

DARSHAN SINGH & ANOTHER

v.

STATE OF PUNJAB.

JANUARY 29, 1988

[G.L. OZA, B.C. RAY AND K. JAGANNATHA SHETTY, JJ.]

*Indian Penal Code, 1860: Sections 34 and 302—Murder by inflicting injuries which were cruel—Sentence of death not justified in the absence of motive.*

*Section 154—FIR—question as to time of recording—Such a question to be put in cross-examination—Held, in the absence of any material to the contrary, FIR was recorded immediately after the incident.*

Appellants Nos. 1 and 2 along with two other accused were convicted for the murder of the first Appellant's paternal uncle, his wife and daughter. First the brother, and then his daughter and wife were done to death with gandassa and kapa blows just outside their house.

The motive alleged was that the first appellant's father and his deceased brother had inherited some land from their father and there were disputes about it, and by eliminating the family, one of the successors entitled to half share in the property had been removed. It was also alleged that the deceased man had no male issue and had only one daughter for whom negotiations for marriage were in the offing and appellant No. 1 and his father apprehended the entry of a stranger in the family as the son-in-law to succeed to the property falling to the share of the deceased man. The Trial Court convicted the appellants and sentenced them to death, while the other two accused were sentenced to life imprisonment.

Against the conviction and sentence, an appeal was filed. There was also a reference to the High Court, as death sentence was involved in respect of the two appellants. The High Court dismissed the appeal and confirmed the death sentence. The appeal before this Court is filed by the two appellants who have been sentenced to death.

The motive alleged has been disputed on behalf of the appellants, as a will had been executed by the deceased man in favour of the son of his wife's brother, and that if at all there was a motive he should have also been eliminated.

A It was also contended that in the locality independent witnesses could be available and they have not been examined. Another submission was that one of the witnesses had complained against the Police Officer and so the Police Officers were prejudiced against him. The time at which the FIR had been registered has also been questioned. In the absence of motive on the part of the second appellant, it was contended, that the death sentence awarded to him is not justified.

Allowing the appeal partly, this Court,

C HELD: 1. The will was filed after the murders, in some civil proceedings when the legatee claimed to be brought on record in place of the deceased man. This apparently could not indicate that this will was in the knowledge of the appellants on the date of incident. Therefore the motive cannot be doubted. [848G-H]

D 2. One of the witnesses is the maternal uncle of the deceased girl and there were some negotiations for her marriage and for that purpose he along with his son had come to the house of the deceased. It is apparent that a maternal uncle is generally consulted when negotiations for marriage of a girl are in progress and apart from it both the courts below had accepted the testimony of this witness which is fully corroborated by the First Information Report lodged immediately after the incident. It appears from the evidence that the nearby area was not so inhabited and by that time in the evening no one else was available. Those who were present have been examined and in this view of the matter the contention that independent witnesses were not examined is of no consequence. The names of the eye-witnesses have been mentioned in the First Information Report, which was lodged immediately after the incident and the statements of eye-witnesses have been fully corroborated by medical evidence. No doubt could therefore be raised about the reliability of such evidence. [849B-C; 851C]

G 3. No relevant evidence was brought on record and not a single question was put to any witness or to the person who made the First Information Report as to whether he had noted the correct time of the incident. There is no material on record to show as to whether the persons who lodged the First Information Report, walked through 12½ kilometres or took a lift in any vehicle. In the absence of any material, the only thing that appears is that immediately after the incident the report was recorded and this report contains a clear description of the incident corroborating the testimony of the eye-witnesses. [849F; 850A-B]

4. Merely because the second appellant chose to make some application and also mentioned the names of some police officers in it, it could not be said that all police officers would be interested in falsely implicating him in a murder case. In the complaint made by appellant No. 2, none of the police officers in charge of the investigation of the present case has been referred to therein. It was, however, contended that the brotherhood of the uniform created a prejudice against the second appellant and that is why he has been falsely implicated. This appears to be too tall a proposition. There is no material to indicate that there was any prejudice in the mind of the investigating officer. The report of the incident was lodged immediately and in the report the part played by the accused has been clearly stated. [851A-B; 850G-H]

