

State Of Punjab vs Mukhtiar Singh And Anr. on 30 July, 1975

Equivalent citations: AIR1975SC2001, (1975)4SCC590, AIR 1975 SUPREME COURT 2001, 1975 4 SCC 590, 1975 SCC(CRI) 625, 1975 CURLJ 580

Author: R.S. Sarkaria

Bench: P.N. Bhagwati, R.S. Sarkaria, Y.V. Chandrachud

JUDGMENT

R.S. Sarkaria, J.

1. Jarnail Singh, Mukhtiar Singh and one Gurmail Singh were tried by the Sessions Judge, Ludhiana for the murder of Ajmer Lal. Gurmail Singh died during the pendency of the trial. Mukhtiar Singh and Jarnail Singh were convicted under Section 302 read with Section 34, Penal Code and each of them was sentenced to imprisonment for life and fine of Rupees 1000/-. They were further convicted under Section 27 of the Arms Act and sentenced to four years rigorous imprisonment, each. The sentences were directed to run concurrently.

2. On appeal, the High Court of Punjab and Haryana acquitted them by its judgment, dated 6-11-1973. Aggrieved by that acquittal, the State of Punjab has now come in appeal to this Court after obtaining special leave under Article 136 of the Constitution.

3. The accused-respondents are real brothers. Ajmer Lal deceased and Ramji Dass P.W. are also brothers. They were plying their private cars as taxis in Ludhiana and the surrounding areas. There was professional rivalry between them. On January 2, 1972 at 6 p.m. both the parties had parked their taxis near the Rikhi Theatre in Ludhiana. Two potential passengers approached the accused and inquired about the hiring charges for Phagwara. The accused quoted Rs. 25/- per passenger. Ajmer Lal deceased offered to charge Rs. 20/- per passenger. The accused then reduced their quotation to Rs. 15/-. The deceased and his brother Ramji Dass declared that they would give the passengers a free ride to Phagwara. A quarrel ensued between the competitors, in the course of which abuses were exchanged. Inderjit Singh (P.W.10) another taxi operator, interceded and disengaged them. The prospective passengers however went away without hiring any taxi. About 15 minutes after this quarrel, the accused drove off in their taxis, while the deceased and his brother stayed on till 8 or 8.15 p.m. when Traffic Constable Kirpal Singh (P.W. 7) came there. Kirpal Singh was in plain clothes. He was on friendly terms with the deceased and his brother. His wife and that of Ramji Dass both hailed from village Kular. Kirpal Singh told Ramji Dass that he was proceeding to Kular and if the latter had any message to deliver at Kular, the former would do so. Ramji Dass replied that he had to send some clothes of his brother-in-law. He requested Kirpal Singh to collect those clothes from the former's house. Kirpal Singh agreed. Thereafter Ajmer Lal deceased, Ramji

Dass, Kirpal Singh and Rup Lal proceeded in the deceased's car No.-JKN-2727 driven by one Satish Kumar, to the houses of Ramji Dass and Ajmer Lal. Those houses are situated in a narrow street in Janta Nagar at a distance of three miles from the taxi stand. After covering 21/2 miles, when they reached the junction of the Gill Road and the street leading to the house of Ramji Dass. the driver reminded them that the car was running short of fuel. Thereupon, Ajmer Lal, Ramji Dass, Rup Lal and Kirpal Singh alighted and proceeded to the house of Ramji Dass on foot while Satish Kumar took the car for refueling to the filling station on the Gill Road.

