimous on the issue that the dead bodies had reached the mortuary at 3.45 p.m. on 22nd November, 1991 clearly spelt out that the FIR had been recorded much later and then antedated.

9. We have considered the argument of the learned counsel and find that it lacks merit. It will be seen that the matter in hand, as already mentioned above, was not a case of a usual murder of one or two but one with 17 deaths and eight injured. The argument of the learned counsel would have to be examined in two ways first it is to be noted that as per prosecution the first information report had been recorded within three hours at Police Station Chheharta and secondly assuming for a moment that there was some delay in the delivery of the special report to the Ilaqa Magistrate the same would be fully justified in the light of the sheer enormity of the crime. The anxiety of the investigating agency would, therefore, have been to complete the investigation at the spot, to prepare the inquest reports and to despatch the dead bodies for their postmortem examinations and as so many victims were involved, it was but natural that some time would be taken in this exercise. It is also significant that Constable Sewa Singh PW11 who had delivered the special report filed his affidavit Ex.PW/11 in which he deposed that Moharrar Head Constable Shiv Nath had given the copy of the special report to him on 21st November, 1991, that is, within a few minutes

of the same having been completed and that the same had been delivered to the concerned officers at 1.30 p.m. on 22nd November, 1991. It is significant that the defence did not even cross-examine this witness on this point. We are, therefore, of the opinion that there was no undue delay in the lodging of the first information report nor in the delivery of the special report.

10. Mr. Ghai has then argued that as Swaran Kaur PW5 and Angrej Singh PW6 had in their statements claimed that they had witnessed the entire occurrence from a distance of 34 feet from the assailants but they had remained unscathed despite a brutal attack on their family members, their presence at the spot was ruled out. This argument would perhaps have appealed to us as it is true that in their statements in court they had stated that they had seen the incident from that distance, but a look at the site plan Ex.PT/4 prepared to a scale of 1" = 17" by PW18 Rishi Ram Draftsman on the directions of Swaran Kaur PW5 and the contemporaneous rough site plan prepared by Balbir Singh Sub Inspector on 22nd November, 1991 does show that these two witnesses had seen the incident from a distance of about 4050 feet and as they had concealed themselves behind a heap of firewood (which was also shown in the site plan) they had managed to escape the carnage. We are of the opinion that the ocular version given by the witnesses after a lapse of about two years and the fact that they were not really conscious of the distance involved on account of the horror around them, has to be ignored and the distances given in the site plan accepted as correct.

11. Mr. Ghai on a corollary to this argument has then stated that if the distance was held to be more than 24 feet it would have been difficult to accept that in the darkness the accused could have been properly identified. This argument again is without force for the reason that the witnesses as also the accused belonged to the same village and as the occasion was of the marriage of Angrej Singh PW6 and the fact that a large number of guests had already taken their meals a short while earlier, clearly proved the fact that lights had been affixed by which the accused could be identified.

12. We have also considered the truthfulness of the prosecution story as given by Swaran Kaur PW5, her son Angrej Singh PW6, her daughter-in-law Kashmir Kaur PW7 and a close relative Balbir Singh PW8 the last two being injured by rifle shots, as borne out by the surgical notes Exhibits PE and PF. We have gone through the evidence of these witnesses and find that no real fault can be found in it. It is to be noted, and it deserves reiteration, that very close relatives of these witnesses had been brutally done to death and if there were some embellishments in their statements recorded almost four years after the incident (though no such substantial embellishment has been pointed out) that latitude was certainly due to them. The evidence of Sarabjit Singh PW9 is also significant with regard to the murder of Gurpal Singh and Sukhdev Singh. This witness too had named the assailants, and no evidence has come on record to show any animosity that he might have had towards them.

13. It has also been contended by Mr. Ghai that the best witness to the entire

incident would have been Avtar Singh, the driver of the threewheeler, from which Piara Singh and Sarabjit Singh accused had been arrested soon after the incident but as this person had not been produced as a prosecution witness, the prosecution story was unbelievable. It is true that in the endorsement, Exhibit PW5/B, Avtar Singh has been mentioned as the driver of the threewheeler but it cannot be ignored that Avtar Singh (who was apparently unconnected with the family of either of the victims or the complainant (he being a Kumhar (potter) they being Jats) would be the last person to come in support of the prosecution seeing what could possibly be in store for him in case he did so.

