Supreme Court of India
Jarnail Singh vs State Of Punjab on 23 November, 1995
Equivalent citations: 1996 AIR 755, 1996 SCC (1) 527
Author: M M.K.
Bench: Mukherjee M.K. (J)

PETITIONER:
JARNAIL SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT23/11/1995

BENCH:
MUKHERJEE M.K. (J)
BENCH:
MUKHERJEE M.K. (J)
KIRPAL B.N. (J)

CITATION:
1996 AIR 755 1996 SCC (1) 527
JT 1995 (8) 279 1995 SCALE (6)563

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T M.K. MUKHERJEE, J.

The appellant along with four others, including his father, brother and nephew, was tried by the learned Additional Sessions Judge, Amritsar for rioting, committing murders and attempting to commit murders. The learned Judge convicted the appellant and his brother Sukhwinder Singh under Section 302 read with Section 34 IPC (on two counts) and sentenced each of them to suffer imprisonment for life and to pay a fine of Rs. 2,000/- in default, to suffer rigorous imprisonment for one year, while acquitting the other three. In appeal, preferred by the two convicts, the High Court affirmed the conviction and sentence of the appellant but acquitted Sukhwinder Singh. Hence this appeal by the appellant after obtaining special leave.

The prosecution case in brief is that on October 27, 1979 at or about 9 A.M. the acquitted accused Sukhwinder Singh was preparing a path to his behak (farm house) by dismantling the water course

of Sukhdev Singh (one of the two deceased) and his brothers running through their lands while Gurmej Singh (since acquitted), father of the appellant and Sukhwinder Singh, was standing nearby. This was objected to by Sukhdev Singh, his brothers Surjit Singh (the other deceased), Dhanwant Singh (PW 4) and Manohar Singh (PW 6) which led to an exchange of hot words and abuses between the parties. Thereafter Gurmej Singh and Sukhwinder Singh left for their behak and the two deceased and their brothers for their village Khatra Khurt. On their way to the village when the latter group had reached the janj ghar (place for marriage parties) the five accused along with one Joginder Singh (since absconding) accosted them. Except Gurmej Singh, who was unarmed, all had rifles in their hands. Gurmej Singh raised a lalkara saying that they should be taught a lesson for stopping them from preparing the path to their behak whereupon Joginder Singh fired from his rifle hitting Surjit Singh on his chest. Then the appellant fired from his rifle hitting Sukhdev Singh on his back. Sukhwinder Singh also fired from his rifle which hit Sukhdev Singh on his left shoulder. On being so fired at, both of them fell down on the ground. The other accused persons also fired from their rifles aiming at Dhanwant Singh and Manohar Singh but their shorts hit the walls of the nearby house of Ajit Singh. Thereafter all the accused persons fled away.

The witnesses then took injured Sukhdev Singh and Surjit Singh to their house nearby but by then they had succumbed to their injuries. Dhanwant Singh then went to Majithia police station and lodged a First Information Report. S.I. Janak Raj (P.W.12) registered a case on that report and left for village Khatra Khurt. He first went to the house of the deceased and after holding inquest upon the dead bodies sent them for post-mortem examination. He then went to the place of occurrence and seized some blood stained earth and also some pellets found embedded on the walls of the house of Ajit Singh. After receipt of the report of the post mortem examination held on the two dead bodies by Dr. Harish Chander Vaid (PW 5) and on completion of investigation S.I. Janak Raj submitted charge sheet and in due course the case was committed to the Court of Session.

The accused persons pleaded not guilty to the charges levelled against them and contended that they had been falsely implicated.

To prove its case prosecution examined twelve witnesses of whom Dhanwant Singh (PW 4) and Manohar Singh (PW6), the two brothers of the deceased, figured as eye witnesses; and in their defence the accused persons examined five witness, including Swaran Singh (DW 5) who also claimed to have witnessed the occurrence.

From the judgments of the learned Courts below it appears that the trial Court found the evidence of PW 4 and PW 6 suspect as against accused Harpal Singh and Jaswinder Singh on the ground that as they were not residents of the village to which the deceased and the other accused belonged it was unlikely that they would be present at the material time with rifles in their hands, much less, participate in the murders which arose out of a dispute between those two families over dismantling of a water course. In dealing with the case of accused Gurmej Singh, the father of the appellant, the trial Court observed that the allegation against him was only of raising a lalkara and it would not be safe to convict him on such accusation alone. The trial Court, however, held that the evidence of the above two eye witnesses was reliable as against the appellant and his brother Sukhwinder Singh and that their evidence was strengthened by that of Swaran Singh (DW 5). The High Court concurred

with all the findings of the trial Court but gave the benefit of doubt to Sukhwinder Singh as Swaran Singh (DW

5) did not mention him as one of the persons who fired at the deceased.

