
(1978) 08 SC CK 0033

In the Supreme Court Of India

Case No : Criminal Appeal No's. 483 and 484 of 1977

State of Haryana

APPELLANT

Vs

Harpal Singh and Others

RESPONDENT

Date of Decision : 22-08-1978

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 109, 151, 302, 307

Citation : AIR 1978 SC 1530 : (1978) CriLJ 1603 : (1978) 4 SCC 465 : (1979) SCC(Cri) 86

Hon'ble Judges : R. S. Sarkaria, J; P. S. Kailasam, J

Bench : Division Bench

Advocate : H.S. Mareah and R.N. Sachthey, for the Appellant; B.S. Randhawa and H.S. Marwah, Ram Jehmalani and M.C. Bhandare, K.K. Mohan, for the Respondent

Final Decision : Allowed

Judgement

P.S. Kailasam, J.—These appeals are preferred by the State of Haryana against the judgment of the High Court of Punjab and Haryana allowing the appeals preferred by the respondents against the conviction and sentence imposed on them by the Additional Sessions Judge, Hissar. Harpal Singh who is the respondent in Criminal Appeal No. 483 of 1977 was the third accused before the Sessions Court and Ram Swarup and Bahadur, who are the respondents in Criminal Appeal No. 484 of 1977 were the first and the second accused in the trial court. Ram Swarup and Bahadur were charged for offences u/s 302 read with Sections 34 and 449, I.P.C. Ram Swarup was also charged u/s 27 of the Arms Act and Bahadur u/s 25 and Section 27 of the Indian Arms Act. Harpal was charged u/s 302 r/w Section 109, I.P.C. and Section 307 read with Section 109, I.P.C. The Sessions Court convicted Ram Swarup and Bahadur u/s 302 read with Section 34 and sentenced them to death. They were also convicted u/s 307 read with Section 109, I.P.C. and sentenced to seven years rigorous imprisonment and u/s 449, I.P.C. and sentenced to five years rigorous imprisonment. Ram Swarup was further convicted u/s 27 of the Arms Act and sentenced to three years

rigorous imprisonment while Bahadur was found guilty u/s 25 of the Arms Act and sentenced to three months rigorous imprisonment. Harpal was found guilty u/s 302 read with Section 109 and sentenced to death. He was also convicted u/s 307 read with Section 109, I.P.C. and sentenced to seven years rigorous imprisonment.

2. The case for the prosecution may be briefly stated. The motive for the crime as stated by Dalip Kaur, P.W. 1 is that in the village of Sainpal 16 killas of land was allotted to her husband and he further purchased 24 killas of land. Harpal cultivated her land for the last 10 or 12 years. As Harpal did not give Dalip Kaur her share of the produce from her land about 1 1/2 years ago she told Harpal that she would look after the cultivation of her land and will do self-cultivation. On hearing this Harpal got annoyed. Dalip Kaur was living in separate portion in Harpal's house.

3. A day before the occurrence Harpal went to Hissar. On that day at about 8 a.m. Harpal was present in Dalip Kaur's Baithak with Ram Swarup and Bahadur. Harpal told them that he was leaving for Hissar and that both of them should do the work which he had told them to do. Dalip Kaur heard this talk when she came to look after the cattle which were nearby.

4. The evidence regarding the occurrence was given by Dalip Kaur. At about 5.30 p.m. on 17th July, 1974. Tej Kaur wife of Harpal Singh and Dalip Kaur were talking in the common courtyard of their house along with their mother Sant Kaur and a relation Gurnam Kaur alias Melo. At that time Ram Swarup armed with a double barrel breach loading gun and Bahadur with a country made pistol came to the spot. Immediately on their reaching the scene they fired with their respective weapons. Tej Kaur received two shots in her chest while Dalip Kaur received some pellet injuries on her left arm. Dalip Kaur stated in her evidence that the shot fired by Ram Swarup hit Tej Kaur and some pellets hit her also. The shot fired by Bahadur from his pistol struck Tej Kaur in her stomach. Ram Swarup again aimed his gun at her mother Sant Kaur but the shot fired by Mm missed its mark and struck the wall.

