

## **Bhola Singh And Another vs State Of Punjab on 7 September, 1993**

**Equivalent citations: 1994 AIR 137, 1994 SCC SUPL. (1) 546, AIR 1994 SUPREME COURT 137, 1993 AIR SCW 3771, 1993 (5) JT 164, 1994 SCC(CRI) 410, 1994 (1) SCC(SUPP) 546, 1993 CRIAPPR(SC) 322, (1994) SC CR R 33, (1993) 3 ALLCRILR 241, (1993) 3 CRIMES 303, (1993) 3 CURCRIR 352, (1993) 3 RECCRIR 493, (1994) ALLCRIC 105**

**Author: G.N. Ray**

**Bench: G.N. Ray**

PETITIONER:  
BHOLA SINGH AND ANOTHER

Vs.

RESPONDENT:  
STATE OF PUNJAB

DATE OF JUDGMENT 07/09/1993

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

CITATION:  
1994 AIR 137                      1994 SCC Supl. (1) 546  
JT 1993 (5) 164                1993 SCALE (3) 644

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by G.N. RAY, J.- This appeal is directed against the judgment dated December 17, 1979 passed by the Division Bench of Punjab and Haryana High +From the Judgment and Order dated December 17, 1979 of the Punjab and Haryana High Court in

Crl. Appeal No. 1440 of 1978 Court in Criminal Appeal Nos. 1439 of 1978 and 1440 of 1978. Both the said appeals were disposed of by a common judgment by the High Court and the appeals were directed against the judgment dated November 6, 1978 passed by the Additional Sessions Judge, Ferozepore, in Sessions Trial No. 60 of 1978. The four accused including the appellants Bhola Singh and Baldev Singh were tried on a charge for offences under Sections 302, 302/34, 307, 307/34 IPC and under Section 27 of the Arms Act.

2. The prosecution case in short is that Smt Mukhtiar Kaur, widow of Gurmej Singh (deceased), had a quarrel with Kashmir Kaur, wife of Baldev Singh, one of the four accused, a few days before the occurrence taking place on September 6, 1977. The matter, however, was settled at the instance of La] Singh of village Dhandian and Puran Singh, Sarpanch of the village. About two days before the occurrence resulting in the murder of Gurmej Singh and causing gunshot injuries to Mukhtiar Kaur, Nirvel Singh, son of Gurmej Singh (deceased), also had a quarrel with Bhola Singh, one of the accused and Joginder Singh, another accused in the case. Gurnam Singh, the other accused, is the brother of Baldev Singh (accused). In the evening of September 6, 1977, Gurdev Singh, PW 12, a relation of Mukhtiar Kaur came to the house of Gurmej Singh (deceased) at the village Kachar Bhan. He had carried with him a licenced .315 bore rifle. Gurdev Singh, PW 12, and Nirvel Singh, son of the deceased took their meals and went to the kotha of their house to sleep. Gurmej Singh, deceased, came from the field and fed the cattle in the house and thereafter started taking bath in the bathroom situated in the courtyard of the house at about 9.00 p.m. Smt Mukhtiar Kaur, the injured widow of the deceased (PW 13), was doing household jobs at that time. The accused Bhola Singh and Baldev Singh both armed with single barrel .12 bore guns while Gurnam Singh and Joginder Singh each armed with gandasi appeared on the scene. They shouted challenges and abused Gurmej Singh (deceased). Gurmej Singh came out of the bathroom wearing only a chadra (Ex. P-17) around his waist. On seeing Gurmej Singh, the accused Baldev Singh fired a shot hitting Gurmej Singh in the chest. Bhola Singh fired a shot causing injuries to Mukhtiar Kaur on the chest and on her face. Both Gurmej Singh and Mukhtiar Kaur fell down being injured. Gurdev Singh, PW 12, fired three shots from his rifle from the kotha of the house towards the accused on which the accused retreated and while retreating they had also fired shots from their gun challenging Nirvel Singh and Gurdev Singh. Gurdev Singh and Nirvel Singh found Gurmej Singh lying dead. They put the dead body on a cot near the place where Gurmej Singh was shot at. According to the prosecution case, at the time of the occurrence an electric bulb installed by the Panchayat in front of the door of the house of the Sarpanch was providing Sufficient light and the said two witnesses including the injured Smt Mukhtiar Kaur had seen the commission of offence by the said accused persons. The prosecution also alleged that lantern was burning in the house. Till midnight due to fear, none of the inmates of the house of Gurmej Singh moved out. After midnight, Nirvel Singh went to the village Markhai from where Naunihal Singh, husband of the sister of Mukhtiar Kaur, joined him and they went to the Police Station, Zira and lodged the report with SI Jagjit Singh, naming Bhola Singh, Baldev Singh, Joginder Singh and Gurnam Singh as the assailants. Gurdev Singh left for village Chhuchak for bringing the married daughter of Gurmej Singh (deceased). SI Jagjit Singh, accompanied Nirvel Singh to the spot at about 5.30 a.m. He prepared the inquest report (Ex. P-E/4) of the dead body of the deceased and also recorded the statements of Mukhtiar Kaur and Jit Singh, younger son of the deceased. The dead body of Gurmej Singh thereafter was sent for postmortem examination through a police constable. The injured Mukhtiar Kaur was taken to civil hospital, Zira. At about 8.15 a.m. on

