

Lakhbir Singh vs State Of Punjab on 26 November, 1993

Equivalent citations: 1994 AIR 1029, 1994 SCC SUPL. (1) 524, AIR 1994 SUPREME COURT 1029, 1994 AIR SCW 1126, 1994 (1) SCC(SUPP) 524, 1994 SCC(CRI) 697, 1993 JT (SUPP) 171, 1994 SCC (SUPP) 1 524, (1993) 4 CURCRIR 478, (1994) 1 ALLCRILR 47, (1995) 1 EASTCRIC 581

Author: G.N. Ray

Bench: G.N. Ray

PETITIONER:
LAKHBIR SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT 26/11/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
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REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 AIR 1029 1994 SCC Supl. (1) 524
JT 1993 Supl. 171 1993 SCALE (4) 553

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J.- These three appeals are filed by the original accused 1 and 3 against the judgment of the Punjab & Haryana High Court. The two appellants along with Bawa Singh and Bir Singh, original accused 2 and 4 respectively were tried for offences punishable under Sections 302 and 307/34 IPC for causing the death of one Gulab Singh and for attempting to commit the murder of the witnesses. The trial court convicted the two appellants under Sections 302/34 IPC and sentenced each of them to undergo imprisonment for life

and to pay a fine of Rs 1000 in default of payment of which to undergo six months' RI. The two appellants were also separately convicted under Section 25 of the Arms Act and sentenced to undergo one year's RI. Questioning those convictions the accused preferred three appeals to the High Court and all the three appeals were dismissed. Hence the present appeals.

2. The prosecution case is as follows: The deceased Gulab Singh and the material witnesses including the three eyewitnesses PWs 4, 5 and 6 belong to Village Mehma Sarja. PW 4 is the son of the deceased. There was enmity between the deceased and his family members and the accused. On Diwali previous to the present occurrence one Beant Singh brother of Gurdev Singh, the second appellant was murdered. Lakhbir Singh, the first appellant lodged a report against the deceased for the said murder. The police during the enquiry found Gulab Singh to be innocent and instead of Gulab Singh, appellant 1 and his brother and some others were challaned and the case was still pending. On September 12, 1981 Gulab Singh, the deceased had gone for purchasing medicines from Goniana Mandi as he was not feeling well. PW 4, son of deceased also came to Goniana Mandi for purchasing insecticides and also to procure money from the Commission Agent. At about 6 p.m. the deceased was standing near the railway crossing for going to his village. PW 4 met the deceased when he talking to Jarnail Singh, PW 5 and Gulzara Singh, PW 6 who belonged to their village. PWs 4, 5 and 6 went near the hand pump for drinking water which was at a distance of about 10 karmas from the pitter (sic) jeep in which the deceased was sitting on the front seat. Lakhbir Singh, A- 1 came there from the side of Gurduwara and entered the jeep from behind along with other accused. Bir Singh, the acquitted accused is alleged to have raised a lalkara. Hearing the same PWs 4, 5 and 6 looked towards the jeep and found A- 1 taking out a 12 bore country-made pistol and firing at the back of the deceased. Gurdev Singh, A-3 was also armed with a 12 bore country-made pistol. He fired a shot simultaneously which hit the deceased on the head on the right side. All the witnesses ran towards the jeep and raised cries and it is alleged that the acquitted accused Bawa Singh fired a shot with his 12 bore country-made pistol but the same did not hit anybody. When the witnesses saw the accused reloading the pistols they ran away and the accused left the place. PWs 4, 5 and 6 went near the deceased and found him dead on the front seat of the jeep. Leaving PW 5 at the place of occurrence, PWs 4 and 6 went to the police station which was nearby and lodged a report which was recorded by SI Gurnam Singh. A case was registered and the Sub-Inspector reached the place of occurrence and got the photographs of the scene of occurrence taken. He also recovered three empty cartridges from the scene of occurrence. After holding the inquest he sent the dead body for postmortem. The Doctor, PW 1, who conducted the postmortem, found four gunshot injuries and on internal examination he found that the right lung was injured and he opined that injury Nos. 1 and 2 were individually sufficient to cause death in the ordinary course of nature and that the injuries were caused by firearms.