5. On hearing the alarm raised, some neighbours came and after seeing the condition of Dalip Kaur and Tej Kaur went away. After about 2 1/2 hours one Sodagar and Resham Singh came in a jeep and took Dalip Kaur, her sister Tej Kaur and their mother Sant Kaur to Sirsa hospital. At the hospital the doctor saw the injured at 11 a.m. and attended to their injuries. Soon after the Sub-Inspector Bhagwan Dass, P.W. 9, came and recorded in the hospital the dying declaration of Tej Kaur in the presence of the doctor who certified that Tej Kaur was in a fit condition to give a statement. Within 45 minutes of the recording of dying declaration Tej Kaur died. A statement was recorded from Dalip Kaur which is treated as the F.I. R.

6. P.W. 12, the Assistant Sub-Inspector conducted the inquest. He inspected the spot and took possession of three empty cartridges, six wads and scrapped

bloodstained earth. He also took possession of the dress of Tej Kaur. He prepared a plan of the site.

7. P.W. 3, Dr. Bhatia examined Tej Kaur at 11 p.m. on 17th July and gave a certificate Ex. (sic) D, Subsequently he examined Dalip Kaur at 11.45 p.m. and gave a certificate, Ex. P.E. After the death of Tej Kaur Dr. Bhatia conducted the post-mortem examination on 18th July, 1975. The doctor was of the opinion that the injuries were gun-shot injuries and were sufficient in the ordinary course of nature to cause death.

8. The case for the prosecution consists mainly of the testimony of the injured eye-witness Dalip Kaur and the dying declaration of Tej Kaur taken at the hospital. The evidence of Dalip Kaur and the dying declaration mention Bahadur and Ram Swarup as the assailants. The prosecution also relied on the evidence of the ballistic expert to prove that the gun which Ram Swarup had was recently fired and that the empty cartridges recovered from, the scene were also fired from the gun.

9. In order to prove that it was at the instigation of Harpal that the two assailants Ram Swarup and Bahadur, the servants of Harpal, committed the crime, the prosecution relied not only on the evidence of Dalip Kaur about the quarrel between her and Harpal but also on the instigation of the crime by Harpal to Ram Swarup and Bahadur, spoken to by P.W. 5. The trial court accepted the case for the prosecution and found all the accused guilty of the offences with which they were charged and sentenced them to death and imposed various sentences. On appeal by the accused the High Court came to a different conclusion and acquitted them. Apart from other evidence which will be referred to in due course, the main evidence relied on by the prosecution is that given by the injured eye-witness Dalip Kaur and the dying declaration given by Tej Kaur in the hospital. The trial court accepted the testimony of Dalip Kaur and the dying declaration. The High Court rejected the evidence of Dalip Kaur and the dying declaration as unworthy of credit.

10. The occurrence, according to the prosecution, took place at about 5 p.m. on 17th July, 1954. According to P.W. 1, Dalip Kaur, after 2 1/2 hours, Sodagar and Resham Singh brought a jeep and took Dalip Kaur and Tej Kaur and Sant Kaur to Sirsa hospital. The doctor P.W. 3 has stated that he examined Tej Kaur at 11 p.m. and Dalip Kaur at 11.45 p.m. Though it is not clear from the record it was stated at the Bar that the distance between the scene of occurrence and Sirsa hospital is about 40 kms. The Medical Officer sent intimation to the police at 3.45 a.m. on 18th July that Tej Kaur had been admitted in the hospital with the fire arm injuries and that the Police Officer may arrange for a dying declaration to be taken as early as possible. At about 3 a.m. blood transfusion was advised to the patient and at 4 a.m. the doctor found the pulse not palpable and blood pressure not recordable. The dying declaration was recorded by the police officer at about 5 a.m. The first information report was recorded from P. W, 1 Dalip Kaur from 5-15 a.m. to 5-45 a.m. In the First Information Report Ex. P. A., Dalip Kaur