Mr. Lalit, the learned counsel appearing for the appellant submitted that both the trial Court and the High Court, having found the evidence of PW 4 and PW 6 unacceptable as against the other accused persons, should not have relied upon the self same evidence to convict the appellant. We are not impressed by this contention for, the trial Court recorded the order of acquittal in respect of three of the accused persons by giving them the benefit of doubt and not on a finding that the evidence of the two eye witnesses examined by the prosecution was totally false and absolutely unreliable.

It was next contended by Mr. Lalit that neither the trial Court nor the High Court was justified in relying upon the evidence of the defence witness Swaran Singh (D.W.5) to record the conviction against the appellant. According to Mr. Lalit, the prosecution having failed to prove its case against the appellant through its eye-witnesses, namely, P.W.4 and P.W.6 could not claim its success solely on the basis of the evidence of D.W.5, more so, when he figured as a witness not on behalf of the appellant but on behalf of some of the other accused persons. We might have persuaded ourselves to accept the above contention of Mr. Lalit, if the learned Courts below had, after discarding the evidence of P.W.4 and P.W.6 altogether, based their findings against the appellant solely relying upon the ocular version of the incident given out by D.W.5, who was examined on behalf of two of the other accused persons to prove that they were not party to the murders but admitted, in cross-examination by the learned Public Prosecutor, that the appellant had fired at the deceased, for in criminal cases the burden of proving the guilt of the accused beyond all reasonable doubts always rests on the prosecution and, therefore, if it fails to adduce satisfactory and reliable evidence to discharge that burden it cannot fall back upon the evidence adduced by the accused persons in support of their defence to rest its case solely thereupon. In the instant case, however, we find that the learned Courts below made use of the evidence of D.W.5 only for lending assurance to the conclusions already drawn by the learned Courts on the basis of the evidence of P.Ws 4 and 6. Such a course is legally and legitimately permissible, for D.W.5 was subjected to cross-examination - and in fact cross-examined - at the instance of the appellants after being cross examined by the Public Prosecutor. That the appellant could not elicit any answe in his favour thereby would not alter the position as regards the admissibility. relevancy or worth of the evidence of the above witness.

It was lastly contended by Mr. Lalit that even if the prosecution case was accepted in its entirety the appellant could not be, consequent upon the acquittal of Sukhwinder Singh by the High Court, convicted under Section 302 IPC simpliciter as neither the death of Sukhdev Singh nor that of Surjit Singh could be attributable to the injuries caused by him. To appreciate this contention of Mr. Lalit it will be necessary to refer to the relevant evidence on record, particularly, that of Dr. Harish Chand Vaid (PW 5) who had conducted the post-mortem examination. As has been already noticed, according to the prosecution case, as detailed through PW 4 and PW 6, Surjit Singh was fired at only by the absconding accused Joginder Singh resulting in his death. The appellant, therefore, cannot at all be liable for that murder. So far as Sukhdev Singh is concerned, P.W.4 & P.W.6 testified that the appellant shot at his back and Sukhwinder Singh at his shoulder. From Dr. Vaid (PW 5), we get that

he found the following injuries on the person of Sukhdev Singh:

> 1. A lacerated wound on top and back of left shoulder measuring 2 1/2 cm. x 1/4 cm. The margins were ecchymosed and inverted..
>
> 2. A lacerted wound 1 1/4 cm. x 1 cm. on back and right side of the upper half of chest placed 7 cm. from midline. The margins were inverted and ecchymosed.
>
> 3. A lacerted would 3 1/2 cm. x 1 1/2 cm,. on back and right side of upper half of chest placed 2 cm. inner to injury No.2. It was obliquely placed. The margins were inverted.

Dr. Vaid stated that injury No. 2 and 3 were communicating with each other; while injury No. 2 was the wound of entry injury No. 3 was the wound of exit. Dr. Vaid further stated that on dissection of injury No.1 he found that bullet after fracturing the acromion and left scapula entered the upper lobe of left lung, which was ruptured at three places. He opined that death was due to shock and haemorrhage as a result of injury to the left lung, accompanied with fracture. In the context of the evidence of P.Ws. 4 and 6 that the appellant had fired on the back of the deceased Sukhdev Singh, the appellant can therfore, be said to have caused injuries No.2 and 3 and the other injury which, according to the doctor was fatal, was caused by the shot fired by Sukhwinder Singh. Since, however, Sukhwinder Singh stands acquitted, Section 34 IPC would have no application whatsoever and the appellant will be liable only for his act, namely, causing injuries No.2 and 3, which was the result of one shot, and, by themselves, did not cause the death of Sukhwinder Singh. Resultantly, the appellant cannot be convicted for the offence under Section 302 IPC, but as he had fired at Sukhdev Singh with rifle he cannot escape his conviction for the attempt to commit his murder. The last contention of Mr. Lalit, therefore, must be accepted.

On the conclusions as above, we allow this appeal in part, set aside the conviction and sentence recorded against the appellant under Section 302 IPC and instead thereof convict him under Section 307 IPC; and for the altered conviction sentence him to undergo rigorous imprisonment for ten years. The appellant, who is on bail, will now surrender to his bail bond to serve out the above sentence. The appeal is thus partly allowed.