

PETITIONER:
TEJA SINGH

Vs.

RESPONDENT:
MUKHTIAR SINGH & ORS.

DATE OF JUDGMENT11/08/1995

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

CITATION:
1995 AIR 2411 JT 1995 (7) 319
1995 SCALE (4) 703

ACT:

HEADNOTE:

JUDGMENT: WITH
CRIMINAL APPEAL NO 556 OF 1985
Malkiat Singh & Ors

State of Punjab

M. K. MUKHERJEE, J.

These two appeals, filed under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984, have been heard together as they stem from one and the same judgment rendered by the Special Court, Ferozepore in Trial No 112 of 1985. One of the appeals (Criminal Appeal No. 556 of 1985) is at the instance of Malkiat Singh and Mohinder Singh, son of Mukhtiar Singh, (hereinafter referred to as A1 and A2 respectively) who have been convicted under Section 302 read with 34 of the Indian Penal Code and sentenced to imprisonment for life and the other (Criminal Appeal No. 539 of 1985) has been filed by Teja Singh (PW-2) the defacto complainant, assailing the acquittal of others arraigned in the trial and seeking capital punishment of the above two convicts. During pendency of these appeals A1 died and therefore his appeal abates. The prosecution case as recounted in the trial is as under :

On April 9, 1984 at or about 6.30 P.M. Teja Singh (PW 2), his father Ajaib Singh (the deceased) and his maternal uncle Major Singh (PW 3) were returning to their village Lehra Rohi on bicycles along the public road. PW 2 and PW 3 were riding one bicycle while Ajaib Singh was on another. Suddenly a tractor came from behind in a great speed and stopped ahead of them. A2 was driving the tractor, A1 and Mukhtiar Singh were sitting on its left mudguard armed with a gun and a Kirpan respectively and Surjit Singh and Mohinder Singh son of Narain Singh, were sitting on the right mudguard with a dang and a qandasa respectively. Mukhtiar Singh raised a lalkara and hearing the same when

Ajaib Singh was on the point of getting down from the cycle Malkiat Singh fired at him from his gun twice felling him down with the cycle. A2 then reversed the tractor and drove it over the body of Ajaib Singh resulting in his death on the spot. Seeing the assault on Ajaib Singh when PWs 2 and 3 raised alarms Surjit Singh and Mohinder Singh (son of Narain Singh) assaulted PW 3 with in question A1 had launched a prosecution against him, the deceased and others for having assaulted him. Besides, a year before A2 and his nephew Mangal Singh had assaulted Sukhwinder Singh, brother of PW3, and in the case that was filed over that incident PW3 used to help Sukhwinder Singh in his capacity as the Sarpanch. The other material witness on whom prosecution relied was Dr. J.S. Gujral (PW 1) who held the autopsy and also examined PW 3. According to PW 1 his post-mortem examination on the dead body of Ajaib Singh revealed the following injuries:-

- "1. Left side of the skull bone was badly crushed with brain matter crushed.
- 2 a. A lacerated wound 5 cms x 3.1/2 cms with inverted margins and blackened on the front of the right chest at the level of the lower end of the sternum. On exploration a wad was taken out. The left pleura and the lung were torn. The plural cavity was full of dark coloured clotted blood (wound of entrance).
- 2 b. A lacerated wound 4 cms x 2.1/2 cms with irregular margins on the front of the left chest towards the outer side 11 cms from the nipple (wound of exit).
- 3 a. A lacerated wound 2.1/2 cms with inverted margins on the back of the left fore-arm towards outer side in the upper third with under lying bones fractured. A pellet was taken out from underneath the injury (wound of entrance).
- 3 b. A lacerated wound with irregular margins 1.1/2 cms x 1 cm on the inner side of the left elbow (wound of exit).

the weapons they were carrying as a result of which he also fell down. Thereafter all the five miscreants fled away in the tractor. In the mean time PW 2 found Dhiraj Singh and Jarnail Singh coming from the opposite direction on a tractor. He stopped them and narrated the incident. Leaving Jarnail Singh to guard the dead body, PW 2 and Dhiraj Singh took injured Major Singh to the hospital. From there PW 2 went to the police station and lodged a first Information Report. On that report ASI Nachhatar Singh (PW 7) registered a case and left for the spot accompanied by PW 2. Reaching there he held inquest upon the dead body of Ajaib Singh and sent it for post-mortem examination. He seized some blood stained earth, a piece of bone, two cycles and two empties found at the spot, besides other articles. On completion of investigation he submitted charge-sheet and in due course the case was committed to the Special Court.

The accused persons pleaded not guilty to the charges levelled against them and contended that they had been falsely implicated owing to previous enmity.

To prove its case the prosecution relied, principally upon PWs 2 and 3, who claimed to have been eye-witnesses to the murder. Both of them detailed the prosecution case as narrated earlier. As regards the motive PW 2 stated that two months prior to the incident

4. Abrasion 10 cms x 4 cms on the inner

side of the left leg upper third.

5. Abrasion 2 cms. x 1.1/2 cms. On the inner side of the right knee.

6. Right ulna was protruding out of the wrist joint."

Considering the fact that PW 2 and PW 3 are near relations of the deceased, being his son and brother-in-law respectively, we have considered their evidence with more than ordinary care and caution. Such exercise of ours persuades us to hold that their evidence is wholly reliable as it is clear, cogent and convincing. Indeed, nothing was brought to our notice in course of the hearing of these appeals to show that PWs 2 and 3 were unworthy of credit or that their evidence was unacceptable. We further get from the record that within an hour of the incident PW 2 lodged the F.I.R. delineating the prosecution case. The presence of PW 3 at the spot and his claim of having seen the occurrence get support from the fact that PW 1 found a number of injuries on his person when he examined him on that very night. The nature of injuries found by PW 1 on the body of the deceased also goes a long way to corroborate the evidence of PWs 2 and 3 for he opined that the deceased was the victim of two gun shots, that injuries No. 1 and 6 could be caused by driving a tractor on his body and that injuries No. 4 and 5 could be caused by fall from a cycle. PW 1 further opined that the death was due to shock and haemorrhage as a result of injuries No. 1 and 2.

Since the evidence of PWs 2 and 3 coupled with the corroborative evidence discussed above conclusively proves that A1 had, by firing twice from a gun, and A2, by driving a tractor over Ajaib Singh, caused his death, we need not discuss the other evidence adduced by the prosecution including that relating to motive.

Coming now to the other appeal we must hold, in view of the nature of evidence adduced during trial to connect the other accused persons with the murder of Ajaib Singh, that the learned trial Judge's finding that they were entitled to the benefit of reasonable doubt cannot be said to be perverse for against the respondent Mukhtiar Singh, the only incriminating evidence was that he raised lalkara and against the other two no evidence of any overt act was laid. As regards the grievance of the complainant that in the facts and circumstances of the case the convicts ought to have been awarded death sentence we can only say that this is not one of the 'rarest of rare' cases meriting such punishment.

On the conclusions as above we dismiss both the appeals. The appellant Mohinder Singh, son of Mukhtiar Singh, who is on bail, will now surrender to his bail bond to serve out the sentence.