

PETITIONER:
KARAM SINGH & ANR.

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT: 20/08/1996

BENCH:
KURDUKAR S.P. (J)
BENCH:
KURDUKAR S.P. (J)
MUKHERJEE M.K. (J)

CITATION:
JT 1996 (7) 349 1996 SCALE (6)74

ACT:

HEADNOTE:

JUDGMENT:
THE 20TH DAY OF AUGUST, 1996

Present:

Hon'ble Mr. Justice M.K.Mukherjee
Hon'ble Mr. Justice S.P.Kurdukar

S.K.Bagga, Sr.Adv., Seeraj Bagga and Ms.Tanuj Bagga and
Ms.Shureshtha Bagga, Advs. with him for the appellants.
H.M.Singh, Advs for R.S.Suri and K.C.Dua, Advs. for the
Respondent

J U D G M E N T

The following Judgment of the Court was delivered:
Karam Singh & Anr.

V.

State of Punjab

J U D G M E N T

S.P. KURDUKAR, J.

The appellants-accused nos. 1 and 2 respectively were put up for trial before the Judge, Special Court, Ferozepur for offences punishable under Sections 302/34 and 363 of the Indian Penal Code., They were tried by the Special Court, under the Terrorist Affected Areas (Special Courts) Act. The appellants have filed this criminal appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act.

2. The prosecution case may be summarized as under:

Karam Singh (A-1) is the father of Piara Singh(PW 2). Sardara Singh (A-2) was the employee. of A-1. There was a dispute between A-1 and Piara Singh (RW 2) as regards the partition of the-property. Jagir Singh (since deceased) was related to them. He intervened in the matter and effect a partition between A-1 and Piara Singh (PW 2). A-1 felt that the said partition was totally inequitable and Jagir Singh had shown favour to Piara Singh (PW 2) being related to him through his wife A-1 and Piara Singh (PW 2) reside in village Badhini Kalan. Piara Singh (PW 2) owned a saw mill Sukhdial Singh (PW 3) used to work in the saw mill it is alleged by the prosecution that on April 13, 1984 in the evening, Jagir singh had come to the saw mill of Pira Singh

(PW 2). At that time Sukhdial Singh (PW 3) was also present in the saw mill. At about 8.00 p.m., Piara Singh (PW 2) left his saw mill to bring food from his house. A-1 at the relevant time was also having a shop adjacent to the saw mill and used to sell fuel wood. A-1 in the mean time came to the saw mill with naked kirpan alongwith A-2. A-1 raised lalkara that they would teach Jagir Singh a lesson for favouring Piara Singh while effecting the partition. Suddenly A-1 and A-2 not to do so. Noticed the incident, requested A-1 and A-2, Sukhdial Singh (PW 3) went to the ahata of A-1 and knocked the door but nobody responded. Realizing danger to the life of Jagir Singh forcibly to the ahata of A-1. Sukhdial Singh (PW 3) went to the ahata of A-1 and knocked the door but nobody responded. Realising danger to the life of Jagir Singh, Sukhdial Singh (PW 3) went to inform Piara Singh (PW 2) about the incident. Piara Singh (PW 2) then went to the police station, Badhani Kalan and lodged the FIR 9 Ex.P2 at about 9.00 p.m. The special report was then despatched to the Illaqa Magistrate at about 11.30 p.m. Hans Raj, ASI (PW 5) accompanied by Piara Singh (PW 2) and other police officials went to the spot. A-1 was then found looking his ahata and A-2 standing by the side. Both the accused came to be arrested. The police party then noticed the dead body of Jagir Singh which was lying in the ahata. Crime was then altered to one under Section 302 of the Indian Penal Code- Hans Raj, ASI (PW 5) commenced the investigation. During the investigation, parna Ex.M/O/5 of A-2 was seized since it was stained with blood. Dano Ex.M/O/4 which was then with A-2 was also seized. Seizure panchnama was then effected. After completing the necessary investigation, both the accused were put up for trial and they came to be charge sheeted for offences punishable under Sections 302/34 and 363 of the Indian Penal Code.

3. Both the accused denied the charge and according to them, they have been falsely implicated in the present crime. They pleaded that they are innocent and they be acquitted

4. It is not and cannot be disputed that Jagir Singh met with a homicidal death. Dr. Jawahar Lal, medical officer, Civil Hospital, Moga, performed the autopsy on the dead body of Jagir Singh and noted as many as twelve injuries out of which three were incised wounds and three were lacerated. In addition to that there was a ligature mark around the neck. Dr. Jawahar Lal (PW 1) has opined that the death was due to asphyxia as a result of strangulation and the injuries to the head. We see no hesitation in accepting the opinion of Dr. Jawahar Lal (PW 1).

5. The prosecution in order to bring home the guilt of both the accused principally relied upon the evidence of Sukhdial Singh (PW 3) who witnessed a part of the incident, namely, that both A-1 and A-2 came to the saw mill of Piara Singh (PW 2) and forcibly dragged Jagir Singh to the ahata of A-1. Piara Singh (PW 2) was examined to prove that on getting the information from Sukhdial Singh (PW 3) about the incident, went to the police station and lodged the FIR Ex.P3 at about 9.00 p.m. in the same evening. In addition to the formal witnesses, the prosecution relied upon certain circumstances namely recovery of parna and dang from the person of A-2. Prosecution also relied upon the seizure of turban of A-1 Ex.M/O/10 which was found lying at the entrance of the saw mill of Piara Singh (PW 2).

