

Jackaran Singh vs State Of Punjab on 20 April, 1995

Equivalent citations: AIR1995SC2345, 1995CRILJ3992, AIR 1995 SUPREME COURT 2345, 1995 (5) SCC 545, 1995 AIR SCW 3485, 1995 AIR SCW 3483, 1995 AIR SCW 3521, 1995 (3) SCC(SUPP) 219, 1996 () ALL CJ 231, (1995) 4 SCJ 103, (1996) 1 CTC 88 (SC), 1995 SCC (SUPP) 3 219, (1995) 58 ECR 621, 1995 (6) JT 3

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Bench: M.K. Mukherjee

JUDGMENT

1. Jaswinder Singh, Jagrup Singh and the appellant herein Jackaran Singh were tried for offences under Section 302/34 I.P.C. and Section 25 of the Arms Act by the learned Judge, Special Court, Ferozepur. While Jaswinder Singh was acquitted Jagrup Singh was found guilty of an offence under Section 25 of the Arms Act and sentenced to suffer nine months R. I. Jackaran Singh - appellant was convicted for an offence under Section 302 I.P.C. and sentenced to suffer imprisonment for life. He was also convicted for an offence under Section 25 of the Arms Act and sentenced to 3 years rigorous imprisonment. The sentences were, however, directed to run concurrently. Jackaran Singh appellant alone is before us in this appeal under Section 14 of the Terrorist Affected Areas (Special Courts) Act, 1984.

2. The prosecution case is that on 2nd June, 1984 at about 8.30 p.m. when Sham Lal (deceased) was returning along with his brother Surinder Kumar, PW4 after taking his bath, near the workshop of Nahar Singh, the appellant and Jagrup Singh co-accused armed with a revolver and a pistol respectively suddenly came out from behind a tree. Jaswinder Singh the acquitted co-accused was also with them. They both fired at Sham Lal, who died at the spot. A telephonic communication was given to Gurmel Singh, SHO, at the Police Station, who rushed to the spot and after recording the statement of Surinder Kumar, PW-4 (Ex. P-6), which formed the basis of the FIR, took the investigation in hand. The inquest report of the dead body was prepared and on a search from near the dead body three empties (Ex. M/O/1 to M/O/3) were recovered. They were taken into possession vide seizure memo Ex. P-7. Blood stained earth was also collected vide memo Ex. P-8. The dead body was sent for postmortem examination which was performed by Dr. Sant Parkash Singh, Senior medical Officer, Muktear, P.W1 on 3rd June, 1984 at 11.30 a.m. According to the medical witness, injuries Nos. 3 and 4 on the deceased were individually sufficient in the ordinary course of nature to cause death. (Since the injuries have been reproduced by the trial court, we refrain from repeating the same in this judgment). Further, investigation was, thereafter, taken over by Inder Singh, SMO, PW-7 on 16-6-1984. The appellant was arrested and on his interrogation, he disclosed that he had concealed one revolver along with ten cartridges under the heap of the cotton sticks in his field. His disclosure statement Ex. P-9 was recorded which was attested by the Panch witnesses Yash Pal and Sukhdev Singh, ASI. Consequent upon the disclosure statement, the

appellant got recovered revolver Ex. M/O/4 and ten cartridges Ex. M/O/5 to M/O/14 from his field from under the heap of cotton sticks. A recovery memo Ex. P-9/A was prepared. It was also attested by the panch witnesses, Yash Pal and Sukhdev Singh ASI. The empty cartridges as also the revolver were later on sent in separate sealed parcels to the Ballistic Expert, who opined that the empties had been fired from revolver M/O/4: On 28th June, 1984, ASI Mohinder Partap arranged a Test Identification Parade before Shri Narinder Singh Bath, Tahsildar-cum-Executive Magistrate, PW-2. The appellant and his co-accused, however, refused to participate in the identification parade on the plea that ever since the initiation of the case, the witnesses had been seeing them. After completing the investigation, the appellant and others were put on trial.

3. The prosecution, with a view to connect the appellant with the crime, examined Dr. Sant Parkash Singh, P.W-1, Narinder Singh Bath, PW.2, Gurbachan Singh Draftsman, PW-3, Surinder Kumar, PW-4, Nihal Singh, PW-5, Gurmel Singh, SI, PW-6 and Inder Singh, PW-7. Besides, the report of the Director, Forensic Science Laboratory, Chandigarh and affidavits of some of the police officials were also tendered. In his statement recorded under Section 313 Cr.P.C. the appellant denied the prosecution allegations, including the recovery of the revolver Ex. M/O/4 and the cartridges Ex. M/O/5 to M/O/14 at his instance, and pleaded false implication.