4. After the departure of the deceased and his companions from the taxi stand, Mukhtiar Singh and Jarnail Singh accused came there in truck No. PUL-475 driven by Gurmail Singh. Jarnail Singh got down from the truck. He was carrying a rifle. He was looking for Ajmer Lal and Ramji Dass who were not present there. Jarnail Singh then fired a shot in the air and proclaimed that they would see to Ajmer Lal and Ramji Dass. The accused then drove off in the truck and reached the entrance of the street leading to the houses of Ramji Dass and Ajmer Lal. They saw the deceased proceeding in the street. They stopped the truck there and challenged the deceased. Jarnail Singh and Mukhtiar Singh both were armed with rifles. On hearing the challenge the deceased turned round. At this moment, he was hit in the abdomen by a bullet fired by Jarnail Singh. His companions, who were a little ahead of the deceased ran and took cover by the side of a wall. When Ajmer Lal was in the process of falling to the ground, he was struck in the arm by a second bullet fired by Mukhtiar Singh. On the hue and cry raised by the witnesses, the accused hurriedly got into the truck and sped away. While Jarnail Singh was boarding the truck, his turban fell down and was left behind at the spot.

5. After the departure of the assailants, Ramji Dass, Kirpal Singh and Rup Lal removed the injured in the car to the Civil Hospital, three miles away. In the Hospital, Ajmer Lal was pronounced dead by the Medical Officer. Leaving the corpse under the care of P. Ws. Kirpal Singh and Rup Lal, Ramji Dass went to the Police Station, Industrial Area, Ludhiana in the car and lodged the F.I.R. (Ex. PG) at 9.40 p.m. Assistant Sub-Inspector Pritam Chand (P.W. 14) recorded the F.I.R, and then went to the Hospital and prepared the inquest report. After despatching the dead body for post-mortem examination, he visited the scene of occurrence. At 12-30 a.m. the investigation was taken over by S.H.O. Joginder Singh (PW. 20). One cartridge case (Exh. C-I) of a rifle, one turban (Ex. P-3) and one fellow of a shoe were found at the scene of crime. The Investigating Officer took these articles into possession and sealed them into parcels at day-break

6. The autopsy was conducted on January 3, 1972 at 4 p.m. by Dr. Puran Singh. The Doctor found three gunshot injuries on the dead-body. Injury No. 1 was a gunshot wound of entrance 1 cm. x 1 cm. on the left side of abdomen 1 cm, outer, and at the level of umbilicus. The margins were found inverted and slightly blackish. Injury No. 2 was also a gunshot wound of entrance. 1 cm. x 1 cm. on the inner aspect of right upper arm just below the axilla. The margins were found to be inverted and slightly blackish. Injury No. 3 was a gunshot wound of exit 3 cm. x 2 cm. on the back of upper part of right shoulder.

7. The Doctor opined that Injuries 1 and 2 which were individually sufficient to cause death in the ordinary course of nature could be the result of two separate shots fired either from the same rifle or from two different rifles of the same calibre from a distance with about 6 ft.

8. The accused Mukhtiar Singh and Jarnail Singh were arrested from the house of their uncle, Kartar Singh (P.W. 13) on January 3, 1972 at about 7 p. m. by S. H. O. Joginder Singh. Kartar Singh produced the rifle (Ex. P-1) and the revolver Ex. P-4 along with cartridges. The Sub-Inspector took them into possession and sealed them into parcels. These firearms were the licensed weapons of Mukhtiar Singh. In due course the sealed parcels containing the rifle and the cartridge case, C-1, were sent to the Forensic Science Laboratory at Chandigarh. The Ballistic Expert Shri J. K. Sinha (P.W. 5) examined them. In his opinion, the empty, C-1, (found at the scene of crime) had been fired through the rifle (Ex. P-1).