5.1 It appears that first appellant and his father were keen to grab the property and it is in pursuit of this motive that they committed the triple murder. The attack was brutal. The medical evidence indicates that the deceased man's neck was chopped off and repeated blows by Gandasa were inflicted on the body of his daughter. Therefore, it is clear that the first appellant first chopped off the neck of his uncle and even after doing this he inflicted number of blows on the young girl, who was his own uncle's daughter, and the repeated blows go to show that he inflicted the injuries with determination that she may not escape. In this view of the matter and the brutal manner in which these two were done to death, there is no reason to alter the sentence awarded to the first appellant. [852C-E]

5.2 So far as the second appellant is concerned he is a stranger and he is not in any way connected with the family and so there could be no motive attributed to him. He appears to have been dragged into the killing. Therefore, the sentence of death awarded to the second appellant is altered to a sentence of imprisonment for life. [852E-F]

**CRIMINAL APPELLATE JURISDICTION:** Criminal Appeal No. 98 of 1987.

From the Judgment and Order dated 9.10.1986 of the Punjab and Haryana High Court in Crl. A. No. 437 of 1986.

A.N. Mulla and S.K. Sabharwal for the Appellants.

M.R. Sharma, R.S. Suri, H.S. Phoolta, Meera Agarwal and R.C. Mishra for the Respondent.

A The Judgment of the Court was delivered by

OZA, J. This is an appeal on grant of special leave against the judgment of the High Court of Punjab and Haryana in Criminal Appeal No. 437/86 and Reference No. 4/86 wherein the learned Judge of the High Court maintained the conviction and sentence passed against the appellants by the learned Additional Sessions Judge, Faridkot. The conviction and sentences passed against the appellants are:

### CHARGES & SENTENCES:

C	Darshan Singh	u/s 302 IPC (for the murder of Mukand Singh	Sentenced to death and to pay a fine of Rs.200/- or in default R.I. for three months.
D	Pala Singh, Buggar Singh alias Bagga Singh and Roop Singh	u/ss 302/34 IPC (for the murder) (of Mukand Singh)	Sentenced to undergo imprisonment for life and to pay a fine of Rs.200/- or in default R.I. for three months each.
E	Darshan Singh	u/s 302 IPC (for the murder) of Harbans Kaur)	Sentenced to death and to pay a fine of Rs.200/- or in default to undergo R.I. for three months.
F	Pala Singh, Buggar Singh alias Bagga Singh and Roop Singh	u/ss 302/34 IPC (for the murder) of Harbans Kaur)	Sentenced to undergo imprisonment for life and to pay a fine of Rs.200/- or in default R.I. for three months each.
G	Buggar Singh Bagga Singh	u/s 302 IPC (for the murder) of Pritam Kaur)	Sentenced to death and to pay a fine of Rs.200/- or in default to undergo R.I. for three months.
H	Darshan Singh, Pala Singh and Roop Singh	u/ss 302/34 IPC (for the murder) of Pritam Kaur)	Sentenced to undergo imprisonment for life and to pay a fine of Rs.200/- or in default to undergo R.I. for three months each.

Accused Pala Singh and Roop Singh are also convicted as mentioned above but they have not come up before this Court. This appeal has been filed by Darshan Singh and Buggar Singh @ Bagga Singh, therefore we are concerned with their cases only.