mentioned that her husband had purchased land measuring about 24 killas about 4 years ago. The land measuring 16 killas had been allotted to them and land measuring 16 killas had been under the cultivation of Harpal for the last 12 or 13 years. After the death of her husband Dalip Kaur was cultivating the land measuring 24 killas on share basis but a year before the land measuring 24 killas was cultivated by her brother-in-law Harpal and as her brother-in-law had not given her share of produce she told Harpal that she herself will cultivate the entire land measuring 40 killas and Harpal was annoyed at her statement.

11. After referring to the motive as aforesaid Dalip Kaur P.W. 1 described the occurrence in her evidence as follows. "Yesterday at, about 5 p.m. Tej Kaur deceased was talking to me in front of my kitchen. My mother Sant Kaur and my niece Melo were sitting in the courtyard i.e. verandah in front of my kitchen. There Bahadur and Ram Swarup accused came. Ram Swarup accused was armed with a double barrel gun and Bahadur accused was armed with a country made pistol. My sister Tej Kaur at that time was standing to my left and Ram Swarup accused fired from the left of my sister and one shot injured my sister and I also received pellet injuries on the upper part of my left arm. Immediately Bahadur accused fired a shot from a pistol at my sister which struck her on the chest from the front. Ram Swarup then aimed his gun on to my mother and he fired a shot at her. My mother however was not injured and the pellets struck the wall. On receipt of the injuries, my sister fell on the ground. In the meantime both the accused again loaded their weapons but as we had raised an alarm, they ran away from the place of occurrence with their respective weapons." Dalip Kaur also stated that Bahadur accused was in the employment of Harpal is a labourer for the last 10-12 years and Ram Swarup had been in the employment of Harpal for the past one year before the occurrence. Both these labourers used to live in the house of Harpal accused. Dalip Kaur also expressed the suspicion that in order to grab her land her brother-in-law had got the shots fired by his sark servants Bahadur and Ram Swarup in order to kill her and that the shots hit her on her left arm and Tej Kaur on her breast and that Sodagar Singh and Resham Singh removed them from the village to the hospital where they were medically examined.

12. The evidence by P.W. 1 is in conformity with the First Information Report in essential particulars. As regards the shooting incident Dalip Kaur deposed that Ram Swarup was armed with a double barrel gun and Bahadur with a country made pistol, and that her sister, Tej Kaur, was standing to the left. Ram Swarup fired from the left of Tej Kaur and one shot injured her. Dalip Kaur also received pellet injuries on her left arm. Immediately thereafter Bahadur accused fired a shot from a pistol at Tej Kaur which struck her on the chest from the front. The High Court rejected the testimony of the eye-witness Dalip Kaur on the ground that the statement of the witness regarding the area cultivated by Harpal, is not consistent and she had a confused state of mind. In the F.I.R. earlier she stated that land measuring 16 killas had been under cultivation of Harpal for about 12 or 13 years and that 24 killas purchased by her husband 4 years ago was

cultivated by her on share basis and a year prior to the occurrences 24 killas was cultivated by her brother-in-law Harpal and he did not give the share of the produce and therefore she told Harpal that she will do self-cultivation. In the cross-examination the witness explained that Harpal did not give her share with respect to 16 killas of land and that 24 killas of land had been cultivated in the previous year by Harpal. The High Court came to the conclusion that her statement is falsified by a copy of the Jamabandi according to which Dalip Kaur is shown to be in self-cultivation of the land in the year 1971-72. The High Court has not specified as to which area of land 16 killas or 24 killas the Jamabandi entry refers. The trial court has not noted any discrepancy in the evidence given by Dalip Kaur regarding the extent under cultivation by her and Harpal and we find ourselves unable to agree with the view taken by the High Court that Dalip Kaur exhibited a confused mind.

