

## **Prem Chand And Another vs State Of Uttar Pradesh on 26 August, 1993**

**Equivalent citations: AIR1994SC1534, 1994CRILJ1379, JT1993(5)SC230, 1993(3)SCALE546, 1993SUPP(4)SCC214, AIR 1994 SUPREME COURT 1534, 1994 AIR SCW 1137, 1994 ALL. L. J. 299, 1993 CRIAPPR(SC) 334, 1993 ALLAPPCAS (CRI) 312, 1993 (4) SCC(SUPP) 214, (1993) 5 JT 230 (SC), 1993 SCC (SUPP) 4 214, 1993 (5) JT 230, (1993) 3 ALLCRILR 35, (1994) SCCRIR 142, (1993) 3 CURCRIR 321, (1994) 1 ALL WC 332, (1994) 1 BLJ 764, (1993) 3 CRIMES 232, (1993) ALLCRIR 665, 1994 SCC (CRI) 11**

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**Bench: G.N. Ray**

ORDER

K. Jayachandra Reddy, J.

1. This appeal is filed under Section 376 Cr. P.C. read with Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. There are two appellants. They were tried along with one another for offences punishable under Sections 302/34 I.P.C. for causing the death of two brothers Deputy Singh and Lekh Raj. The trial court acquitted all of them. The High Court, however, set aside the order of acquittal and convicted all the three accused under Sections 302/34 I.P.C. and sentenced each of them to undergo imprisonment for life. Prem Chand was convicted under Section 302 I.P.C. simpliciter also and was sentenced to undergo imprisonment for life. The sentences were directed to run concurrently. Only Prem Chand and Radhey Shyam, accused are the appellants before us. Since this is a regular appeal, we have gone through the judgments of the courts below and the evidence on record carefully. The prosecution case is that the three accused and the two deceased persons were close neighbours and were residents of Village Khajura, within the limits of Police Station, Sidhpura in Etah District. A lane of six paces in width intervened between the Baithak of the accused and the Baithak of the deceased persons. Some of their agricultural plots also adjoined each other. Lekhraj deceased constructed a channel in his field in which he used to take water from the Government channel. Lekhraj permitted one Sheopal Singh to take water to his own field through the channel of Lekhraj. It appears that during the irrigation the water leaked from the channel of Lekhraj and inundated the field of the accused. On account of this there was verbal quarrel. Prem Chand accused said that he would not allow water to pass through the channel of Lekh Raj. Thus there was enmity. On 9.12.71 at about 8 A.M. Deep Singh Chauhan

whose turn it was to take water offered Lekhraj deceased to take water to his field as he did not require water. On hearing this offer the accused said that they would not allow water to be taken through the channel. They were challenged by the accused that nobody would dare to take water. This led to exchange of abuses between the accused and Lekhraj and his brother Deputy Singh. While so, Naresh Chandra, the third accused went inside his house and brought out the licenced gun of Prem Chand and a pistol. He handed over the licenced gun to his brother Prem Chand and the pistol to his other brother Radhey Shyam. Prem Chand fired the gun at Lekhraj who fell down and Radhey Shyam fired the pistol at Deputy Singh. Thereafter Prem Chand also fired his gun at Deputy Singh who fell on the ground. Naresh Chandra pelted brickbats on Deputy Singh. Deputy Singh died instantaneously. Thereafter the accused ran away. Lekhraj was still alive. He was placed on a cot. The occurrence was witnessed by Sher Singh, P.W. 1 and several others. Sher Singh wrote a report and went on a cycle to the Police Station, 7 miles away and handed over the report to P.W. 6 Head Constable Suresh Chand who registered the crime. P.W. 21 took up the investigation, reached the scene of occurrence by mid-day and he recorded the statement of Lekhraj who was conscious at that time. He held the inquest over the dead body of Deputy Singh and sent Lekhraj for medical examination. The Doctor who examined him found one gun-shot entry wound and three gun-shot wounds of exit. Lekhraj was admitted in the hospital and his dying declaration Ex. Ka-10 was recorded on 9.12.71. at 5. P.M. by the Magistrate, P.W. 15. Later Lekhraj was taken to Agra for treatment but he died in the hospital on 11.12.71. Post-mortem was conducted on the dead bodies of both the deceased and the medical evidence established that both the deceased died due to gun-shot injuries. The accused surrendered in the court and Prem Chand accused deposited his S.B.B.L. gun in the court. After completion of the investigation the charge-sheet was laid. The accused pleaded not guilty and contended that they have been falsely implicated. There were four eye-witnesses namely P.Ws 1,5,8 and 9 and also the dying declarations, one recorded by the police officer and the other recorded by the Magistrate. The trial court, however, acquitted the accused holding that the prosecution has not proved its case as alleged by the witnesses and that the occurrence might have taken place in the early hours. Yet another reason given by the trial court was that no blood was recovered from the place where Lekhraj is alleged to have received gun-shot injuries. The trial court also held that in order to prove the motive, the prosecution ought to have examined Deep Singh Chauhan. The trial court further held that descriptions of the incident as given by the eye-witnesses is not supported by the medical evidence. The trial court rejected the dying declarations also and accordingly gave the benefit of doubt to the accused.