14. Mr. Ghai has then urged that the identity of Sarabjit Singh accused was suspect as in the police proceedings recorded after the registration of the FIR and identified as PW5/B, the name of Satnam Singh son of Piara Singh had been mentioned as one of the accused. We are of the opinion that this appears to be in a slipup recorded by the police officer weighed down with the enormity of the crime. It is to be noticed that in the FIR Exhibit PW5/C the name of Sarabjit Singh son of Piara Singh has been mentioned. Moreover, the investigating officer Balbir Singh PW15 reiterated in court that he had arrested Sarabjit Singh along with Piara Singh and brought them to the place of the incident soon after the incident. The prosecution also produced evidence to show that Sarabjit Singh was in fact the adopted son of Piara Singh whereas Satnam Singh was yet another son and he too had been involved in the case but as he had absconded, he had been declared a proclaimed offender. Once we accept that Sarabjit Singh and Piara Singh had been apprehended soon after the incident and brought to its venue in police custody, and the FIR recorded promptly thereafter in which Sarabjit Singh son of Piara Singh was named, no dispute with regard to his identity can possibly arise.

15. Mr. Ghai has in this connection then raised this argument that as the accused Sarabjit Singh had moved the court for arranging an identification parade and though orders to that effect had been made by the court, but could not be complied with as noted in the Court's order dated 21st December, 1992, indicating that the witnesses had refused to participate in the identification parade due to the fear of the accused, the identity of this accused was in doubt. The trial court has found that there was adequate justification for this refusal as the incident had taken place on 21st November, 1991 and the two proclaimed offenders Satnam Singh and Gurdev Singh sons of Piara Singh accused were still at large and the witnesses were unwilling to take any chances.

16. Mr. Ghai has then argued that though a large number of shots had been fired and many of them had penetrated the bodies of the victims and gone through and through yet as no bullet holes either in the Kanaths or in the walls had been noted by the investigating officer indicated that the investigation was tardy and that the incident had not taken place in the manner suggested.

17. We have considered the argument of the learned counsel and find that it lacks merit. The situs of the incident has not been disputed at any stage nor any

suggestion to that effect given to the witnesses. The fact that the victims had suffered gun shot injuries is not denied. In this view of the matter the mere fact that no bullet holes were noted in the kanath or the walls of the courtyard and factors which can hardly influence the outcome of this case.

18. Mr. Ghai has finally argued that as per the evidence on record that as all the injuries had been caused by rifle shots and though some empty cartridges of .12 bore had also been recovered from the spot, they had not been matched with the shotgun recovered from Piara Singh, a serious doubt was cast on the prosecution case. He has further urged that though the weapon and the empty cartridges had been sent to the Forensic Science Laboratory for the purpose of comparison, yet the prosecution had not brought the report on record; an inference against the prosecution was to be drawn and in that eventuality it could not be said that the weapons recovered from the accused had been used in the crime. It is true that the report of the Forensic Science Laboratory has been produced on record and an inference against the prosecution has, therefore, to be taken but in the light of the other evidence on record, particularly the eyewitness account, this factor cannot dislodge the prosecution case. It bears repetition that the FIR was promptly lodged after the two appellants had been arrested and taken to the place of incident where they had been identified by PW5 Swaran Kaur in her statement which formed the basis of the first information report.

19. As the murder reference is also before us, we have gone through the question of sentence as well. The accused, in this case, had chosen a particularly auspicious day, the day fixed for the marriage of Angrej Singh PW6, to wreak their vengeance on his family. In this exercise they did not care to see that amongst the victims were many women and children, and many of them did not have deep connections with that family. The manner in which the accused surrounded the area shutting out all possible exits and then shooting down their victims like clay pigeons, betrays the fact that the crime had coolly thought out and then perpetrated. We are of the opinion that the case certainly falls in the category of the "rarest of rare cases". We, therefore, find that no interference in the judgment of the trial court is called for. We, therefore, while dismissing the appeal accept the murder reference and confirm the death sentence.