
(1999) 02 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 549-DB of 1995 (Against Order of G. C. Aggarwal, Sessions Judge, Faridkot, D/- 12-9-1995)

Surjit Singh and others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-02-1999

Acts Referred:

Arms Act, 1959 — Section 25

Penal Code, 1860 (IPC) — Section 148, 300, 307, 34

Citation : (2000) CriLJ 774 : (1998) 79 FLR 463 : (2000) 1 RCR(Criminal) 33

Hon'ble Judges : V.K. Bali, J;A.S. Garg, J

Bench : Division Bench

Advocate : R.S. Cheema and M.J.S. Waraich, for the Appellant; S.S. Dhaliwal, Dy. Advocate General, Punjab, for the Respondent

Judgement

V.K. Bali, J.—By this order we propose to decide Criminal Appeal No. 549-DB of 1995 preferred by Surjit Singh, Manjit Singh. Gurdip Singh, Makhtiar Singh, Atma Singh and Bikkar Singh against the order of learned Sessions Judge, Faridkot dated 12th of September, 1995 convicting Surjit Singh and Manjit Singh to undergo R.I. for life u/s 302 of the Indian Penal Code and to pay a fine of Rs. 200/- or in default of payment of fine to further undergo R.I. for two months each; to undergo R.I. for two years u/s 148 of the Indian Penal Code; to undergo R.I. for three years u/s 307 of the Indian Penal Code and to pay a fine of Rs. 200/- and in default thereof to further undergo R.I. for two months each and to undergo R.I. for three years u/s 27 of the Arms Act and a fine of Rs. 200/- and in default thereof to undergo R.I. for two months each; Gurdip Singh, Mukhtiar Singh, Atma Singh and Bikkar Singh have been convicted u/s 147 of the Indian Penal Code and sentenced to undergo R.I. for one year; u/s 302 read with Section 149 of the Indian Penal Code to undergo R.I. for life and to pay a fine of Rs. 200/- or in default thereof to undergo R.I. for two months and u/s 307 read with Section 149 of the Indian Penal Code to undergo R.I. for three years and to pay a fine of Rs. 200/- or in default thereof to further undergo R.I. for two

months each; all the substantive sentences have, however, been ordered to run concurrently, as also Criminal Revision No. 134 of 1995 preferred by Sandip Singh against the same order acquitting Pala Singh of the charges framed against him.

2. Brief facts of the case reveal that murder of Jasbir Singh was reported by Sandip Singh son of the deceased to Inspector Gurmej Singh PW-11 at 7.30 p.m. on 23-10-1993. According to the statement of Sandip Singh, his father Jasbir Singh was done to death by the appellants at 6 p.m. on 23-10-1993 at village Abdul Khurana on the road in the running Mini bus. The F.I.R. mentioned above came to be recorded at 7.30 p.m. on 23-10-1993 and the special report with regard to the incident reached the concerned Magistrate at Gidderbaha on 23-10-1993 at 10.30 p.m. While narrating the events leading to the death of Jasbir Singh the first informant stated that he alongwith his father Jasbir Singh and younger brother Harsharan Singh had come to Malout Mandi for personal work. After getting free at about 5.30 p.m., they reached the Bus stand, near railway crossing for boarding a bus for village Kakhanwali. Sardul Singh son of Hakam Singh of village Kakhanwali and Dial Singh Sarpanch of village Kolianwali met them there. They all then boarded the Mini bus No. PB04-1089 of the Supreme Bus Service, Malout, which plies from Malout to village Kakhanwali. His father Jasbir Singh sat on the second seat behind the driver and Dial Singh and Sardul Singh sat on the seat behind him. His brother Harsharan Singh and lie occupied the scat on their left side. As soon as the bus set out from the bus stand, Surjit Singh son of Gurdip Singh armed with. 12 double barrel gun; Gurdip Singh son of Kartar Singh empty handed, Manjit Singh son of Pal Singh armed with. 12 bore double barrel gun, Atma Singh son of Bahal Singh, Bikkar Singh son of Suraj Singh and Makhtiar Singh son of Kartar Singh, all residents of village Kakhanwali, all empty handed boarded the bus from the rear door. When the bus started and left the bus stop of village Abul Khurana, Surjit Singh and Manjit Singh came near his father Jasbir Singh after making their way through passengers. When the bus covered a distance of 1-1/2 KMs from village Abul Khurana, Atma Singh Bikkar Singh, Mukhtiar Singh and Gurdip Singh all raised a Lalkara exhorting Surjit Singh and Manjit Singh to get ready and not allow Jasbir Singh to go scot free on that day. On hearing this, Surjit Singh fired a shot from his gun which hit his father below the left ear towards the back side. Then Manjit Singh also fired a shot with his gun which hit his father on his back. Gurdip Singh, Mukhtiar Singh, Bikkar Singh and Atma Singh continued raising Lalkara exhorting Surjit Singh and Manjit Singh not to let Jasbir Singh go alive on that day. On hearing the report of fire shots, the driver stopped the bus at once and the passengers, driver and conductor got down from the bus and ran towards the fields. His brother Harsharan Singh and he himself also ran towards the field alongwith the passengers. While they were running, the appellants fired shots at them with their respective weapons with intention to kill them. They saved their lives by hiding in cotton (Narma) crop. When the appellants left the spot, they came near the bus and found that their father had succumbed to fire arm