The prosecution case at the trial was that on 24th June, 1985 at about 7.30 p.m. Dalip Singh, brother of Pritam Kaur, and his son Sarbjit Singh were present outside the house of Mukand Singh along-with Gurnam Singh son of Babu Singh. Mukand Singh was returning to his house. At that time, Darshan Singh and Roop Singh accused armed with a Gandasa each, Pala Singh and Buggar Singh accused armed with Kapa each came on a tractor from the village side. They stopped the tractor near Mukand Singh. All the four accused got down from the tractor. Pala Singh and Roop Singh accused caught hold of Mukand Singh deceased and threw him on the ground. A blow on the neck of Mukand Singh was inflicted by Darshan Singh as a result of which the neck was chopped off except that it remained suspended with the body by skin. Then Harbans Kaur, the daughter of Mukand Singh came out of the house and she was given three gandasa blows on her head by Darshan Singh. It is thereafter that Pritam Kaur, the wife of Mukand Singh came out of the house and Buggar Singh gave kapa blows on her person. As a result, all the three victims died on the spot. Dalip Singh, Sarbjit Singh and Gurnam Singh who had witnessed the incident raised an alarm and also threw brick bats towards the assailants. Thereupon all the appellants made good their escape. It is significant that Mukand Singh had only one daughter Harbans Kaur and had no male issue.

The appellant Darshan Singh is the son of Pala Singh whereas Buggar Singh is said to be an agricultural labourer working with Pala Singh and Roop Singh also belonging to the group of appellant.

It is alleged by the prosecution that the two brothers had inherited some land from their father and there were disputes about it. Apparently, Pala Singh and Darshan Singh by eradicating the family of his brother Mukand Singh removed one of the successors claiming half share in the property. It was also alleged that as Mukand Singh had no male issue and Harbans Kaur was of marriageable age, it appears from evidence that negotiations for marriage were in the offing, Pala Singh apprehended the entrance of some stranger in the family as son-in-law of Mukand Singh to succeed to the property falling in the share of Mukand Singh.

A Dalip Singh accompanied with Gurnam Singh son of Babu Singh went immediately to the Police Station, Baghapurana and lodged the First Information Report Ex. PH which was recorded by Inspector Darshan Singh. This report was recorded at 8.30 p.m. and it was alleged that the incident had taken place sometimes in the evening about 7.30 p.m.

B Inspector Darshan Singh went on the spot, prepared the visual plan. He also held inquest of the three dead bodies of Mukand Singh, Harbans Kaur and Pritam Kaur respectively and sent the dead bodies for autopsy. He also took blood-stained earth from the place where the bodies were found and recovered 20 brick bats from the spot. The accused persons were searched and it is alleged that they were not traceable. They, however, were arrested subsequently on 27th June, 1985 and 1st July, 1985. After arrest, the Investigation officer interrogated Darshan Singh accused in the presence of Gurnam Singh son of Kartar Singh and Kalkiat Singh PW and he disclosed in his statement giving information where the gandasa is and on his information  
C from the specified place, the gandasa was recovered. After investigation, a charge-sheet was filed and on trial the appellants have been convicted and sentenced as mentioned above. As it involved a sentence of death to the two appellants, apart from the appeal preferred by the appellants there was also a reference to the High Court and by the impugned judgment the High Court dismissed the appeal filed by the  
D appellants and confirmed the sentence of death awarded by the learned trial court and it is against this judgment that the present  
E appeal by Darshan Singh and Bugger Singh is before us.

Learned counsel appearing for the appellants mainly contended that the motive alleged that the appellants did not like the idea of a stranger inheriting the property and coming into the family after the marriage of Harbans Kaur appears to be not a very plausible reason. It was also contended that there is a will executed by Mukand Singh in favour of Sarbjit Singh son of Dalip Singh and therefore if the motive was to eliminate all possible successors to the half share of Mukand Singh the accused appellants would not have spared Sarbjit Singh. So  
F far as this contention of the learned counsel is concerned when he referred to the relevant evidence it is discovered that this will was filed by Sarbjit Singh after this incident in some civil proceedings when he claimed to be brought on record in place of Mukand Singh on the basis of the will. This apparently could not indicate that this will in favour of Sarbjit Singh was in the knowledge of the appellants on the date of  
G incident. Learned counsel could not point out to any other material to  
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suggest that this will was known to the appellants on the date of incident and therefore this contention raised by the learned counsel for the appellant is without any substance.