2. The High court examined the evidence of the eye-witnesses as well as the contents of the two dying declarations and also the grounds on which the trial court ordered acquittal and then came to a firm conclusion that the prosecution established its case beyond all reasonable doubt against all the three accused and accordingly convicted the three accused as already stated. Only Prem Chand and Radhey Shyam have preferred the present appeal. The place of occurrence is not in dispute. Sher Singh, P.W. 1 lodged the F.I.R. at about 10 A.M. on 9.12.71 at the Police Station. He deposed that the two deceased Lekhraj and Deputy Singh were real brothers and were his close relations. On the morning of occurrence, Deep Singh Chauhan offered his turn for irrigation to Lekhraj and then a quarrel and exchange of abuses took place. The witness further deposed that Naresh Chandra, the third accused went inside his house and brought out a gun and a pistol and handed over the gun to Prem Chand and the country made pistol to Radhey Shyam. Thereafter all the three accused

exhorted each other to finish Lekhraj and Deputy Singh. It was Prem Chand who fired his gun at Lekhraj and Radhey Shyam fired his pistol at Deputy Singh. Thereafter Prem Chand fired a second shot at Deputy Singh as a result of which Deputy died on the spot and Lekhraj was injured and fell on the ground. Naresh Chandra was pelting brickbats at Deputy Singh. To the same effect is the evidence of P.Ws. 5,8 and 9. P.W. 1 further deposed that Lekhraj, who was conscious at that time, was taken to the hospital. This witness was cross-examined at length. He fairly admitted that but for the quarrel regarding taking water, there was no previous enmity. He denied the defence suggestion that the occurrence, took place in darkness. No doubt he is related to the deceased but that is not a ground to discard his evidence which is supported by the F.I.R., the medical evidence as well as other circumstantial evidence. The other three witnesses amply corroborate the evidence of P.W. 1. Practically no enmity has been brought out between P.W. 8 and the accused and therefore the High Court has rightly held that P.W. 8 is an independent witness. Likewise P.W. 9 is a close neighbour and his presence at the scene of occurrence is quite probable. Nothing has been brought out in his cross-examination to doubt his evidence. The only pointed raised against the veracity of these three eye-witnesses is that they have specifically stated that the accused fired thrice and that the post-mortem on the dead body of Deputy Singh showed four gun-shot wounds and Lekhraj had only one gun-shot wound and therefore there is some discrepancy in their evidence when examined in the light of the medical evidence. This cannot be a discrepancy in the strict sense. Even if the witnesses have not clearly stated as to how many times each one of the assailants fired that does not affect their veracity. The medical evidence amply establishes that the two deceased persons died of fire-arm injuries. That being the position the details as to the number of shots fired being not exactly given by the witnesses, do not affect their veracity. Apart from the evidence of these eye-witnesses there are two dying declarations. Ex. Ka-10 is the second dying declaration recorded at 5.05 P.M. by the Magistrate is of great importance. In that Lekhraj mentioned all the details. The Magistrate, who was examined as P.W. 15, deposed that he recorded the dying declaration and Lekhraj was conscious at that time. There is no discrepancy regarding the names of the assailants. The contents of the dying declarations are in conformity with the version given by the eye-witnesses. Thus there is overwhelming evidence in this case. The reasons given by the trial court are highly unsound. The only possible view on the basis of this overwhelming evidence is that the prosecution has established beyond all reasonable doubt the guilt of the appellants.

3. There are absolutely no merits in this appeal. It is accordingly dismissed.