

A

STATE OF HARYANA

v.

GURDIAL SINGH AND PARGAT SINGH

March 19, 1974.

B

[H. R. KHANNA AND P. K. GOSWAMI, JJ.]

Indian Penal Code—Sec. 302 read with Sec. 34—Two contradictory versions presented by prosecution—Benefit of doubt must go to the accused.

P & G were convicted u/s. 302 and were sentenced to death. The High Court set aside the convictions of both the accused and acquitted them. The State has filed the present appeals against the acquittal of the 2 accused by special leave.

C

The prosecution case is that on account of a family feud, the deceased was murdered by one P. with a double-barrel gun, in front of one A, the widow of a rich landlord.

The trial court accepted the prosecution version of occurrence and relied upon the evidence of A which was corroborated by the youngest son and the daughter, that P. was holding a gun etc. and he was convicted along with G, an associate.

D

On appeal, the High Court found that the F.I.R. was recorded subsequently after due deliberation and consultation. The High Court also found that the witnesses, relied on by the trial court had supported another version of the occurrence. It was found that an attempt had been made to improve upon the story with a view to save D, the eldest son of the landlord. The High Court, therefore, set aside the conviction of the accused and acquitted them.

Dismissing the appeal,

E

HELD : In the present case, the prosecution witnesses have come out with two inconsistent versions of the occurrence. One version of the occurrence is contained in the evidence of the witnesses in Court, while the other version is contained in their statements made before the police. According to the version given before the Court, it was P, who shot dead the deceased while according to other version, it was G of village Ramana, who was responsible for the crime. Again, according to the version given in Court, the occurrence was witnessed by A. As against that, the version contained in the police statement was that A had not witnessed the occurrence. In view of these contradictory versions, the High Court rightly set aside the conviction and there is no ground for interference by this Court in the present appeal.

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 1 & 2 of 1971.

G

Appeals by special leave from the judgment and order dated the 13th May 1970 of the Punjab and Haryana High Court in Criminal Appeals Nos. 170 and 201 of 1970.

Janardan Sharma and *R. N. Sachthey*, for the appellant.

Nuruddin Ahmed and *U. P. Singh*, for the respondents.

The Judgment of the Court was delivered by

H

KHANNA, J. Pargat Singh (31) of village Taraori was convicted by learned Sessions Judge Karnal under section 302 Indian Penal Code and was sentenced to death. Gurdial Singh (35) of village Ramana was

also tried along with Pargat Singh and was convicted under section 302 read with section 34 Indian Penal Code. He too was sentenced to death. On appeal and reference the Punjab and Haryana High Court set aside the conviction of both the accused and acquitted them. The State of Haryana has filed these appeals against the acquittal of the two accused by special leave.

The prosecution also filed charge sheet against Gurdial Singh of village Taraori, a brother of Pargat Singh accused, but as he was found to be insane, the committing magistrate directed that his case be separated and a separate challan be filed against him. The said Gurdial Singh of village Taraori was, in the meanwhile, directed to be sent to the hospital for his treatment.

The prosecution case is that Avtar Kaur (PW 3) was married about 33 years ago to Gurinder Singh of village Shamgarh. Gurinder Singh was one of the biggest landlords of Karnal district and belonged to a family of Chiefs. About four years after the marriage, Lal Singh, who was aged 65 or 70 years at the time of the present occurrence, was brought by Gurinder Singh to reside with him in Shamgarh. Lal Singh was previously in the service of the mother of Avtar Kaur. Lal Singh was respected like a Guru and was known as Dadaji. Gurinder Singh used to consult Lal Singh deceased with regard to his affairs and generally acted upon the advice of Lal Singh. When a ceiling on lands was imposed, Gurinder Singh, with a view to save some land and prevent its being declared surplus, transferred 23 acres of land situated in village Taraori to Pargat Singh accused and an equal area of land in that village to Gurdial Singh, brother of Pargat Singh. Pargat Singh and Gurdial Singh were sons of Sher Singh, maternal uncle of Gurinder Singh, and used to reside with him. After the land had been transferred by Gurinder Singh to Pargat Singh and Gurdial Singh, they shifted to village Taraori which is at a distance of about 4 miles from Shamgarh. They, however, used to visit Shamgarh off and on.