13. Regarding the occurrence the High Court was of the view that Dalip Kaur was a prevaricating as in the first information report, she alleged that Ram Swarup and Bahadur both fired shots which hit her and her sister Tej Kaur while in her evidence she stated that Ram Swarup fired a shot from his gun which injured Tej Kaur and caused pellet injuries to her left arm and later Bahadur fired a shot with his pistol on Tej Kaur. It is no doubt true that in the First Information Report she mentioned that both the accused fired with their respective weapons and did not state as in the evidence that Ram Swarup fired with his gun and then Bahadur with his pistol. This omission of the detail in the First Information Report is, in our opinion, of no consequence. In her evidence she has given details as to how the incident occurred.

14. The third ground on which the High Court rejected the testimony of Dalip Kaur was that her testimony is contrary to the statement made by her in Ex. D.H. Ex. D.H. is said to be a statement made by Dalip Kaur but it appears she declined to affix her thumb impression to the statement. This statement cannot be taken as a prior statement which could be used for contradicting the testimony of Dalip Kaur. The High Court misled itself in holding that the testimony of Dalip Kaur is contrary to Ex. D.H.

15. Mr. Mookerjee, the learned Counsel for the respondents, did not place much reliance on the ground on which the High Court rejected the testimony of Dalip Kaur but submitted that the evidence of Dalip Kaur cannot be safely acted upon on the ground that the record in the case indicated that the occurrence took place much later when it was dark and that the witness would not have identified the assailants. In support of this contention the learned Counsel relied on the fact that the injured did not present themselves before any authority before 11 p.m. If the occurrence was at 5 p.m. as was spoken by Dalip Kaur the inordinate delay has not been explained and the delay would indicate that the occurrence took place very much later after it was dark. The evidence of Dalip Kaur is that about 2 1/2 hours after the occurrence they were taken in a jeep. The witness had sustained gun shot injuries and Tej Kaur was critically wounded. There is no

evidence as to the state of the road between the village and Sirsa and one can reasonably conclude that considerable time would have been taken in covering the distance between the village and Sirsa. The occurrence was in the middle of July and there would have been day-light till about 7.30 p.m. We are not persuaded to accept the view that the incident was during night time and P.W. 1 did not know the assailants.

Mr. Mookerjee the learned Counsel, also pointed out that the evidence of Dalip Kaur that throughout the journey she did not mention anything about the occurrence to the two persons who took them to the hospital seems to be unnatural. We do not think that this circumstance would throw any doubt on the testimony of Dalip Kaur for it is probable that the two persons knew about the incident. No question was put to Dalip Kaur as to why she did not mention about the incident to the two persons in the jeep. We are satisfied that the incident took place in the courtyard between the portion in which Harpal and Dalip Kaur lived. It is highly probable that at dusk Dalip Kaur, Tej Kaur and her mother were in the courtyard. We agree with the conclusion arrived at by the trial court that the incident took place during day-light and Dalip Kaur and Tej Kaur had no difficulty in identifying the assailants. There is no motive at all to suggest as to why Dalip Kaur should falsely implicate the two accused Ram Swarup and Bahadur.

16. The other circumstance which conclusively establishes the identity of Ram Swarup and Bahadur is the dying declaration recorded by the police officer in the presence of the doctor. According to P.W. 3 Dr. S. P. Singh, Ex. P. L, the dying declaration was made by Tej Kaur in his presence and he affixed his signature. Explaining the condition of Tej Kaur during the night the doctor stated that when Tej Kaur was brought to the hospital she was not in a critical condition. At 3 a.m. the doctor advised blood transfusion. At 4 a.m. it was found that the pulse was not palpable. Blood pressure was not recordable and respiration was gasping. The doctor was definite that at that time Tej Kaur, was talking coherently. When the police came for recording the dying declaration he was attending to Dalip Kaur. The doctor further explained that Tej Kaur was in shock, as she was in a gasping condition and her general condition was not good. She was not able to speak continuously. She was narrating sentences by pauses in small words and a few questions were asked by the Police officer in the end, which she replied in 'yes' or 'no'. He further stated that the police recorded her replies in the form in which she was asked and soon after her statement was over, her thumb impression was affixed on Ex. P. L. the dying declaration. The doctor in Ex P. J, endorsed that the patient was fit for recording a statement at 4.55 a.m. and again at 5 a.m. The evidence no doubt discloses that Tej Kaur was not in sound condition but we have no hesitation in accepting the testimony of the doctor that she made the statement and it was truly recorded by the police. In her statement she has clearly stated that it was Ram Swarup who fired a shot at her with his licensed gun and Bahadur fired a shot at her with his unlicensed pistol in order to kill her. Mr. Mookerjee the learned Counsel, pointed out that the