injuries. The right side window pane of the bus had broken due to fire shot. After leaving his brother Harsharan Singh and Sardul Singh near the dead body of his father, he alongwith Dial Singh was coming to the police station for lodging the report. When Inspector/SHO met them at Petrol Pump Lambi. The cause of grudge stated by Sandip Singh while lodging the F.I.R. was that his father Jasbir Singh had contested panchayat election against Pala Singh father of appellant Manjit Singh. Pala Singh had lost the election and his father was declared elected. Due to this grudge, the appellants having connived with one another, had murdered his father by firing gun shots at him. Pala Singh son of Dara Singh resident of the village had taken part in the conspiracy of killing his father.

3. Death of Jasbir Singh by gun shots was proved by Dr. G. S. Bhullar who appeared as PW-1. He stated that on 24-10-1993 at 6.20 a.m. he conducted post-mortem examination on the dead body of Jasbir Singh and found the following injuries :-

1. Lacerated punctured wound with inverted and abraded margins on the left side of neck 2 cm in diameter. The surrounding skin Was blackened and hairs singed. It was 3 cm below the lobule and 7 cm from the midline, in front of neck. On dissection this wound opened into a lacerated punctured wound with everted margins 7 x 5 cm over the right side of the face, its upper level was at the level of right ala, lower level upto chin, medially upto angle of mouth and laterally 5 cm from the trachea. The mandible was fractured on both sides. The tongue mouth floor and large vessels of left side severely lacerated. Clotted blood was present.

2. Lacerated punctured wound with inverted margins on the back 3 cm in diameter, 1 cm to the right of midline and 10 cm from posterior hair line. On dissection underlying bones and ribs were shattered. The right lung was severely lacerated. Plural cavity was full of blood and blood clots. A piece of cardboard and three pellets were recovered from the wound. All other organs were healthy."

4. In the opinion of the doctor, death was due to shock and haemorrhage due to above-mentioned injuries which were ante-mortem in nature and were sufficient to cause death in the ordinary course of nature. Injuries were due to fire arm. Probable time that elapsed between injuries and death was within few minutes and between death and postmortem within 24 hours.

5. Raj Balwinder Singh PW-2 stated that he alongwith Baldev Singh went to Malout Mandi about a year ago. At about 3 p.m. they started taking tea at tea stall (hotel) at Malout. The appellants were sitting in the hotel and taking tea. Pala Singh told his companions that until Jasbir Singh is killed, they would not be able to live peacefully as every time Jasbir Singh is elected as Sarpanch and did not allow Pala Singh to win the election. The statement of this witness with regard to the conspiracy hatched by the appellants with Pala Singh has been disbelieved. As mentioned above, Pala Singh has been acquitted so there is no need to give the detailed statement made by Raj Balwinder Singh. Sandip Singh,