Gurinder Singh died a few months before the present occurrence. He was survived by his widow Avtar Kaur and three sons Daljit Singh, Gurjeet Singh and Sukhjeet Singh and two daughters Sukhiwan Kaur and Harjiwan Kaur. Sukhjeet Singh and Harjiwan Kaur were the only two unmarried children. Sukhjeet Singh was a student of Doon School Dehra Dun, while Harjiwan Kaur was studying in another school in Dehra Dun. Both of them were present in their house at Shamgarh during the days of the present occurrence having come there during winter vacation. The house is also described during the course

- A of evidence as a fort. Daljit Singh and Gurjeet Singh also used to live in that house. Sukhjiwan Kaur too was present there on the night of occurrence.

- B After the death of Gurinder Singh, Avtar Kaur used to consult Lal Singh in every matter. Gurinder Singh at the time of his death was constructing a cold storage. One chamber of the cold storage had been completed during the life time of Gurinder Singh, while the other chamber yet remained to be completed. Some money was required by Avtar Kaur in that connection. Lal Singh deceased accordingly called Pargat Singh accused about 15 days before the present occurrence and told him that as Gurinder Singh had given to him and his brother land worth rupees two lakhs, they should help Avtar Kaur when she was in need of money. Pargat Singh accused then stated that he had nothing to do with that. He also abused Lal Singh and told him that he was nobody to demand the money. Lal Singh deceased then threatened Pargat Singh that he would get a suit filed through
- C Sukhjeet Singh, who had recently become major in respect of the land which had been given to Pargat Singh and his brother Gurdial Singh.

- E Daljit Singh eldest son of Gurinder Singh, it is stated, was a spend thrift. Lal Singh deceased and Gurinder Singh used to tell Daljit Singh not to spend too much money. After the death of Gurinder Singh, Daljit Singh demanded more land in addition to the land which had been given to him by Gurinder Singh in his life time. Demand was also made by Daljit Singh for more money. There used to take place quarrels between Avtar Kaur and Daljit Singh on that account.

- F The case of the prosecution further is that on December, 11, 1968. Avtar Kaur, Sukhjiwan Kaur, Harjiwan Kaur, Sukhjeet Singh and Lal Singh took their meals in the dining room on the ground floor of the fort. Gurjeet Singh was on that day away to Ferozepore to attend a marriage. After finishing the meals at 9.15 p.m. Avtar Kaur and her two daughters went to her bed room on the upper storey. Sukhjeet
- G Singh had a room on the ground floor and he went to that room. At about 10 p.m. Avtar Kaur after finishing other work went to the room of Lal Singh. Lal Singh at that time sat on his cot, while Avtar Kaur sat nearby on a chair. Avtar Kaur during the course of her talk asked Lal Singh to settle the matter about Daljit Singh and to give to him what was his due. When Avtar Kaur and Lal Singh deceased were
- H talking, they heard the sound of a car in the outer courtyard. Daljit Singh, Pargat Singh, Pargat Singh's brother Gurdial Singh, Gurdial

