

STATE OF RAJASTHAN

v.

KARTAR SINGH

March 18, 1970

[M. HIDAYATULLAH, C.J., A. N. RAY AND I. D. DUA, JJ.]

Indian Evidence Act, (1 of 1872) s. 145—Entire statement made before Committal Court stated to be made under pressure—Whole statement read and then witness asked to explain—Whether s. 145 complied with.

A father and son were charged with committing seven murders. K, an eye witness, narrated the incident in the committal court and stated that the two accused armed with a pistol and sword respectively entered the house of the deceased, the son attacked the victims and the father fired when his son was caught by M. R stated that the son made a confession to him with regard to the murder. In the sessions court K turned hostile, and the public prosecutor read to K the whole of her statement and asked whether it was her statement. She admitted that it was a true record of what she stated before the committal court, but stated that it was a false statement given under 'police pressure'. The same was the case with R. Both the statements of K and R before the committal court were brought on record of the Sessions trial as Exhibits, and the defence did not then object to their being read. The Sessions Court convicted the father and son relying on the statements of K and M before the committal court, of another eye witness, and of S who had heard the report of pistol shot and saw the accused armed with their respective weapons coming out of the deceased's house. The High Court, on appeal, affirmed the conviction of the son, but rejecting the testimony of K, R and S acquitted the father holding that he had taken no share in the affair. In appeals, by the State against the father's acquittal, and by the son against his conviction this Court :—

HELD : The High Court was in error in not reading the statements. The objection taken to the admissibility of the statement of K was that every single passage which differed from her testimony in the Court of Session was not put to her with a view to affording her an opportunity of explaining why she had made a contrary statement. No doubt, if there were some passages here and there which differed from her later version, that procedure would have been necessary. Here the witness admitted that her statement was truly recorded in the Committal Court. She only denied that it was a true statement because she said that she was made to depose that way by the police. It would have been useless to point out the discrepancies between the two statements because her explanation would have been the same. In these circumstances, the requirements of s. 145 of the Indian Evidence Act were fully complied with and the earlier statement could be read as evidence in the Sessions Trial. [61-C-E]

The same was the case with R. These two witnesses also made a statement under s. 164 of the Code of Criminal Procedure. These statements were, of course, not evidence but were corroborative of what had been stated earlier in the Committal Court. The attention of the witnesses was drawn to the passages from those statements also and their explanation only was that they were made under police pressure. The

- A High Court should have accepted the evidence of S, because there was sufficient corroboration of his evidence. There was, thus, enough evidence on record to convict the father also. [61 E; 62 B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 114 and 115 of 1969.

- B Appeals by special leave from the judgment and order dated May 6, 1968 of the Rajasthan High Court in Criminal Appeal No. 624 of 1967.

K. Baldev Mehta, for the appellant (in Cr. A. No. 114 of 1969).

- C *E. Udayarathnam*, for the appellant (in Cr. A. No. 115 of 1969).

S. P. Sinha and *S. K. Bisaria*, for the respondent (in Cr. A. No. 114 of 1969).

K. Baldev Mehta, for the respondent (in Cr. A. No. 115 of 1969).

- D The Judgment of the Court was delivered by

- Hidayatullah, C.J.* This judgment will govern the disposal of Criminal Appeals Nos. 114 and 115 of 1969. They have been filed by special leave granted by this Court. Criminal Appeal No. 114 of 1969 has been filed by the State of Rajasthan against the acquittal of Kartar Singh and Criminal Appeal No. 115 of 1969 has been filed by Gurjant Singh son of Kartar Singh who has been convicted under s. 302, I.P.C. and sentenced to death. Previously the Sessions Judge, Ganganagar had convicted Kartar Singh also under s. 302/34, I.P.C. and sentenced him to death. Both Kartar Singh and Gurjant Singh were also convicted for some minor offences and sentenced to diverse periods of imprisonment but we are not concerned with them here, though the conviction and sentences of Gurjant Singh on the minor offences were confirmed but Kartar Singh was acquitted.