the first informant who appeared as PW-3 deposed in tune with the F.I.R. lodged by him. He, however, stated that he had told the police that Surjit Singh had fired by bending his body and keeping the barrel of the gun parallel to the floor of the bus. He was confronted with his statement Ex. PD wherein it was not so recorded. He further stated in his cross-examination that he reached Malout on the eventful day at about 2/2.30 p.m. He had gone to the P.C.O. at Malout for making an S.T.D. call for Sirhind to his friend Ramandeep Singh, leaving his father at the shop of Jagga, Deed Writer. The call had not matured. He denied the suggestion that he had not gone to Malout alongwith his father. He further stated that the appellants raised Lalkara simultaneously. Their wording was almost the same. All the four raised Lalkara. He and his brother were at a distance of 2"-3" from Surjit Singh and Manjit Singh appellants. In the bus they did not fire upon him or his brother nor the remaining appellants raised Lalkara regarding him and his brother. There were 30 to 35 passengers in the bus. About 10/11 passengers were standing in the bus including the appellants. About 10/11 persons including them and the appellants were in the bus of village Kakhanwali. He could not give the name of any other passenger. He further stated that his father was President of Akali Party of Muktsar. The Supreme Bus Service did not charge the fare from his father because he helped them in obtaining route permit and that Mini Bus belonged to Supreme Bus Service. So, his father did not purchase the ticket. They also did not purchase the Bracket of the bus. He could not identify the driver and the conductor of the bus. He could not give description of any other passenger. He, however, volunteered and stated that they could be identified if they were brought before him. He further stated that he alongwith Dayal Singh had taken lift in some car and they told about the occurrence to the driver of the said car. He, however, could not give the name or description of the car driver or the number of the car but the driver was a Hindu gentleman. Rameshwar Singh Senior Assistant from D.C. Office who appeared as PW-4 only stated that he had brought the summoned record. Vide entry No. 5163/Faridkot-O, Pala Singh son of Dara Singh of village Kakhanwali was issued a licence for .12 bore gun which was valid upto 18-12-1995. Vide entry No. 1730/DM/Faridkot Surjit Singh of village Kakhanwali was issued a licence for .12 bore DBBL gun which was valid upto 29-11-1995. Dayal Singh Sarpanch of village Kilianwali who appeared as PW-5 stated that a year and five months ago before he made a statement he had gone to Malout and from there he was to go to village Kakhanwali. At about 5.15 p.m. he came to the bus stand, Malout where he found Sardul Singh standing there. Jasbir Singh alongwith his two sons Sandip Singh and Harsharan Singh also came there. They boarded the bus and so did he and Sardul Singh. Jasbir Singh sat on the second seat on the driver side. He and Sardul Singh also sat on the seat behind him. The sons of Jasbir Singh sat on the seat opposite to their seats. The bus started. Surjit Singh, Manjit Singh, Gurdip Singh, Mukhtiar Singh, Atma Singh, Bikkar Singh also boarded that bus when it was starting. The bus reached village Abul Khurana and went one/one and a half Km beyond Abul Khurana when Surjit Singh and Manjit Singh armed with .12 bore guns came forward. Their remaining companions raised Lalkara exhorting

Surjit Singh and Manjit Singh not to allow Jasbir Singh to escape. Then Surjit Singh fired from his gun which hit just below the left ear of Jasbir Singh. That fire was shot by Surjit Singh by bending a little. Manjit Singh also fired from his gun which hit Jasbir Singh on his back. They raised a Lalkara do not kill, do not kill (Na Maro, Na Maro). The driver stopped the bus and the passengers fled away. Surjit Singh also fired towards Sandip Singh and I Harsharan Singh who were running. He further corroborated the prosecution the version. The cross-examination adverted to this witness is on the same line as that of Sandip Singh PW-3. Like Sandip Singh PW-3 he also stated that all the four companions raised the same Lalkara simultaneously in the same words. Lalkara was immediately followed by fire shots and it was thereafter that they had stated do not kill do not kill (Na Maro, Na Maro). Jagdish Chander Head Constable who appeared as PW-6 deposed with regard to arrest of Surjit Singh and Manjit Singh appellants and recovery of .12 bore gun from them. Four live cartridges of the same bore were also recovered from Manjit Singh. The gun was made into a scaled parcel. The gun and the cartridges were taken into possession vide recovery memo Ex. PD. The parcel of the gun had also the seal of F.S.L. towards the end of the barrel. .12 bore DBBL gun and seven live cartridges were recovered from Surjit Singh appellant. The gun was made into a sealed parcel and the gun and the cartridges were taken into possession vide recovery memo Ex. PM. Jaskaran Singh PW-7 tendered his affidavit Ex. PN and in cross-examination he stated that no time of delivering the special report to the Ilaqa Magistrate had been written in the affidavit. Raj Pal Head Constable who appeared as PW-8 tendered his affidavit Ex. PO. Shri Bachittar Singh PW-9 stated that in January 1993 Panchayat elections of village Kahanwali were held. He had brought the summoned sealed record pertaining to village Kakhanwali. He further stated that appellant Pala Singh and Jasbir Singh deceased were the candidates for election of Sarpanch. Jasbir Singh won the election. Suresh Kumar Draftsman who was examined as PW-10 deposed with regard to his preparing scaled site plan Ex. PQ. Shri Gurmej Singh Retired DSP who appeared as PW-11 deposed the steps that he had taken while investigating the case. Surjit Singh L.C. No. 822, PW-12 tendered his affidavit Ex. PU. The Public Prosecutor vide his statement dated 31-8-1995 tendered into evidence reports of the Forensic Science Laboratory Ex. X and Y and closed the prosecution evidence.