Singh of Ramana and Rajinder Singh alighted from the car. Rajinder Singh belongs to village Bairsal. He had borrowed Rs. 3,000 in connection with the election of Chanda Singh to the Haryana Legislative Assembly in 1968. Earlier on that day Rajinder Singh refunded Rs. 1,500 out of the amount of Rs. 3,000 to Ram Lal, who was working as an accountant of Gurinder Singh's estate. As Daljit Singh, Rajinder Singh and Gurdial Singh of Ramana had earlier in the day gone for Shikar, Sukhjeet Singh came out and enquired from Daljit Singh as to what he had shot. Sukhjeet Singh was then told by Daljit Singh that he had been able to shoot four partridges. Daljit Singh then went upstairs to his own room taking his gun with him. Sukhjeet Singh also went to his own room. About 5 or 10 minutes thereafter Sukhjeet Singh and Avtar Kaur heard some footsteps going up the staircase. Pargat Singh, his brother Gurdial Singh and Gurdial Singh of Ramana then came inside the room wherein Avtar Kaur was talking to Lal Singh deceased. Pargat Singh was holding a double barrel gun P2 in his hand. The said gun belonged to Rajinder Singh. Avtar Kaur enquired from Pargat Singh and others as to why they had come at such late hour. Pargat Singh replied that they had come back after Shikar. Lal Singh then asked them as to whether all three of them had become Shikaris. Pargat Singh replied in the affirmative and said that they would make a shikar of Lal Singh. Pargat Singh at the same time fired at Lal Singh. Before the shot was fired at Lal Singh, Pargat Singh and his two companions made some signs to each other. Lal Singh on receipt of the shot fell down on the spot and died soon thereafter. Avtar Kaur was stunned because of the incident. Pargat Singh and his two companions then left. Harjiwan Kaur, Sukhjiwan Kaur and Sukhjeet Singh on hearing the gun shot came to the room where Avtar Kaur was present and were told about the occurrence by her. Avtar Kaur was then taken to her room. Sukhjeet Singh was directed by her to call accountant Ram Lal. When Ram Lal came there he was told by Avtar Kaur that Pargat Singh had killed Lal Singh by firing a shot with a double barrel gun. Ram Lal was told to go to the police station and to bring the police. Ram Lal then woke up the car driver and went in the car towards the police station. When the car reached near the bus stop of village Shamgarh on the Grand Trunk Road, Ram Lal saw a police party which included Sub Inspector Ram Rikh. Ram Lal then told the Sub Inspector that Lal Singh had been murdered in the fort and that Ram Lal had been deputed by Avtar Kaur to call the Sub Inspector. Sub Inspector Ram Rikh then went to the fort where Avtar Kaur made statement PD at 3 a.m. to him. The said statement was sent to police station Butana at a distance of 6½ miles from the place of occurrence and formal first information report PJ was prepared on the basis of statement PD at 3.45 p.m. Inquest report relating to the dead body was thereafter prepared by the Sub Inspector. The dead body was sent to the mortuary in Karnal. Post mortem examination on the dead body was performed by Dr. Jagdeep Singh at 4.30 p.m. on December 12.

On the morning following the occurrence, i.e. on December 12, 1968, a number of persons including Daljit Singh, Rajinder Singh, Pargat Singh and the latter's brother Gurdial Singh assembled at the

A fort. Sub Inspector Ram Rikh did not arrest Pargat Singh or his brother Gurdial Singh. Daljit Singh then produced gun P2 of Rajinder Singh along with an empty cartridge which had been fired from that gun. These articles were taken into possession.

B During the course of investigation, it is stated, a counter version of the occurrence came to light, Sub Inspector Ram Rikh and the Deputy Superintendent of Police who was supervising the investigation kept Superintendent of Police Brar (DW 1) informed of the investigation. Final report under section 173 of the Code of Criminal Procedure in court was filed by Sub Inspector Ram Rikh. In that report only Gurdial Singh of village Ramana was shown as the culprit. The names of Pargat Singh and his brother Gurdial Singh were mentioned in column No. 2 of the challan. The reason for that, according to Sub Inspector Ram Rikh, was that those two persons had been found on investigation to be innocent." The two accused in their statements under section 342 of the Code of Criminal Procedure denied the prosecution allegations which appeared against them in the prosecution evidence. In defence the accused examined Superintendent of Police S. S. Brar who deposed that in view of the fact that there were two versions of the occurrence, he ordered that before any arrest was made, a thorough probe should be made in the matter to find out the truth.