- G The case arises from an incident which took place on the night between the 8th and 9th February, 1967 at 11 p.m. at Mauza Ramsara in District Ganganagar. It involved the murder of no less than 7 persons and injuries to two others. The murdered persons were Kartar Singh's father Dayal Singh, Kartar Singh's step-mother Phinno and five children born to Dayal Singh from Phinno. Two other step-brothers of Kartar Singh were grievously wounded but escaped with their lives. The cause of this miniature massacre was the purchase of land by Dayal Singh in the names of his second wife Phinno and two of her sons. This annoyed Kartar Singh and his son Gurjant Singh since the step-mother and the

step-brothers were being favoured. The family had migrated from the West Punjab and settled down first at Simrewala. Later it shifted to village Ramsara. Dayal Singh sold the land at Simrewala and purchased some other at Ramsara in the names of his second wife Phinno and two of her sons. Kartar Singh also sold his land in village Simrewala and went to village Jasana, 2 to 2½ miles from village Ramsara. On the night in question Dayal Singh was talking to his daughter Mst. Kartar Kaur from his first wife, who had gone to her father's house that very day. Some of the members of the family were asleep and some were awake. At about 11 p.m. Gurjant Singh and his father Kartar Singh went to the house of Dayal Singh and called Dayal Singh. Dayal Singh went to the door, opened it and enquired why they had come at such an odd hour. He was told that they had been attacked by some Nayaks and had come to the house for taking shelter. Kartar Singh was armed with a pistol and Gurjant Singh with a sword. As soon as they entered the house, Gurjant Singh started striking Dayal Singh with his sword. Dayal Singh emerged into the 'Chowk'. Mohinder Singh, his adult son, then grappled with Gurjant Singh. Gurjant Singh also wounded Mohinder Singh and Kartar Singh fired his pistol which made Mohinder Singh release Gurjant Singh. Mohinder Singh then made his escape with his full sister Kartar Kaur. Meanwhile Mst. Phinno had arrived and she was also attacked by Gurjant Singh. It is not necessary to go over the ground. Suffice it to say that one after the other the seven inmates of the house—six step relations of Gurjant Singh and Kartar Singh and Dayal Singh himself were killed. One boy—another step-brother of Kartar Singh—was seriously wounded but survived.

Mohinder Singh then went to the house of Fazal Deen (P.W. 2) and reported the matter to him and asked for help. Fazal Deen sent his son Balu Khan with Mohinder Singh and himself started to get ready. They first went to the house of Premaram carpenter and with Premaram they went to the house of Gurdeep Singh (P.W. 1). Then they proceeded to the house of Dayal Singh and found the seven bodies and the wounded boy lying there. Many other persons arrived on the scene. Balu Khan was asked to go and report the matter to the police. He went in search of his mare but Samandar Singh (P.W. 6) told him that he had seen Kartar Singh and Gurjant Singh going away on the back of a horse. Balu Khan's mare was not found; presumably they had taken his mare. The incident was reported at Police Station Noher at about 2 p.m. After leaving the spot, the father and son seem to have parted company. Gurjant Singh went to village Patholawali in Haryana State where Mst. Kartar Kaur was married. He met Ranjeet Singh son of Kartar Kaur and disclosed to him that he had murdered Dayal Singh, Phinno and also their child-

- A ren. A fire was lit to warm himself and in that fire he cast the shoe and his shirt which were blood-stained. They were burnt. It may be pointed out that at the spot where murders took place, a *safa*, an odd shoe and a live 303 cartridge were found. The shoe, which Gurjant Singh burnt in the fire and the one found on the spot were presumably a pair. After Gurjant Singh fell asleep,
- B Ranjeet Singh's father Karnail Singh informed the Sarpanch and the Lambardar about the murders committed by Gurjant Singh and the Sarpanch and the Lambardar took Gurjant Singh to the Police Station Raina and handed him over to the police. His jersey was found to be stained with blood and seized. Later Gurjant Singh made a statement that he had thrown the sword
- C in a cotton held in village Ledesar and that he would point out the place. As a result of this information a sword was found in the field pointed out by Gurjant Singh and later both the jersey and the sword were found to be stained with human blood.

- Kartar Singh was not arrested immediately. He remained absconding till February 26, 1967 when he was arrested near the bus-stand at Dekha, District Ludhiana. He made a statement that
- D he had buried a pistol and some cartridges near a bush about one furlong from the village Ladesar and that he would point out the place. On his pointing out the place a pistol and 18 live cartridges of 303 bore were dug out from the ground and they were also seized.

- E After investigation the police presented a charge-sheet against Kartar Singh and his son Gurjant Singh. The Sessions Judge Ganganagar convicted both of them but the High Court has since acquitted Kartar Singh while maintaining the conviction and sentences of Gurjant Singh and hence the two appeals before us.