9. In his examination under Section 342, Jarnail Singh gave this version of the incident:

I operate my own truck. Ajmeri Lal deceased's brother Piare Lai stole away the car of Gurcharan Singh. I spotted that car with Piare Lal and I informed Gurcharan Singh. Piare Lal was arrested and challaned. Due to this Ramji Dass felt offended and his wife's brother Roop Lal also felt offended. Constable Kirpal Singh is friend of Ramji Dass and he arranged his marriage in village Kular. On 2-1-1972 I was having minor repairs of my truck carried out at the Kuka's Workshop at Miller Ganj. There minor repairs were carried out to the truck No. PUL 475 by Bhan Singh also. He went to the Transport Company (Associate Traders and Engineers Company) and on returning from there he told him that an additional load was not ready for despatch. He then told me that I should drop him at his house in Janta Nagar and then take the truck PUL 475 to Kartar Bhawan after so doing for parking. I brought Bhan Singh in that truck to Janta Nagar. When the truck entered the mouth of the lane leading to the house of Bhan Singh. Ajmeri Lal with gandasa in his hand was seen coming from the opposite side and he on seeing the truck stood in front of it in Kucha (Lane). I stopped the truck and got down from the same. In the meantime Ajmeri Lal advanced towards me with his gandasa and attempted to assault me by wielding that gandasa. On this I stepped back with the result that my turban went off my head by coming in contact with the body of the truck and the gandasa blow caused a slight injury on the right side of my forehead. The other portion of the blade of the gandasa of course had hit the body of the truck. Ajmeri Lal again wielded a gandasa and aimed a blow at me. Thereupon I ran towards the back side. He came in front of me from a side and gave a blow with it and that blow hit me on my right hand. Thereafter he wielded 4/5 gandasa blows which hit on different parts of my body when I was- trying to save myself by moving hither and thither. In the meantime Bhan Singh came down from the truck with a rifle of Mukhtiar Singh which was in the truck for my rescue. He raised a Lalkara. Thereupon Ajmeri Lal left me and diverted his attention towards Bhan Singh. He also advanced towards him and gave gandasa blow which landed on the butt of the rifle held by Bhan Singh. Bhan Singh then fired a shot at Ajmeri Lal which hit on his right shoulder. Ajmeri Lal again wielded a gandasa blow towards Bhan Singh. Bhan Singh then fired another shot from the rifle hitting him in the abdomen. Thereupon, Ajmeri Lal dropped on the ground. The gandasa had also fallen on the ground as Ajmeri Lal had lost the grip of the same. There after I and Bhan Singh came in that very truck to Kartar Bhawan leaving Ajmeri Lal and his

gandasa at the spot, I handed over the rifle to my mother and then went to the Police Station, Industrial Area, Ludhiana. Finding some men and women present opposite to that police station I changed mind and went to Papilla where I got myself medically examined by Dr. Tandon. who also dressed my wounds. I am innocent

10. Mukhtiar Singh denied the prosecution case, and pleaded alibi. He, however admitted that the rifle (P-1) was his licensed weapon which used to be kept in his truck PUL 475, for protection of the goods.

11. The learned Sessions Judge rejected the defence version, as false. He accepted the prosecution story and convicted both the accused as afore said.

12. The High Court rejected the defence version. It partly accepted the prosecution case, namely, with regard to the quarrel between the accused and the deceased at about 6 P.M. and the return of the accused a couple of hours later to the taxi-stand in search of the deceased and the firing of a rifle-shot in the air by the accused on this occasion. It further found that the rifle, Ex. P-1, had been used in the commission of the murder. The High Court, however, rejected the testimony of the three eye-witnesses, namely, Ramji Dass, Kirpal Singh and Roop Lal because in its opinion, none of them "can be said to have witnessed the occurrence". The High Court concluded that the circumstances established by the prosecution "do give rise to a strong suspicion against the accused persons, but...suspicions howsoever strong cannot take the place of proof. .. " In the result, it accorded the benefit of doubt to both the accused and acquitted them.

13. We have heard the learned Counsel on both sides and carefully examined the evidence on record. The following circumstances have been indubitably established by the prosecution:

(i) At about 6 P.M. on the day of occurrence, there was a serious quarrel between the accused on one side and the deceased and his brother Ramji Dass, on the other, at the taxi-stand. In the course of this quarrel the accused abused and threatened the deceased. The timely intercession of Inderjit Singh (P.W. 10), who pacified the parties, saved the situation.

(ii), About 15 or 20 minutes after the quarrel, both the accused went away in their taxi car from the taxi-stand, while the deceased and his brother left that place at about 7 or 8 p.m.