6. The learned Trial Judge after appraisal of the oral and documentary evidence on record vide his impugned judgment dated 20th February, 1985 found both the accused guilty of murder of Jagir Singh and convicted them for an offence

punishable under Section 302 read with 34 of the Indian Penal Code. In view of the above finding, the learned Trial Judge, however, did not record any conviction against the accused under Section 363 of the India Penal Code. The learned Trial Judge sentenced both the accused to suffer life imprisonment. It is this order of conviction and sentence passed by learned Trial Judge which is the subject matter of challenge in this criminal appeal.

7. Mr. Bagga, the learned Senior Advocate appearing in support of this appeal urged that there is no direct evidence as regards the fact of murder of Jagir Singh by any of the accused. According to learned counsel assuming that Jagir Singh was dragged by both the accused from the saw mill to the Ahata of A-1, there is no material on record to indicate that they were responsible for the murderous assault on Jagir Singh. He also urged that in the ahata of A-1, a Transport Union was also running its office and many truck drivers used to park their vehicles in that area. It was, therefore, urged that Jagir Singh might have been assaulted by some unknown persons, but the accused were implicated in this crime on mere suspicion.

We find no substance in any of these contentions raised on behalf of the appellants. Piara Singh (PW 2) in his evidence has stated that A-1 was having a grievance as regards the partition which was effected by Jagir Singh and it is this grouse which was prompted A-1 to lay a murderous assault on Jagir Singh. As regards the presence of Jagir Singh on 13th April 1984 in the evening at the saw mill, Piara Singh (PW 2) as well as Sukhdial Singh (PW 3) have stated that Jagir Singh had come there and he was sitting until Piara Singh (PW 2) left for his house at about 8.00 p.m. to bring his food. What happened thereafter was narrated by Sukhdial Singh (PW 3). He stated that A-1 came to the saw mill with naked kirpan alongwith Sardara Singh (A-2) and forcibly dragged Jagir Singh from the compound of the saw mill to the ahata owned by A-1. He further stated that after taking Jagir Singh into ahata they closed the door. The witness then went to the ahata of A-1 and knocked the door but, nobody opened it. He then went to inform Piara Singh (PW 2) about this incident who (PW 2) thereafter went to the police station and lodged FIR Ex. P3 at about 9.00 p.m. After recording the First Information Report, Hans Raj ASI (PW 5) accompanied by Piara Singh (PW 2) and same police officials came to the ahata of A-1.

8. Piara Singh (PW 2) and Sukhdial Singh (PW 3) have stated that when the police party came to the ahata of A-1, they saw A-1 was standing with the blood stained kirpan in his hand at that place. A-2 was also standing by his side. Both the witnesses further stated that the dead body of Jagir Singh was lying in that ahata. It needs to be mentioned at this stage that at about 8.00 p.m., Jagir Singh was forcibly dragged by A-1 and A-2 and he was then taken to the ahata of A-1. The door of the ahata was closed and despite knocking the said door by Sukhdial Singh (PW 3) nobody responded. Within an hour, the police party alongwith Piara Singh (PW 2) reached the ahata of A-1 and they noticed the dead body of Jagir Singh at that ahata and A-1 and A-2 were standing near the dead body. The only legitimate inference that must follow from the aforementioned evidence is that Jagir Singh was done away with by both the accused in the ahata of A-1. There was hardly any time for Piara Singh (PW 2) or Sukhdial Singh (PW 3) to concoct a false story against the accused. We have carefully gone through the evidence of PW 2 and PW 3 and we see no hesitation in accepting the same as reliable. There is nothing in their cross-examination which would

discredit their testimony.

9. In addition to the evidence that we have discussed hereinabove, there are two other very telling circumstances which are pointer to the guilt of the accused. During investigation, a turban of A-1 found in the saw mill. It was seized and marked as Ex.M/O/10. On this turban, name of A-1 (Karam Singh) was printed. Seizure of this turban in the compound of saw mill of Piara Singh (PW 2) corroborates the story narrated by Sukhdial Singh (PW 3) that both accused had come to saw mill and forcibly dragged Jagir Singh therefrom. No explanation whatsoever is coming from A-1 as to how his turban was found in the compound saw mill of Piara Singh (PW 2). Mr. Bagga, learned counsel, however, urged that the seizure of turban Ex.M/O/10 is nothing but a bogus seizure. He urged that such a recovery and seizure has got to be rejected because no names are printed on turbans. We are again not impressed by this argument because infact such a seizure was made and it was proved by the Pach witnesses and the Investigating Officer.

10. The next connecting circumstance is the seizure of Ex.M/O/5 from the said of A-2. The said was stained with human blood and the Serologist reported it to be human blood (Ex. P20). No explanation whatsoever was given by A-2 as to how his parna was stained with human blood. The serologist in his report Ex.P20 also found that the earth from the ahata of A-1 and kirpan seized from A-1 were stained with Human blood. All these circumstance clearly and conclusively establish that both the accused were responsible for murder of Jagir Singh.

It was then urged by Mr. Bagga that it is highly improbable that A-1 and A-2 would stand in the ahata with a naked kirpan for more than one hour. The prosecution story is highly improbable and could not be made basis for conviction. We see no merit in this contention since there is direct evidence of Piara Singh (PW 2) and Sukhdial Singh (PW 3) as also the investigating officer Hans Raj ASI (PW 5) to establish this fact.

12. In the result, the appeal falls and the same is dismissed. A-1 and A-E to surrender to their bailbonds forthwith to serve out the remainder of their sentences.