- F There were two eye-witnesses to the occurrence, namely, Mohinder Singh (P.W. 4) and Kartar Kaur (P.W. 2). Kartar Kaur turned hostile in the Court of Sessions and the statement made by her before the committal court was brought on the record of the trial court under s. 288 of the Code of Criminal Procedure. Mst. Kartar Kaur admitted that that was correctly recorded but denied the truth of it saying that it was given under police pressure. The
- G learned Sessions Judge relied upon the statements of Mohinder Singh and that of Kartar Kaur before the committal court and convicted both the father and the son. The High Court did not accept the earlier statement of Kartar Kaur, for the reasons which will soon appear, and therefore acquitted Kartar Singh because he had taken no share in the affair. Kartar Kaur had earlier stated
- H that he had fired the pistol but later resiled from that statement. As no other part was attributed to Kartar Singh the High Court felt that he was not involved in the murder and only his son Gurjant Singh was responsible.

We shall first deal with the appeal of Gurjant Singh against his conviction and sentence of death.

The prosecution case against Gurjant Singh has been accepted by the High Court and the Court of Session. Ordinarily this Court does not consider evidence for the third time when a concurrent finding has already been reached by the High Court and the Court of Session. However, as there was an appeal against the acquittal of Kartar Singh and the evidence was read to us in that connection we have been able to appraise it in relation to Gurjant Singh also. Our conclusion is that the case against Gurjant Singh is amply proved. There are other pieces of evidence which the High Court rejected, in our opinion, wrongly. If those are added to the evidence already accepted against Gurjant Singh they leave no room for doubt (if there was one) that he was the person who committed the seven murders on that fateful night. Before we summarise the case against Gurjant Singh we wish to consider the evidence which was discarded by the High Court in relation to his case and the appeal against Kartar Singh.

Testimony of three witnesses was rejected by the High Court. The first is Kartar Kaur, the full sister of Kartar Singh, the second her son Ranjeet Singh and the third Samandar Singh (P.W. 6). The evidence of Kartar Kaur in the Committal Court was brought upon the record of the Sessions trial, as Ex. E-14, and the evidence of Ranjeet Singh before the Committal Court was brought on the record of the trial court as Ex. E-17. When these documents were admitted in evidence, counsel for the defence did not object to their being read. In the High Court, however, attempt was made to get rid of the statements by saying that they were inadmissible since the provisions of s. 145 of the Indian Evidence Act were not complied with. In our judgment, there was enough compliance with s. 145 of the Evidence Act and the High Court erred in not reading these earlier statements for what they were worth. When these two witnesses were examined in the committal court, they gave a clear version involving the two accused in the case. The statement of Mst. Kartar Kaur was that Gurjant Singh and his father Kartar Singh came to the house of Dayal Singh and Gurjant Singh called aloud to Dayal Singh to open the door. The door was opened and father and son entered. At that time Gurjant Singh was carrying a sword. She stated quite clearly that Gurjant Singh attacked her father Daval Singh and later her step-mother Phinno. She also said that Kartar Singh had also entered with Gurjant Singh and Kartar Singh fired a firearm when Gurjant Singh was caught by Mohinder Singh. She also stated that Mohinder Singh was wounded by Gurjant Singh and then she ran out of the house in the company of Mohinder Singh. These clear statements were completely denied by her when she came to the Court

- A of Session. Her effort then was to make it appear that the persons who had entered the house had muffled their faces and she could not identify them. She also said that she had not seen anything in the hands of those persons. In fact she did not say that there were two persons at all but only one. She was declared hostile and was allowed to be cross-examined by the Public Prosecutor.
- B The Public Prosecutor read to her the whole of her statement before the Committal Court and asked her whether it was her statement. She admitted that it was a true record of what she had stated before the Committal Court, but she said that it was a false statement given under 'police pressure'. The objection taken to the admissibility of the statement was that every single passage which differed from her testimony in the Court of Session was not
- C put to her with a view to affording her an opportunity of explaining why she had made a contrary statement. No doubt, if there were some passages here and there which differed from her later version, that procedure would have been necessary. Here the witness admitted that her statement was truly recorded in the Committal Court. She only denied that it was a true statement because she
- D said that she was made to depose that way by the police. It would have been useless to point out the discrepancies between the two statements because her explanation would have been the same. In these circumstances, the requirements of s. 145 of the Indian Evidence Act were fully complied with and the earlier statement could be read as evidence in the Sessions Trial.