E The trial court accepted the prosecution version of the occurrence and, in doing so, relied upon the evidence of Avtar Kaur. It was further held that the evidence of Avtar Kaur was corroborated by that of Sukhjeet Singh and Harjiwan Kaur, who had deposed that when they looked out on hearing the gun shot, they saw Pargat Singh holding a gun and two Gurdial Singhs going downstairs. Regarding the counter version of the occurrence which appeared from the police statements of Avtar Kaur, Sukhjeet Singh and Harjiwan Kaur, the trial court held that compared to that version, the version as given in the evidence of the above witnesses in court was reliable. In the opinion of the trial court, the investigation of the case was tainted and unfair. The argument that there was delay in recording the report was rejected.

G On appeal the learned Judges of the High Court found that the circumstances of the case showed that the first information report was recorded subsequent to the time at which it purported to have been recorded and was the result of deliberation and consultation. The High Court also found that the witnesses, upon whose testimony reliance had been placed by the trial court, had supported another version of the occurrence. It was found that an attempt had been made to improve upon the story with a view to save Daljit Singh, eldest son of Avtar Kaur. Ocular evidence was also found to be not in consonance with the medical evidence. In the result the High Court accepted the appeal, set aside the conviction of the accused and acquitted them.

H We have heard Mr. Janardan Sharma on behalf of the appellant-State and Mr. Nuruddin on behalf of the accused-respondents and

are of the opinion that the judgment of the High Court calls for no interference.

It is not disputed that Lal Singh deceased died as a result of gun shot wound. Dr. Jagdeep Singh who performed post mortem examination on the dead body found "a single oval wound of entry with irregular inverted margins, 1½" in transverse diameter and 1¼" in vertical diameter, placed on the right side of the neck, just above the calvicle about half inch from the mid-line. The margins of the wound showed blackening and scorching. Hair of beard were not singed. The wound was directed backwards and downwards and towards the mid-line producing extensive laceration of underlying tissues and fracture of calvicle bone of right side. Right pleura was ruptured on the top and the pleural cavity contained large amount of blood. Upper lobe of right lung was lacerated completely. Middle and lower lobes were contused, showing bleeding on the surface. A part of the projectile, lying on the right side of the thoracic cavity, was recovered from mediastinum and two from the left lung, which was also showing haemorrhages at various parts. In the mediastinum big vassels were ruptured at many places and mediastinum was found containing large amount of clotted blood." The injuries were sufficient in the ordinary course of nature to cause death.

The case of the prosecution is that it was Pargat Singh accused who fired shot at Lal Singh and thus killed him. The prosecution for this purpose relied upon the ocular evidence of Avtar Kaur (PW 3), who in the course of her deposition supported the prosecution case as given above. The High Court did not place reliance upon the testimony of this witness, and we find no sufficient ground to take a different view. Avtar Kaur was confronted with her statement made before the police. In that statement Avtar Kaur stated that after taking her meals, she went to her daughter's room and slept there. It was further stated by Avtar Kaur that on the night of occurrence at about 10 or 11 p.m. Rupinder Kaur, wife of Daljit Singh, came to Avtar Kaur and woke her up. Rupinder Kaur also told Avtar Kaur that Daljit Singh was calling her below in the drawing room. Avtar Kaur further stated before the police that she had been told by Gurdial Singh of Ramana that in a drunken state he had shot dead Lal Singh deceased and he be pardoned. According to that statement of Avtar Kaur, she immediately directed that police be called and thereupon Gurdial Singh of village Ramana tried to run away, but he was secured by Pargat Singh and Daljit Singh. Daljit Singh also snatched the gun from his hand. It is thus plain that the version given by Avtar Kaur in her statement before the police was materially different. In view of that fact not much reliance can obviously be placed upon the testimony of Avtar Kaur in court.