September 7, 1977, she was examined by the Senior Medical Officer of the hospital and injuries were noted by the doctor. From the postmortem report and medical report of the hospital doctor it was established that the injuries suffered by the deceased and Mukhtiar Kaur were gunshot injuries. It may be mentioned here that the police also recovered three empty cartridges of .12 bore from the place of occurrence and another three empty cartridges of .12 bore were recovered from near the house of the deceased and according to the ballistic expert the individual characteristic marks of the said two .12 bore guns were found on all the said cartridges belonging to the two accused persons which were seized by the police. The police also recovered three empty cartridges of .315 bore from the roof of the kotha of the house of the deceased.

3. The defence tried to establish that the incident had not taken place at the house of the deceased but somewhere else and Gurdev Singh was not at all present at the house. The defence also contended that there was no strong motive for which the murder of the deceased was committed and an attempt to murder Mukhtiar Kaur would also be made. The defence also contended that at the relevant time there was power cut in the village and as such there was no occasion to witness the occurrence by the alleged eyewitnesses. For the aforesaid purpose, the employees of the electricity department were examined by the accused but on perusal of the records of the department, the learned Sessions Judge was of the view that a loose sheet not signed by any officer and having interpolation and overwriting was not at all acceptable and the prosecution case that the electric bulb was burning deserved credence. The learned Sessions Judge believed the statements of three eyewitnesses that they had witnessed the occurrence. After considering the postmortem report and the evidence of the doctor who examined Mukhtiar Kaur and also considering the materials on record and evidences adduced on behalf of the prosecution including three eyewitnesses, the learned Sessions Judge accepted the prosecution case that the accused Baldev Singh had fired a shot killing Gurmej Singh on the spot and the accused Bhola Singh had fired a shot causing injuries to Mukhtiar Kaur, PW

13. The learned Sessions Judge was, however, of the view that the other two accused, namely, Gurnam Singh and Joginder Singh though accompanied Bhola Singh and Baldev Singh, might not have any intention to commit murder of Mukhtiar Kaur and Gurmej Singh or to cause injuries to Mukhtiar Kaur endangering her life. Accordingly, the learned Sessions Judge gave the benefit of doubt and acquitted the said two accused of all the charges. The learned Sessions Judge convicted Baldev Singh under Section 302 IPC and Bhola Singh under Sections 302/34 IPC. He also convicted Bhola Singh for the offence punishable under Section 307 IPC and Baldev Singh was also convicted under Sections 307/34 IPC. Both Bhola Singh and Baldev Singh were further convicted under Section 27 of the Arms Act. The learned Sessions Judge sentenced Baldev Singh and Bhola Singh to imprisonment for life with a fine of Rs 500 to Baldev Singh and Rs 250 to Bhola Singh on the charge under Sections 302, 302/34 IPC. It was further directed that on default of payment of fine Baldev Singh will suffer rigorous imprisonment for three months and Bhola Singh will further suffer rigorous imprisonment for two months. Bhola Singh was further directed to suffer rigorous imprisonment for 7 years with a fine of Rs 250 under Section 307 IPC and Baldev Singh was sentenced to suffer rigorous imprisonment for five years with a fine of Rs 250 under Sections 307/34 IPC. In default of payment of fine each of the two accused were directed to suffer rigorous imprisonment for two months. Both the accused were further sentenced to rigorous imprisonment

for three years under Section 27 of the Arms Act, and the guns recovered from the accused, Bhola Singh and Baldev Singh, were directed to be confiscated to the State along with the cartridges. The learned Sessions Judge directed that the amount of fine if realised in full or in part would be paid to Smt Mukhtiar Kaur.

4. The two appeals being Criminal Appeal Nos. 1439 and 1440 of 1978 preferred by the said two convicted accused in the High Court of Punjab and Haryana and as aforesaid, the Division Bench disposed of both the said appeals on December 17, 1979. The High Court agreed with the findings made by the learned Sessions Judge and accepted the evidences of the eyewitnesses as reliable thereby fully establishing the guilt of the two accused persons. Coming to the question of absence of electric light at the time of occurrence, the High Court was of the view that even if it was accepted that there was no electric light at the relevant time, it was quite apparent that there was otherwise sufficient light by which the accused persons could easily identify their victims and had fired upon them. In the aforesaid circumstances, it was also possible for the eyewitnesses particularly, the injured eyewitnesses, Mukhtiar Kaur, to identify the assailants. The High Court was of the view that there was only a trifling dispute between Mukhtiar Kaur and Kashmir Kaur, wife of Baldev Singh, and hardly there was any other dispute which could persuade Mukhtiar Kaur to implicate the appellants falsely. The High Court was of the view that the prosecution evidence was very weighty against the appellants and the report of the ballistic expert had lent unassailable support to the account of the eyewitnesses against the identity of the weapons used in the commission of the offence. In that view of the matter, the High Court accepted the findings of the learned trial Judge and upheld the conviction and sentence imposed on the appellants and dismissed both the appeals.

