

PETITIONER:
KAPUR SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 03/08/1995

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
NANAVATI G.T. (J)

CITATION:
1995 SCC Supl. (3) 447 1995 SCALE (4) 629

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT
M.K. MUKHERJEE, J.

Kapur Singh, the appellant herein, was placed on trial before the learned Additional Judge, Special Court, Ludhiana, to answer charges under Sections 302 of the Indian Penal Code and 27 of the Arms Act, 1959 on the allegation that on March 27, 1984 he committed the murder of his real brother Darshan Singh with a pistol. On conclusion of the trial the learned Judge convicted him of both the charges and sentenced him to imprisonment for life and a fine of Rs.1,000/-, in default, to rigorous imprisonment for two years more for the former and to rigorous imprisonment for two years more for the former and to rigorous imprisonment for one year and a fine of Rs.100/-, in default, to rigorous imprisonment for three months more for the latter, with a direction that the substantive sentences shall run concurrently. The above order of conviction and sentence is under challenge in this appeal preferred by the appellant under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984.

Shorn of details, the prosecution case is that the deceased Darshan Singh and the appellant used to live in adjacent houses in village Jangpur within the police station of Dakha in the District of Ludhiana. About 2 1/2 years prior to his death a prosecution was launched against him and his son Jagmel Singh for causing injuries to the appellant. Since then the relations between the two brothers became strained. On March 27, 1984, the appellant was found moving around the house of Darshan Singh since noon. At or about 6.30 P.M. while drawing water from the nearby hand-pump he started hurling abuses towards Darshan Singh in his absence and gave out that he would kill him. After hurling abuses the appellant went towards the village gate. Apprehending that the appellant might translate his threat into action, Inderhit Singh (P.W.1), another son of Darshan Singh, followed him accompanied by his mother Smt. Niranjana

Kaur (P.W.2).. At that time Darshan Singh was sitting on a chounta (raised platform) by the side of the village pond which is near the village gate. Reaching there the appellant took out a pistol from the fold of his chaddar which was wrapped around his body and fired a shot aiming Darshan Singh. He immediately fell down on the spot. Then the appellant dragged him to the nearby pond and threw him in its water. Thereafter he ran away. After the appellant had fled away, Inderjit Singh and his mother went to rescue Darshan Singh from the pond but found him dead. Leaving his mother near the dead body, Inderjit Singh rushed to Chowkidar Bachan Singh (P.W.3) and narrated the incident. Inderjit Singh then approached Mukhtiar Singh of his village and accompanied by him went to the police station and lodged a First Information Report. S.I. Jagir Singh (P.W.8), who recorded the First Information Report, took up the investigation of this case and went to the place of occurrence. He arranged to have the photographs of the dead body taken while inside the pond and after it was brought out. He held inquest on the dead body and then sent it for post-mortem examination. Besides, preparing a site plan he seized an empty cartridge, the turban of the deceased which was embedded with two cardboards and some pellets, some blood stained earth, one parna and a pair of shoes. In course of the investigation he arrested the appellatn on March 31, 1984 and pursuant to the statement made by him recovered the pistol (Ex. P.17) and two cartridges (Ex. P.18 and 19). He sealed those articles and sent the same to the Ballistic Expert for his opinion. On completion of investigation he submitted charge-sheet against the appellant and in due course the case was committed for trial.

The appellant pleaded not guilty to the charges levelled against him and contended that he was falsely implicated. His specific defence was that his another brother Nirmal Singh had a dispute with Darshan Singh over a house jointly owned by them. Over that issue Darshan Singh and his sons Jagmel Singh and Dayal Singh had assaulted him and other members of his family for which he instituted a police case against them. He also contended that as he was the sole bread-earner of the family and earning a total monthly remuneration of Rs.1600/- to 1700/- as an employee of the Punjab Roadways, he was made a target by the family members of the deceased.

In support of its case the prosecution examined nine witnesses but no witness was examined by the appellant. He, however, tendered his pay certificate to show his monthly income.

On perusal of the impugned judgment we find that in recording the order of conviction and sentence the trial Judge held that the prosecution succeeded in proving that the appellant had a motive for the crime, that the ocular version of the incident as given out by Inderjit Singh (P.W.1) and Niranjana Kaur (P.W.2) was reliable, that the medical evidence fully supported the prosecution case and that the First Information Report was lodged with utmost dispatch and contained the quintessence of the prosecution case. The trial Judge, however, found that the recovery of an empty cartridge from the spot and of the pistol and cartridges pursuant to the statement of the appellant had not been proved in a satisfactory manner.

To ascertain whether the findings of the trial court on which the conviction is based, are sustainable or not we have gone through the record. On a careful perusal of the evidence of the two eye-witnesses, namely, P.W.1 and P.W.2 we

find that they have fully supported the prosecution case as narrated earlier. Both of them were subjected to detailed and searching cross examination but the defence could not succeed in eliciting any favourable answer or discrediting them. On the contrary, the evidence of P.W.1 gets ample corroboration from that of Bachan Singh (P.W.5) to whom P.W.1 rushed after the death of his father and narrated the incident. The other corroboration of P.W.1's evidence is furnished by the fact that the FIR containing the details of the prosecution case was lodged within two hours of the incident and reached the Special Magistrate on that very night at 2 A.M.

We next find that the evidence of the two eye-witnesses fits in with the medical evidence. Dr. Subhash Bhatta (P.W.3) who held post-mortem examination upon the dead body of Darshan Singh found a central irregular wound of 1/2"x 1/2" with inverted margin on the left temporal region 1/2" away from the left eye. According to P.W.3 there was no burring and no blackening around the wound but some tattooing were present around the margin. The doctor opined that the injury was caused by a fire-arm and it was sufficient to cause death in the ordinary course of nature. Relying upon an answer elicited in cross-examination of P.W.3 that the injury indicated that the gun was fired from a distance of 3 to 6 ft., the learned counsel for the appellant submitted that the opinion so expressed completely discredited the two eye-witnesses as they stated that the appellant fired from a distance of two Karmas (one Karma is equal to 5 ft.). There is no substance in this contention as it was not expected of P.Ws. 1 and 2 to speak about the distance with mathematical precision.

The evidence of the eye-witnesses also gets some support from that of Investigating Officer (P.W.8) when he testified that he found and seized some blood stained earth from the place of incident and the report of the chemical analysis shows that it contained human blood.

For the forgoing discussion it must be held that the prosecution has been able to conclusively prove that the appellant committed the murder of his brother Darshan Singh. We, therefore, need not go into the question as to whether the prosecution has succeeded in proving the motive for the crime.

The appeal therefore stands dismissed. The appellant, who is on bail, will now surrender to his bail bond to serve out the sentence.