Another fact of which note may be taken is that, according to Avtar Kaur, she was sitting on a chair in the room of Lal Singh and it was while sitting on that chair that she saw the occurrence. No such chair was found in that room when Sub Inspector Ram Rikh arrived there on the night of occurrence. It is also nobody's case that any chair was removed from that room after the occurrence.

- A. The absence of the chair in that room creates considerable doubt about the correctness of the evidence of Avtar Kaur.

B. The prosecution has sought corroboration of the evidence of Avtar Kaur from the testimony of Sukhjeet Singh (PW 4) and Hariwan Kaur, (PW 5), according to whom they saw Pargat Singh holding a gun and two Gurdial Singhs going down the stairs after the occurrence. The version of these witnesses in their statements before the police was, however, materially different. Sukhjeet Singh stated before the police that on reaching the drawing room he enquired from Daljit Singh as to what was the matter and that Daljit Singh then replied that Gurdial Singh had shot dead Lal Singh. The witness also stated before the police that Gurdial Singh of village Ramana was lying at the foot of Avtar Kaur and was saying that under intoxication he had fired the shot and he be pardoned. Hariwan Kaur in her statement made before the police stated that she had not seen anybody going or coming. She had also not heard the sound of any gun shot. According to that statement, she, her mother and sister were sleeping in her room on the night of occurrence when Rupinder Kaur came and woke them up.

D. The High Court also gave cogent reasons for arriving at the conclusion that the first information report appeared to have been recorded much later and not at the time it purported to have been done. Police station Butana is at a distance of about 13 miles from Karnal. The two places are connected by metalled road on which buses ply frequently. Copy of the first information report was received by the Ilaka magistrate at Karnal at 2 p.m. If the formal first information report had, in fact, been prepared at 3.45 a.m. it is not explained as to why the copy of the same was not delivered to the magistrate on the morning of December 12, 1968. Likewise, if the inquest report was prepared by Sub Inspector Ram Rikh shortly after recording report PD at 3 a.m., there is no sufficient reason as to why the dead body which was sent in the trolley of a tractor to Karnal should be brought to the doctor not before 3.55 p.m. The evidence that it took time to get the tractor ready has not been accepted by the High Court and we are not inclined to take a different view.

G. There is another fact which also indicates that on the morning of December 12, 1968 the police had no material with it about the complicity of Pargat Singh for the murder of Lal Singh deceased. Pargat Singh was admittedly amongst those persons who assembled at the house of Avtar Kaur on the morning of December 12, 1968. Although Sub Inspector Ram Rikh noticed his presence, he did not arrest Pargat Singh. It seems rather difficult to believe that if the first information report had been recorded before the assemblage of different persons including Pargat Singh on the morning of December 12, 1968 and the name of Pargat Singh had been mentioned in that report as the assailant of Lal Singh, the police Sub Inspector would not take him into custody.

Reliance was placed by the trial court upon the statement of Pargat Singh made before the committing magistrate that on December 11, 1968 he had gone to the room of Lal Singh to pay respects. There is, however, nothing in that statement to show that it related to a visit at day time or at night time. No incriminating inference can in the circumstances be drawn from that statement against Pargat Singh.

The present is a case wherein the prosecution witnesses have come out with two inconsistent versions of the occurrence. One version of the occurrence is contained in the evidence of the witnesses in court, while the other version is contained in their statements made before the police. According to the version given in court, it was Pargat Singh who shot dead the deceased, while according to the other version it was Gurdial Singh of Ramana who was responsible for the crime. Again, according to the version given in court, the occurrence was witnessed by Avtar Kaur. As against that, the version contained in the police statement was that Avtar Kaur had not witnessed the occurrence. In view of these contradictory versions, the High Court, in our opinion, rightly came to the conclusion that the conviction of the accused could not be sustained. We see no ground to interfere with the judgment of the High Court. The appeals fail and are dismissed.

S. C.

Appeals dismissed.