Learned counsel also attempted to contend that Dalip Singh who is the brother of Pritam Kaur the wife of Mukand Singh has given an explanation for having come to the house of Mukand Singh but it does not appear to be justified. As according to the witness, he is the maternal uncle of Harbans Kaur and there was some negotiations about her marriage and for that purpose he alongwith his son had come to the house of Mukand Singh. It is apparent that a maternal uncle of the daughter (bride) is generally consulted when negotiations for marriage of the daughter are in progress and apart from it both the courts below had accepted the testimony of this witness which also is fully corroborated by the First Information Report lodged immediately after the incident. In fact, in this case as the report is lodged immediately the contention advanced by the learned counsel for the appellants is not that there is delay but it was seriously contended that if the incident has taken place at 7.30 p.m. as mentioned in the First Information Report the report could not have been lodged at 8.30 p.m. within one hour as in the First Information Report itself the distance of the police station from the scene of occurrence is recorded as 12½ kilometres and on this basis an argument was raised by learned counsel for the appellants that the report appears to have been prepared later on and a false time has been mentioned in the report.

Instances of this filed that no relevant evidence was brought on record and not a single question was put to any witness or to Dalip Singh who made the First Information Report that he had noted the time of incident after seeing the watch and this was recorded in the first information report as 7.30 p.m. It is also clear that there is nothing in his evidence to indicate that he and Gurnam Singh who went to the police station walked on foot and covered a distance of 12½ kilometres because it is not in their testimony as to whether they went through the normal route or they went across the fields by short cut nor there is anything in the evidence that they did not take a lift in any vehicles. Learned counsel when confronted with this situation contended that the burden lay on the prosecution but it could not be disputed that if this was the contention of the defence that the report could not have been recorded at 8.30 p.m. if the incident was at 7.30 p.m. question to establish this should have been put in cross-examination. It is apparent that there is no material to indicate that the time of incident when noted was 7.30 p.m. it is precise time nor it is there in

- A evidence as to whether the persons who lodged the first information report walked through 12½ kilometres. In absence of any material the only thing that appears is that immediately after the incident the report is recorded and this report contains a clear description of the incident corroborating the testimony of the eye witnesses. The courts below therefore on consideration of the testimony of the eye witnesses
- B accepted their version and convicted the appellants as mentioned above.

- C Learned counsel could not from the evidence of the eye witnesses refer to any part of their evidence to indicate that the evidence is such on which reliance could not be placed except for the fact, according to the learned counsel, that there were disputes between the two parties i.e. the groups of the two brothers and all the prosecution witnesses apparently were belonging to the group of the deceased. It was also contended that in the locality independent witnesses could be available but they have not been examined. The Courts below have considered this aspect of the matter. It appears from the evidence that
- D the nearby area was not so inhabited and by that time in the evening no one else was available. Those who were present have been examined and in this view of the matter the contention that independent witnesses were not examined is of no consequence.

- E It is also significant that the testimony of the eye witnesses has been fully corroborated by the medical evidence and the injuries on the particular parts of the body of the three deceased persons. In this view of the matter therefore learned counsel for the appellants mainly emphasised on the aspect of motive and the first information report.

- F It was also contended that appellant Bugger Singh had submitted an application sometimes before this incident in which he had made allegations against the police officers of the police station and in view of that the police officers must have been prejudiced against him. The application for contempt against the police moved by Bugger Singh was also relied upon in support of the contention. We do not find any substance in this contention too. In the complaint made, it is apparent
- G that none of the police officers in charge of the investigations of the present case has been referred to therein. It was however, contended that the brotherhood of the uniform created a prejudice against the appellant Bugger Singh, and it is why he has been falsely implicated. This appears to be too tall a proposition. There is no material to indicate that there was any prejudice in the mind of the investigating
- H officer. The report of the incident was lodged immediately and in the



report the part played by the accused has been clearly stated. Under these circumstances, therefore, merely because Buggar Singh chose to make some application and also mentioned the names of some police officers in it, it could not be held that all police officers will be interested in falsely implicating this appellant in a murder case. There is no other material on the basis of which it could be contended that there was any prejudice against him.