4. We have heard learned Counsel for the parties and examined the record.

5. A perusal of the FIR Ex. P-6 shows that Surinder Kumar, PW-4 had stated therein that while he along with his brother Sham Lal were returning after taking their bath and were near a Kikkar tree.

three persons, concealed behind the tree, who had their faces muffled and who were of medium height, at once emerged from behind the tree and they all fired one shot each at my brother, which struck at my brother directly.

6. Thus, it is seen that in the FIR, the version given by the first informant, PW.4 is (i) that the assailant had muffled their faces; (ii) that the assailants were of medium height and (iii) each of the three assailants had fired a shot each at his brother which had hit his brother. At the trial, however, Surinder Kumar, PW-4 deposed that at the time of the occurrence he could identify Jackaran Singh and Jagrup Singh as the two accused persons who had come out from behind the tree along with another person. The story of the muffled faces was thus given up. He then went on to say that Jackaran appellant had a revolver while Jagrup Singh had a pistol and they alone had fired at his brother and that Jagrup Singh did not fire at his brother but that he had fired in the air. He further deposed that "Jackaran Singh accused fired three shots from the revolver hitting my brother, who died at the spot". Thus, the version that each of the three accused had fired at his brother was also given a go-bye. Thus, at the trial, Surinder Kumar, PW-4 not only attempted to project that he had identified the appellant and Jagrup Singh as the assailants at the time of occurrence but also that all the three shots which had hit the deceased had been fired by the appellant alone. Surinder Singh, PW-4 has, thus, not only made material improvements in his statement at the trial but has also exaggerated the prosecution case. His testimony has, therefore, been rendered doubtful. Had Surinder Kumar, PW-4 identified the assailants at the time of the occurrence - why he did not name them in the FIR? Why the prosecution had to go through the exercise of arranging a Test

identification parade for identification of the accused? The prosecution has failed to give any explanation for these questions. It appears to us that Surinder Kumar, PW-4 is not a truthful witness and it is doubtful if he had at all 'witnessed the occurrence. Besides, the statement of Surinder Kumar, PW-4, there is no other direct evidence to connect the appellant with the crime.

7. The prosecution has relied upon the seizure of the empties from the spot vide Memo Ex. P-7 and the recovery of the revolver Ex. M/O/4 pursuant to a disclosure statement made by the appellant under Section 27 of the Evidence Act besides the report of the Ballistic Expert to connect the appellant with the crime.

8. So far as the conscious possession of the weapon Ex. M/O/4 is concerned, the disclosure statement, Ex. P-9 inspires no confidence. Firstly because none of the two panch witnesses, Yash Pal and Sukhdev Singh, ASI, have been examined at the trial and secondly because the disclosure statement does not bear the signatures or the thumb impression of the appellant. Even, the recovery memo of the revolver and the cartridges, Ex. P-9/A, which is also attested by Yash Pal and Sukhdev Singh, ASI does not bear either the signatures or the thumb impression of the accused. The absence of the signatures or the thumb impression of an accused on the disclosure statement recorded under Section 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement. According to the defence version the appellant had been arrested during the night intervening 15-16 June, 1984 and not on 23rd June, 1984, as alleged by the prosecution. The statement of PW-4, Surinder Kumar to the effect that "I had seen the accused in the police station for the first time after about 13-14 days of the occurrence" probably the defence version. The prosecution case, that the appellant was arrested on 23-6-1984 and led to the recovery of the revolver and the cartridges pursuant to the disclosure statement, therefore, becomes suspect. We are unable to place any reliance upon the alleged disclosure statement and the recovery of the revolver and consequently the opinion of the Ballistic Expert connecting the empties with Ex. M/O/4 becomes irrelevant. The appellant has denied ownership of the crime revolver and the prosecution has led no evidence to show that the crime weapon belonged to the appellant. There is no other circumstance pressed into aid by the prosecution to connect the appellant with the crime. The prosecution has thus not been able to establish the case against the appellant beyond a reasonable doubt. We, therefore, accept his appeal and set aside the conviction and sentence recorded against him. The appellant is on bail. His bail bonds shall stand discharged.