(iii) Shortly after the departure of the deceased and his brother, the accused returned to the taxi-stand at about 8 P.M. in truck No. PUL 475 which was driven by Gurmail Singh in search of the deceased. Jarnail Singh got down from the truck. He was carrying a rifle. He fired a shot in the air and proclaimed that they would see to Aimer Lal and Ramji Dass. Thereafter, the accused drove away in the same truck, towards Jagraon Over-Bridge.

(iv) The occurrence took place about 45 minutes after the preceding incident near the entrance to the street leading to the house of the deceased, which is at a distance of about 3 miles from the taxi-stand.

(v) The crime cartridge, C-1, found at the scene of occurrence was proved to have been fired through the rifle. Ex-P-1 which is a licensed firearm belonging to Mukhtiar Singh accused.

(vi) The turban found at the scene of crime admittedly belongs to Jarnail Singh, accused.

14. Both the courts below are substantially agreed with regard to the proof of these circumstances. The chief witness in respect of the first three circumstances was Inderjit Singh (PW 10). The trial court found his evidence fully trustworthy. The High Court held that his testimony had a ring of truth. The High Court has not specifically adverted to the sixth circumstance, although it has rejected the version of Jarnail Singh, inter alia, with regard to the circumstances in which his turban was left behind at the spot.

15. Mr. Hardy, learned Counsel for the accused-respondents does not maintain that the concurrent finding of the courts below as to the proof of these circumstances is unreasonable. His contention is that these circumstances, by themselves, go no further than creating a suspicion may be a strong suspicion as the High Court has said about the complicity of the accused in the crime.

16. In our opinion, these circumstances are of a determinative character. They lead general assurance to the prosecution story and render it probable. At any rate, they go a long way to mark out Jar nail Singh as the person who in all probability fired the fatal shots at the deceased with the rifle Ex. P-1. Instead of explaining this catenation of circumstances, Jarnail Singh set up a false counter-version. This factor had also to be taken into account.

17. The evidence of the eye-witnesses had to be appreciated against the background of the above circumstances.

18. In reaching the conclusion that Ramji Dass, P.W. 6, Kirpal Singh, P.W.7 and Roop Lal, PW.9 had not seen the occurrence, the. High Court gave these reasons:

(a) The names of the eye-witnesses do not find mention in the gist of the First Information Report that was entered in the General Diary of the Police Station in purported compliance with the provisions of Section 154 of the CrPC.

(b) The version of Kirpal Singh, P.W.7 that he left Kotwali at about 8.00 P.M. and thereafter at 8.15 P.M. proceeded from the Taxi-stand in the Company of the deceased and Ramji Dass etc. to the latter's house for collecting clothes, is not acceptable because (i) he was present in the Kotwali at the time of roll call which was held by Dayal Singh (D.W. 10) at 8-30 P.M. From the Kotwali the place of occurrence

is more than 3 1/4 miles via the taxi-stand. The occurrence took place at about 8.45 p.m. (ii) neither in the F.I.R., nor in the statement of Inderjit Singh P.W. 10, there is any mention of the visit of Kirpal Singh to the Taxi-Stand, (in) Kirpal Singh took part in the general parade on the morning of 3rd January. "His leave commenced on the 3rd at 6.15 P.M. That being so, there was no apparent urgency for getting the clothes on the evening of the 2nd January."

(c) According to Inherit Singh P.W. Ramji Dass and Aimer Lal left the taxi stand around 7 p.m. and DSD not return thereafter. So the testimony of these witnesses (Ramji Dass and Kirpal Singh) that they left the taxi-stand a little after 8-30 p.m. is obviously not acceptable.

(d)...Kirpal Singh could not be at the taxi stand by 8-30 p.m. Therefore, his inclusion in this version falsifies the entire version justifying the theory that the witnesses above-named saw the incident.

(e) Ramji Dass was the brother of the deceased and as such was a highly interested witness. The relations of Ramji Dass and the deceased with the accused were strained.