6. When examined u/s 313 of the Code of Criminal Procedure, appellant Surjit Singh while denying the incriminating material put to him further stated that Jasbir Singh was President of the Akali Jatha Muktsar District of Badal Group. Many workers of Badal group were killed by the extremists. Kamaljit Singh DSP who was posted at Ludhiana in those days had been posted earlier as SHO in Police Stations, Ferozepore Sadar, Mallanwal, Zira, Makhu and Dharmakot is wife's brother of Jasbir Singh deceased. At his instance, a false case was registered after due deliberations and they were brought from their houses on the night intervening 23/24-10-1993 alongwith their guns and licences and the recovery was foisted upon them their arrest later on. The police fired from their

guns in the police station and sent those empties to the Forensic Science Laboratory to connect them with the alleged offence. He was innocent and was falsely involved in this case. The statements made by other appellants are on the same line as made by Surjit Singh appellant. The appellants, however, led no evidence in their defence.

7. We have heard Mr. R. S. Cheema learned Senior Counsel in support of the appeal preferred by the appellants and Mr. S. S. Dhaliwal who represents the State of Punjab and with their assistance we have gone through the records of the case. Mr. Cheema half-heartedly canvassed non-presence of Sandip Singh son of Jasbir Singh PW-3 and Dayal Singh son of Jagtar Singh PW-5. So far as Sandip Singh PW-3 is concerned, the counsel contends that he being son of the deceased is highly interested in success of the prosecution version and so far as PW-5 is concerned he too cannot be termed as independent witness being Dharam Bhai of the deceased. Mr. Cheema has brought to our notice some contradictions in the statements made by these two witnesses. He has also pointed out variance in statements made by these two witnesses in the Court and made before the police u/s 164 of the Code of Criminal Procedure. We are, however, of the view that there is no merit whatsoever in the contention of the learned counsel. So far as PW-3 Sandip Singh is concerned, it is no doubt true that he is son of the deceased but that in itself is not enough to discard his sworn testimony. Nothing has at all been shown that may point towards his non-presence at the scene of occurrence. Minor contradictions and that too on the issues which are not material, in our considered view will not make any dent in the sworn testimony of this witness who otherwise stood the test of cross-examination. So far as PW-5 is concerned, he denied being Dharam Bhai of deceased Jasbir Singh in his cross-examination. From the cross-examination adverted to this witness, nothing could be made out that may tend to show that he was not present at the scene of occurrence. He like Sandip Singh PW-3 has also stood the test of cross-examination.

8. The other contention of the learned Counsel with regard to applicability of Section 34 of the Indian Penal Code has, of course, considerable merit. It is not the prosecution case that the appellants knew that the deceased alongwith his son would be travelling in the Mini bus on a particular day and time. It appears to be a co-incident that when the deceased boarded the bus alongwith his sons the appellants also happened to be travelling in the same bus. Appellants Surjit Singh and Manjit Singh were armed with. 12 DBBL guns. They found the occasion to eliminate Jasbir Singh who had given them a cause of concern having won the election of Sarpanch. As mentioned above, the two eye-witnesses Sandip Singh PW-3 and Dayal Singh PW-5 deposed that appellants other than Surjit Singh and Manjit Singh had given Lalkara simultaneously in the same words. It is conceded that these four appellants were unarmed. It is not possible to believe that all four had given Lalkara at one and the same time and that too in the same words. As mentioned above, it was perhaps not known to them that they shall happen to meet Jasbir Singh and his sons on the eventful day in the

Minibus. The prosecution could not bring on record the evidence that might clinch the active participation or common intention entertained by these four appellants in causing death of Jasbir Singh. In our considered view these four appellants, namely, Gurdip Singh, Mukhtiar Singh, Atma Singh and Bikkar Singh cannot be convicted with the aid of Section 34 of the Indian Penal Code. By giving them the benefit of doubt we acquit them. The order of conviction and sentence recorded against them by the Sessions Judge, Faridkot dated 12-9-1995 is set aside and the appeal preferred qua them is allowed.

9. So far as the appeal preferred by Surjit Singh and Manjit Singh appellants is concerned, we find no merit in the same and thus uphold the conviction and sentence recorded against them by the Sessions Judge in so far as the same is u/s 302 read with Section 34, IPC and 25 of Arms Act. Their appeal u/s 307, IPC is allowed as it could not be proved by any convincing evidence that they fired while chasing the eye-witnesses when they were running for shelter after the main incident. They are also acquitted u/s 148 of the IPC.

This appeal is, thus, partly allowed to the extent indicated above.

Criminal Revision No. 134 of 1995 filed by Sandip Singh is also dismissed.

10. Order accordingly.