The evidence of the eye witnesses have been considered by both the courts in detail and especially the Sessions Court before whom the witnesses were examined accepted their testimony and we have no reason to discard their testimony. The names of the eye witnesses have been mentioned in the first information report, which was lodged immediately after the incident and the statements of eye witnesses have been fully corroborated by medical evidence. No doubt could therefore be raised about the reliability of such evidence.

Learned counsel realising the situation ultimately contended that so far as Darshan Singh is concerned he could not make submissions about the sentence as he has done away with first Mukand Singh his uncle and then Harbans Kaur, Mukand Singh' daughter i.e. her own cousin. But he contended that so far as Buggar Singh is concerned he is a stranger and he is not in any way connected with the family and so there could be no motive attributed to him. Pala Singh and Darshan Singh may have the interest of getting the property falling into the share of Mukand Singh but Buggar Singh has no such motive and therefore the sentence of death awarded to him does not appear to be justified.

The learned counsel appearing for the respondent State contended that the courts below have considered the question of sentence in a reasonable manner and those who are personally responsible for killing in such a brutal manner three persons one after another, have been sentenced to death and those who have been convicted with the aid of Section 34 have been treated leniently and sentence of life imprisonment alone is awarded.

In the light of the discussions above therefore so far as merits are concerned, there is no substance in the contention advanced by learned counsel for the appellants. The conviction of the appellants could not be assailed on any ground. The only question that remains to be considered is the question of sentence. Learned counsel referred to the decision of this Court in *Dalbir Singh & Ors. v. State of Punjab*,

- A [1979] 3 SCR 1059 wherein the plausible reasons which may weigh with a court while awarding a sentence of death have been enunciated. So far as the present case is concerned we must consider the facts of the case. It is clear and not disputed also that father of Mukand Singh and Pala Singh left behind some agricultural land. It is not in dispute that the two brothers Pala Singh and Mukand Singh were the only heirs entitled to the share in the property of their father. It is also not disputed that so far as Mukand Singh is concerned he had only one daughter Harbans Kaur and had no male issue. It is also disputed that the property disputes have been going on. There have been cases and complaints against each other. It appears that Pala Singh and his son Darshan Singh were keen to grab that property and it is in pursuit of this motive that they attacked Mukand Singh and his family and killed all the members of the family, Mukand Singh, his wife Pritam Kaur and his only daughter Harbans Kaur and thereby eliminated everyone who could claim any share in the property. The attack was brutal. The medical evidence indicates that Mukand Singh's neck was chopped off, repeated blows by Gandasa were inflicted on the body of Harbans Kaur. Therefore it is clear that Darshan Singh first chopped off the neck of Mukand Singh and even after doing this he inflicted number of blows on Harbans Kaur a young girl, his own Uncle's daughter and the repeated blows go to show that he inflicted injuries with determination that she may not escape. In this view of the matter and the manner in which brutally these two were done to death, we see no reason to alter the sentence awarded to Darshan Singh.
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So far as Buggar Singh is concerned it is no doubt true that he inflicted three blows on Pritam Kaur by Kapa which he was carrying. So far as infliction of injuries are concerned it could be described as nothing but cruel but it is true that he had no motive. He appears to have been dragged into the killing. In our opinion, so far as he is concerned both the courts below were not right in awarding sentence of death.

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- G Consequently the appeal is partly allowed. The conviction of all the appellants is maintained. The sentences of all the appellants except Buggar Singh are maintained and so far as Buggar Singh is concerned, sentence of death awarded to him is altered to a sentence of imprisonment for life.