(f) Inderjit Singh P.W. IC, is silent about the presence of Roop Lal at the taxi stand and his departure from there in the Company of Ramji Dass and the deceased in a car driven by Satish Kumar.

(g) No reason was shown why petrol was not had from any of "the petrol pumps which were on the way". "One fails to see why they (P. Ws) would choose to alight there" (only 160 yds. from the house of Ramji Dass) and not ask Satish Kumar to drop them at their house.

19. Mr. O. P. Sharma, learned Counsel for the appellant-State has assailed the reasoning of the, High Court. He has adopted the reasoning of the trial court to rehabilitate the credibility of the eye-witnesses. He has laid great stress on the fact that the F.I.R, in this case was lodged by Ramji Dass, P.W.6, with utmost promptitude, and that its copy had reached the Magistrate by 11.30 P.M. Ramji Dass had no time, proceeds the argument to concoct a false story and to induct false witnesses. In any case, maintains the Counsel, the presence of Ramji Dass at the scene of occurrence could not be doubted, and his evident CD alone corroborated by the F.I.R. and the other tell-tale circumstances which the courts below have concurrently held to have been established, was sufficient to bring home the charges to the accused.

20. As against the above Mr. Hardy tried to support the reasoning and the conclusions arrived at by the High Court. His main argument is that this is a case in which two views of the evidence are reasonably possible, one of which, taken by the High Court supports the acquittal. Learned Counsel has reminded us that in such a situation this Court would not, as a rule of prudence, disturb the order of acquittal. In this connection, he has cited State of Punjab v. Hari Singh . Counsel further

maintains that the presence of Kirpal Singh and Roop Lal at the scene of occurrence was highly improbable. Apart from reiterating the reasoning of the High Court, Counsel points out that the inquest report or firry other record does not show the presence of these witnesses in the Hospital when the A. S. I. reached there to make the inquest As a last resort, learned Counsel submits that even if the presence of Ramji Dass at the venue of crime was considered to be probable, it would be hazardous to accept his evidence without looking for independent corroboration. According to him, sufficient corroboration firmly fixing the identity of Mukhtiar Singh with the crime is not forthcoming in this case.

21. A glance at the reasons catalogued above given by the High Court would reveal their inherent fallacy. While two views about the presence of Kirpal Singh at the scene of occurrence around 8.45 P. M. are possible, the same cannot be said regarding Ramji Dass, P.W. 6. If Kirpal Singh's evidence were to be rejected on the score that his presence at the scene of incident was doubtful, this would not as the learned Judges of the High Court have erroneously held, lead to the conclusion that Ramji Dass and Roop Lal were not with the deceased at the time of the fatal assault on him. Ramji Dass is the brother of the deceased. He was a party to the quarrel which took place earlier in the day around 6 p. m. at the taxi stand. It may be recalled that the accused had on that occasion held out a threat to deal with Ajmer Lal deceased and Ramji Dass. From the testimony of Inderjit Singh P.W. 10. it appears that the two brothers Ajmer Lal and Ramji Dass had gone away from the taxi stand about 50 minutes after the quarrel. In fact he has stated that both the accused went away from the taxi stand about 20 minutes after the quarrel and about half an hour thereafter, the deceased and his brother Ramji Dass also left the place. The High Court has construed this version of Inderjit Singh to mean that the deceased, and his brother Ramji Dass went away at 7 P. m. while Ramji Dass himself puts the time of his departure around 8 P.M. The High Court has treated this difference with regard to the time of departure in the statements of these two witnesses as a material discrepancy. We do not agree. Inherit Singh has said that it was around 8 P. M. that both the accused returned to the taxi stand in a truck and at that time Ramji Dass and the deceased were not present at the taxi stand. It is not disputed that after their departure from the taxi stand, the deceased and his brother did not return there. The fact remains that the deceased and Ramji Ass both left for their house together from the taxi stand about one hour before the occurrence. In view of the threat held out by the accused at the taxi stand during the quarrel, the deceased was not likely to go alone particularly after night-fall to his house. The same would be the state of Ramji Dass's mind. Roop All is the brother-in-law of Ramji Dass. It is in evidence that he drives one1 of the taxis belonging to these two brothers. Admittedly the deceased was not in any vehicle at the time when he received the fatal shots. The place of occurrence is not in dispute; He was at the material time about 160 yards from the building in the separate apartments of which the two brothers were residing. The presence of Ramji Dass in the Company of the deceased at the material time was thus highly probable. It was he who had lodged the First Information Report in the Police Station at Industrial Area, Ludhiana at 9.40 P.M. Within less than two hours of the registration of the case, a copy of this First Information had reached the Magistrate, The names of the three eye-witnesses, the accused and all other material particulars of the case find mention in the First Information Report The version given by Ramji Dass at the trial was consistent in material particulars with what he had said in the First Information Report.