- E The same was the case with Ranjeet Singh. He had also given a graphic account of how Gurjant Singh had met him at his field and had confessed to him that he was coming after murdering Dayal Singh and the whole family. Gurjant Singh said that he was hungry and therefore he was brought home. As he was feeling cold a fire was lit and Gurjant Singh began to warm himself.
- F Then he asked for hot water so that he (Gurjant Singh) could take a bath. He also asked Ranjeet Singh to prepare some tea. When tea was being prepared Gurjant Singh put his *chaddar*, shirt and a shoe in the fire. Ranjeet Singh on getting the smell came and asked what was being burnt and was told that he (Gurjant Singh) had burnt his clothes which were blood-stained. When Gurjant
- G Singh fell asleep, Karnail Singh father of Ranjeet Singh informed the Lambardar and the Sarpanch and they came and caught Gurjant Singh and handed him over to the police. In the Court of Session Ranjeet Singh completely denied the statement. He was confronted with this statement and it was read over to him *in extenso*. He also admitted that was a true record of what he had stated in the Committal Court but that it was false and was given
- H under 'police pressure'. In our judgment, there was sufficient compliance with s. 145 of the Indian Evidence Act in his case also. It would have been pointless to draw his attention to each sen-

tence and ask his explanation because the explanation would have been the same that it was false and given under pressure of police.

It may be pointed out that these two witnesses also made a statement under s. 164 of the Code of Criminal Procedure. These statements were, of course, not evidence but were corroborative of what had been stated earlier in the Committal Court. The attention of the witnesses was drawn to passages from those statements also and their explanation only was that they were made under 'police pressure'. In our judgment the High Court was in error in not reading the statement of Ranjeet Singh made before the Committal Court and considering it as part of the evidence in the case.

Samandar Singh (P.W. 6) was the third witness to be disbelieved. His statement was that he heard the report of a pistol shot and climbed his roof. He saw in the house of Dayal Singh a light burning and also that something was happening as there were shouts of 'bachao' 'bachao' from that direction. He saw Kartar Singh and Gurjant Singh coming out of the house of Dayal Singh. Gurjant Singh had a naked sword in his hands and Kartar Singh had a white mare with him. That mare belonged to Fazaldeen. He accosted them but they did not stop and told him to go away lest he should be killed. Both the father and the son had not covered their faces. He saw them go away on the mare. He followed them for some 70 to 80 paces and then turned back and went to the house of Dayal Singh and saw the dead body of a woman lying in the courtyard. He went to Fazaldeen but did not find him. He then returned to his own house which was next to Dayal Singh's house and found Prema, Gurdeep and other persons there. He told them that Kartar Singh and Gurjant Singh had gone away with the mare. He also saw Mohinder Singh who was wounded. The evidence of this witness was curiously disbelieved by the High Court because the report of the pistol shot was not heard by Fazaldeen and Gurdeep Singh. It is often the case that the report of a firearm at night is heard by some persons and not by others. It depends on the fact that some persons are awake and some are asleep. It is obvious that Samandar Singh was awake that night because he was at the house of Dayal Singh soon afterwards. Perhaps lying awake and as his house was next door he heard the report of the pistol shot and also the cries from Dayal Singh's house. There is nothing unnatural in the statement made by Samandar Singh and we do not see any reason to disbelieve him. Another reason given by the High Court was that Samandar Singh claimed to have followed the father and the son for 70 to 80 paces and that would not be natural since it was night time and the other two were armed. It may be that Samandar Singh, who was a police surveille, claimed that he was following the suspects merely to earn a name for himself. But we do not think that his

- A whole testimony is false because his statement that there was a pistol shot was corroborated by Mohinder Singh and by Kartar Kaur in her statement before the Committal Court. The story of pistol shot was disbelieved by the High Court because it was not mentioned to Fazaldeen and Gurdeep Singh by Mohinder Singh and did not figure in the First Information Report. The First Information Report was made not by one of the persons immediately concerned but by a person who had the information from another. In these cases, sometimes, a fact gets omitted which should have been mentioned. Fazaldeen and Gurdeep Singh had stood by the First Information Report although there was no mention in it about the pistol shot. This was noticed by the High Court. In these circumstances the suspicion should have fallen on the correctness of the statements of Fazaldeen and Gurdeep Singh rather than on the statements by Mohinder Singh, Kartar Kaur and Samandar Singh.