5. Against the said decision of the High Court, the instant appeal has been preferred by Bhola Singh and Baldev Singh, accused Nos. 1 and 2. Mr Kohli, learned counsel appearing for the appellants has strenuously contended that there was hardly any motive which could induce the appellants to come armed with guns for causing murder of Gurmej Singh and attempting to murder his wife, Mukhtiar Kaur. Mr Kohli has contended that it is unbelievable that the two appellants being accompanied by other two persons would come all the way armed with guns to the house of the deceased and cause gunshot injuries as alleged. He has contended that when a relation of the deceased Gurdev Singh had fired from his rifle on the appellants, it is unbelievable that they would dare for further challenge and would fire further shots from their guns as alleged by the prosecution. Mr Kohli has contended that there was clinching evidence from the side of the defence that there was power cut in the village at the relevant time and there was no occasion of having any electric light by which the eyewitnesses could identify them. He has submitted that the learned Sessions Judge discarded the defence evidences about power cut on flimsy grounds and erred in not placing any reliance on the record of the electricity department produced on behalf of the defence to support the case that there was a power cut. He has submitted that it is a positive case of the prosecution that with the help of the electric bulb they had identified the appellants. Hence, absence of electric light completely demolishes prosecution case. Mr Kohli has contended that the presence of Gurdev Singh at the house of the deceased was highly doubtful and admittedly he left the place shortly after the occurrence. His rifle was not examined by the ballistic expert for establishing whether the cartridges of .315 bore rifle, recovered by the police from the house of the deceased had been fired from the rifle of the said Gurdev Singh. Mr Kohli contended that the first information report was lodged after

a long lapse of time and the explanation since accepted by the courts below for the delay in lodging the first information report was not at all tenable. He has contended that according to the prosecution case, Gurdev Singh had a rifle. He, therefore, could easily have accompanied the son of the deceased to the police station without any delay. There was no reason to wait till midnight on the plea of apprehension of being attacked by the appellants on the way. He has also submitted that if such was the apprehension, there is no reason why after midnight such apprehension would disappear and the son would go without being accompanied by any person carrying a gun. He has submitted that because of the inordinate delay which has not been explained, the prosecution could fabricate a story and lodge false first information report. Mr Kohli has contended that it is unfortunate that a man had died because of gunshot injuries and the wife of the deceased had also suffered injuries from a gun. But such facts, though lamentable should not weigh against the appellants and the prosecution having failed to establish the guilt of the appellants beyond all reasonable doubts and the case of the prosecution remaining in the realm of surmise and conjecture, the appellants should have been given benefit of doubt. He has, therefore, submitted that the appeal should be allowed and the appellants should be acquitted of the offences charged against them.

6. The learned counsel for the State, however, opposed such submissions and contended that the delay in filing the first information report has been fully explained by the prosecution witness and the learned Sessions Judge has given very cogent reasons for accepting the prosecution case in lodging the first information report after some time. The learned counsel has also contended that from the report of the ballistic expert, it has been clearly established that the .12 bore cartridges recovered from the place of occurrence were fired from the guns of the appellants and the appellants failed to explain how such firing had taken place from their guns. The learned counsel has also contended that there was no power cut at the relevant point of time and the loose sheet of the electric department was not acceptable for the reasons indicated by the learned Sessions Judge and the High Court had also not taken a contrary view. Moreover, the High Court has rightly pointed out that if in the absence of electric light the appellants could identify their targets, it was also possible for the eyewitnesses to identify the assailants. He has, therefore, contended that there is no occasion to take a contrary view in the matter and the appeal should be dismissed.

7. After considering the facts and circumstances of the case, and taking into consideration the materials on record and the evidences adduced in the trial, we find no reason to take any view contrary to the view taken by the learned Additional Sessions Judge and the High Court in convicting the appellants. In the instant case, there is an injured eyewitness and the High Court, in our view, is amply justified in holding that even if the electric bulb was not burning at the relevant time, there was some light available which helped the appellants to identify their targets and to fire on them. If the light available was sufficient for the accused to identify their targets there is no reason to hold that the injured eyewitnesses and other witnesses could not identify the assailants. It is nobody's case that the appellants were strangers. Hence, there was no difficulty in identifying them. There was not any serious dispute between the parties which would induce the injured widow of the deceased to falsely implicate the appellants as the assailants. The case of the prosecution that the appellants had fired their guns is amply corroborated by the report of the ballistic expert that all the cartridges of .12 bore recovered from the house of the deceased had been fired from the guns of the appellants. Accordingly, we find no reason to interfere with the decision impugned in this appeal.

and the appeal is, therefore, dismissed and the conviction and the sentences passed by the learned Sessions Judge since upheld by the High Court are also affirmed. It appears that during the pendency of the appeal, bail was granted to the appellants by this Court. Since the conviction and the sentences imposed on the appellants are upheld by this Court, the appellants would be taken into custody for serving out the sentences.