22. We cannot lose sight of the fact that Ramji Dass .and Roop Lai being close relations were highly interested in the prosecution. There was no love lost between Ramji Dass and the deceased on one hand and both the accused on the other. In a case of this kind, therefore particularly when sitting in appeal over a judgment of acquittal recorded by the High Court, it will not be safe to act upon his testimony without corroboration from independent sources against each of the two accused. The circumstances enumerated above furnish cogent corroboration so far as the complicity of Jarnail Singh in the commission of murder is concerned.

23. From the record it emerges that only one rifle Exh. P-1 was used in the commission of the crime. Dr. Puran Singh has opined that two bullet-wounds found on the dead body of Ajmer Lal could be the result of two separate bullets fired from the same rifle. The fact that the dimensions of the two wounds of entry are identical also points towards that conclusion. Further, only one fire arm has been recovered by the Investigating Officer in this case. It is the rifle Exh. P-1 which is a licensed weapon belonging to Mukhtiar Singh accused. The crime cartridge C-1, according to the opinion of the ballistic expert Shri J. K. Sinha. had been fired through this rifle Exh. A-1. .Thus both the fatal shots were fired from this rifle either by Mukhtiar Singh or. by Jarnail Singh. It is not disputed that the firing at the taxi-stand about one hour preceding the occurrence was done by Jarnail Singh. On that occasion Jarnail Singh alone had alighted from the truck and fired a shot. Inderjit Singh who has deposed to that fact does not say that there were two rifles or two fire-arms; with the accused at that time. The accused had come in search of the deceased and his brother Ramji Dass and they had gone away in the truck obviously to pursue the deceased and his brother. According to Inherit Singh they went over the Jagraon-Overbridge. This way leads to the locality known as Janta Nagar where the house of the deceased is situate. Again, besides the empty cartridge Ex. C-I the turban of Jarnail Singh was found at the scene of crime. Jarnail Singh has given a false version with regard to the occurrence and the circumstances in which his turban fell down and was left at the spot. The totality of the circumstances coupled with the ocular account given by Ramji Dass firmly leads to the conclusion that the fatal shots were fired from this rifle by Jarnail Singh. So far as Jarnail Singh is concerned the charge against him has been proved to the hilt.

24. The question remains whether Mukhtiar Singh is also vicariously liable by the operation of Section 34 for the act of Jarnail Singh. The prosecution case as put by Ramji Dass at the trial was that both Mukhtiar Singh and Jarnail Singh were armed with rifles from which they actually fired one bullet each and both those bullets found their mark. Since firing attributed to Mukhtiar Singh with another rifle has not been confirmed, if not completely discounted by the independent evidence on record, we would not, as a matter of caution, interfere with his acquittal recorded by the High Court,

25. In the light of what has been said above, we would partly allow this appeal, set aside the acquittal of Jarnail Singh and convict him under Section 302, Penal Code and sentence him to imprisonment for life for the murder of Ajmer Lal. We dismiss the appeal against Mukhtiar