- D No doubt Kartar Kaur and Ranjeet changed but it must be remembered that Kartar Kaur and Ranjeet Singh were immediately related to Kartar Singh. Kartar Kaur was his full sister and Ranjeet Singh was her son. They were favourably disposed towards Kartar Singh and his son Gurjant Singh. Although they had made truthful statements under the shock of what had happened they were trying to save them by denying their statements in the Committal Court. It would be impossible to think that police could exert pressure to make successive statements to the police, then to the Magistrate under s. 164 and then to the Committal Court. It is obvious that pressure was exercised the other way by Kartar Singh and Gurjant Singh and the earlier statements were denied to save them.

- F When these statements are thrown in, the case against Gurjant Singh remains amply proved. Apart from the evidence of eye-witnesses, namely, Mst. Kartar Kaur and her brother Mohinder Singh, there is the evidence of Samandar Singh that he was seen going away. In support of this evidence there is the extra-judicial confession of Gurjant Singh to Ranjeet Singh when he met him at the latter's village. We are completely satisfied that this confession was made. The circumstantial evidence of burning the *chaddar*, shirt and the shoe clearly demonstrates the guilt of Gurjant Singh. It must be remembered that a *safa* and an odd shoe were found at the spot near the body of Mst. Phinno. Mohinder Singh identified them as the shoe and *safa* of Gurjant Singh. The High Court has accepted this evidence and we see no reason to disbelieve Mohinder Singh who was the identifying witness. Then there is the discovery of the sword with human blood-stains on it and his pullover which was also found to be stained with human blood. The fact that Gurjant Singh was apprehended from a

place far away from the place where the murders took place also shows that he had run away from the place of murder to seek shelter elsewhere. The evidence against Gurjant Singh is complete and we are convinced that the prosecution case put up against him has been fully brought home to him. We are further convinced that for the reasons given above statements made by Kartar Kaur and Ranjeet Singh before the Committal Court are true and they fully support the conclusion that Gurjant Singh has been rightly convicted and sentenced. His appeal will be dismissed.

This brings us to the appeal against Kartar Singh. We have already stated that we think that the statement of Mohinder Singh about the firing of the pistol by Kartar Singh is corroborated by the earlier statements of Mst. Kartar Kaur and the statement of Samandar Singh who heard the report of the firing of the pistol. At the scene of the murder a live cartridge of .303 bore was found. Later Kartar Singh made a statement to the police and as a result of that statement a pistol and 18 live cartridges of the same bore were dug out from the ground. These corroborate the evidence of Mohinder Singh and of Kartar Kaur that Kartar Singh had a pistol in his hand and he fired it to force Mohinder Singh to release Gurjant Singh with whom he was grappling. The presence of the cartridge on the scene of the murder connects Kartar Singh and lends sufficient corroboration to the statement of the eye-witnesses to make the guilt brought home to him. The High Court was in error in thinking that Kartar Singh did nothing in the matter and was a silent spectator. It is impossible to think that Kartar Singh would stand aloof and let his son commit as many as seven murders including the murder of his (Kartar Singh's) own father and not do anything to prevent his son unless he himself had connived and was a party. It is clear from the evidence that Kartar Singh and Gurjant Singh had come together. They were both armed and both went away together. The pistol was in fact fired and at the site of the offence a live cartridge was found which matched with the pistol and the other live cartridges dug out from the ground as a result of a statement made by Kartar Singh. We believe Samandar Singh's statement that he saw these two go away together, as indeed he must have, after the assault on the family had been made. On the whole the case against Kartar Singh is also proved. He did not do anything to murder these persons but he certainly was there with Gurjant Singh and both were of the same mind in doing away with the family of Daval Singh including Dayal Singh himself. We are satisfied that the case stood proved against him as well.

We allow the appeal of the State of Rajasthan against Kartar Singh and convict him under s. 302/34, I.P.C. He was awarded

- A** a sentence of death by the learned Sessions Judge but, we think, that as his part in the seven murders, was secondary, it would be sufficient if the sentence of life imprisonment is imposed upon him. Kartar Singh is therefore convicted under s. 302/34, I.P.C. and is sentenced to undergo rigorous imprisonment for life. If he is not in custody he shall be arrested forthwith and committed to prison
- B** to serve out his sentence.

Y.P.

Appeal allowed.