description was a tutored one. Though the description of the gun as licensed and pistol as unlicensed seems to be unusual we are not on this account prepared to hold that Tej Kaur was tutored. Tej Kaur was undoubtedly injured during day time by the assailants who fired from a very short distance and there could have been no difficulty in identifying the assailants. We see no reason at all as to why Tej Kaur should falsely implicate persons who were not at the scene and exculpate the real assailants. The injuries found also amply corroborate her testimony that a 12 bore gun and a pistol has been used.

17. So far as Ram Swanup and Bahadur are concerned we find that the testimony of, eye-witness Dalip Kaur and dying declaration at Taj Kaur prove beyond all reasonable doubt that they were the persons who used fire arms and caused the injuries resulting in death of Tej Kaur and injuries to eye-witness Dalip Kaur.

18. The High Court was of the view that a person in the state of health as depicted in the Bed Head Ticket could not have possibly made a coherent and detailed statement as contained in Ex. P. L. We are unable to share the view of the High Court. The doctor was fully aware of the condition and certified that the patient was in a fit condition to give a dying declaration and has deposed that she was conscious and was in a fit condition to give the dying declaration. The fact that the pulse was not palpable and blood pressure un-recordable and the patient was in a gasping condition would not necessarily show that the patient's condition was such that no dying declaration could be recorded. We see no reason for rejecting the testimony of the doctor.

19. The prosecution has also relied on the evidence of the ballistic expert who found that the empty cartridges were discharged from the gun that was recovered. The learned Counsel appearing for the third accused submitted that the empty cartridges were received at the police station after the arrest of the accused and therefore reliance cannot be placed on the recovery of the empty cartridges as there was extreme delay in the production of the empty cartridges before the authorities as the accused were arrested before that time. We do not place any reliance on this recovery.

20. So far as the complicity of accused Ram Swarup and Bahadur is concerned we have no difficulty in agreeing with the conclusion of the trial court that the prosecution has proved its case beyond all reasonable doubt. We set aside the order of acquittal of the two accused by the High Court and restore the convictions imposed upon them by the trial court.

21. Regarding Harpal Singh the evidence is purely circumstantial and the question is whether a charge of abetment made against him has been proved, beyond reasonable doubt. We have already referred to the statement made by Dalip Kaur in the First Information Report and her evidence regarding the misunderstanding between her and Harpal due to Harpal's not giving her share of the produce from her land and her asking for possession of the land for her self-

cultivation. As already stated we do not find any discrepancy in her evidence to justify rejection of her evidence regarding the motive. Soon after the death of her husband Dalip Kaur came to live with her sister's husband Harpal and the evidence of Dalip Kaur that she entrusted the cultivation to Harpal is acceptable. There is also material on record that Harpal was trying to help himself with the property of his sister-in-law. Dalip Kaur adopted a baby son of Harpal obviously at the instigation of Harpal to retain the property with his son and not allowing Dalip Kaur to give it to others. The evidence also indicates that Ram Swarup and Bahadur were attending to the affairs of Harpal though the evidence is not clear that they were employed as servants of Harpal, The absence of motive for Ram Swarup and Bahadur to commit the crime would also throw a suspicion that Harpal Singh might have instigated the crime. But beyond suspicion - may be strong suspicion, we do not find any evidence on which we can hold that the prosecution has established the charge of abetment against Harpal. The Sessions Court in Paragraph 71 of its judgment has listed four circumstances as proving the case of the prosecution against Harpal. They are:

- (1) The demand for possession of land by Dalip Kaur.
- (2) Harpal's description of Dalip Kaur as his wife, in will Ex. X dated 6th March, 1972.
- (3) No motive or ill-wi of Dalip Kaur has been established for disbelieving her statement that a day prior to the occurrence, she heard Harpal accused telling his co-accused that he was going out to Hissar and that they should finish the work he had told them to do.
- (4) Dalip Kaur stated that Harpal accused met her on the fourth day of her admission in Sirsa hospital and again met her in her village after she had gone back to the village from the hospital and asked her that she should not involve him in the case.

We have already found that the evidence of Dalip Kaur that she demanded possession of the land from Harpal and that Harpal resented such a request has been made out. The second circumstance refers to the description of Dalip Kaur as his wife in a will dated 6th March, 1972, We are not inclined to draw any inference from this document as the circumstances under which Harpal described Dalip Kaur as his wife are not apparent and there is no indication that he made any representation to Dalip Kaur that he would take her as his wife. The third circumstance relied on by the trial court is the evidence of Dalip Kaur that the day prior to the occurrence Harpal went to Hissar and on that day at about 8 a.m, Harpal was present in Dalip Kaur's baithak along with Ram Swarup and Bahadur and Harpal was saying to them that he was leaving for Hissar and that both of them should do the work which he had told them to do. Apart from the direction of Harpal to the two accused not being clear as to its import Dalip Kaur accepted in her cross-examination that she did not mention anything in her statement to the police about the talk Harpal had with the other two accused in

the baithak. As for the first time the witness stated in the court about Harpal's direction to the two accused on the previous day, no reliance can be placed on it. The fourth circumstance relied on is Dalip Kaur's evidence regarding the subsequent conduct of Harpal in asking her not to involve him in the case. This statement does not take the prosecution case any further as such a plea would not indicate that Harpal was guilty. After the occurrence as there was some suspicion regarding him he might have tried to disabuse any false suspicion that may be present in the mind of Dalip Kaur. One other circumstance which we have noted in the record was that Harpal was arrested only on the 5th August but there is no evidence led by the prosecution that Harpal was suspected of the crime and that they were trying to apprehend him and that he was not available. On the other hand the evidence of the Police Officer is that they arrested him for an "offence" u/s 107 and Section 151 I.P.C. The delay in the arrest of Harpal cannot therefore be taken as indicating the guilt of the accused. On a consideration of all the circumstances against Harpal we are satisfied that there is no clinching evidence on which we can hold that the prosecution has proved beyond doubt the case of abetment against Harpal. No doubt, the evidence indicates that Harpal was keen on helping himself to the property of his widowed sister-in-law and that he was annoyed when the unfortunate sister-in-law dared to ask for the possession of her property, the fact that the assailants were associated with Harpal and that they had no motive to commit the crime would also indicate that Harpal would have very much liked to see the end of her sister-in-law taut all these suspicious circumstances do not unerringly lead to an inference of guilt and prove abetment. It is not clear as to why the assailants shot and caused the death of Tej Kaur and spared Dalip Kaur. Taking all circumstances into account though we have a strong suspicion about the conduct of Harpal, there is no case for indubitably holding him guilty of the offence with which he was charged.

22. In the result we allow the appeal by the State of Haryana against the acquittal of Ram Swarup and Bahadur by the High Court and confirm the convictions and sentences as passed by the Sessions Judge except for the offence u/s 302 we reduce the sentence to imprisonment for life. As regards Harpal, the appeal by the State is dismissed and the order of acquittal by the High Court is confirmed, as a matter of abundant caution.