3. Immediately after the occurrence, the police went after the accused. They saw three persons running. Gurdev Singh, the second appellant was caught by ASI Gian Chand and he recovered a pistol from him. The other accused were arrested later. The prosecution mainly relied on the evidence of the eyewitnesses PWs 4, 5 and 6. The accused when examined under Section 313 CrPC denied the offence and stated that they have been falsely implicated. The trial Judge as well as the High Court accepted the evidence of PWs 4, 5 and 6 as against the two appellants who are alleged to have shot at the deceased and accordingly convicted them as stated above.

4. Shri Kohli, learned senior counsel appearing for the appellants submitted that PWs 4, 5 and 6 are chance witnesses and also highly interested and the failure on the part of the prosecution to examine some independent witnesses who would have been present at the scene of occurrence, is fatal to the prosecution case. His further submission is that the ballistic expert's evidence would show that the empty cartridges recovered at the scene of occurrence would not have been fired from the weapons seized. He also submitted that in view of the medical evidence the prosecution version that the accused shot from behind at the close range is belied.

5. PW 4, the principal eyewitness is the son of the deceased. Immediately after the occurrence within a short while he lodged the FIR. In the said report all the details of the occurrence are given. It is clearly mentioned that the two appellants shot at the deceased who was sitting in the jeep. He also mentioned the names of PWs 5 and 6, the other two eyewitnesses. If PW 4 had not witnessed the occurrence, he would not have given a correct version of the occurrence within such a short time. A perusal of the FIR would show that it could have been given only by an eyewitness. The criticism that PWs 4, 5 and 6 are chance witnesses has no force. All the three eyewitnesses have given reasons as to why they came to Goniana Mandi. It is a matter of common knowledge that the villagers do come to a town and since they belonged to the same village they also moved together. PW 4 knew that his father had gone to Goniana Mandi and he also came later and met his father. There is nothing unnatural about it. Therefore it cannot be said that the eyewitnesses are chance witnesses.

6. The next criticism is that the prosecution has failed to examine independent witnesses. Sometimes even assuming that some people there had witnessed the occurrence, they might not have come forward to speak about the occurrence. Further the occurrence has taken place suddenly and the people in the nearby shops might not have seen the actual attack and further they could not have known the assailants since they belonged to a different place. The facts in the case would show that this was a preplanned murder. At any rate when the evidence of PWs 4, 5 and 6 is found to be creditworthy, non-examination of some persons in the vicinity does not affect the prosecution case.

7. PWs 4, 5 and 6 have been cross-examined at length. Except eliciting some omissions in respect of minor details they have not been shaken. So far as the medical evidence and the expert evidence in respect of nature of the weapons used and the distance from which the shots were fired, are concerned, we do not come across any serious infirmity in the prosecution case. The Doctor, PW 1 who conducted the postmortem, has stated that the injuries found on the deceased must have been caused by firearms. As a matter of fact some pellets also were removed from the body. Therefore there cannot be any doubt that the firearms were used. He was cross-examined but he asserted that the distance from where the pellets were recovered from the entrance wound on the head may be more than 6" and that injury Nos. 1 and 2 were caused from a very close range. In view of this positive evidence even if some of the recovered weapons as per the ballistic expert's evidence could not have been used, that by itself is not a serious infirmity. The eyewitnesses have categorically stated that country-made pistols were used and the medical evidence shows that the death was due to injuries caused by firearms. This aspect has been considered by the Sessions Court in detail-and it has been rightly observed that the shots have been fired from country-made pistols. There was every possibility of the holes caused being slightly bigger than muzzle. We have carefully gone through the evidence of the eyewitnesses and reasons given by the two courts for believing their evidence. We

see absolutely no grounds to come to a different conclusion. Accordingly, the appeals are dismissed.