

State of Punjab

Vs

Mukhtiar Singh and Another

Criminal Appeal No. 350 of 1974

(Y. V. Chandrachud R. S. Sarkaria, P. N. Bhagwati JJ)

30.07.1975

JUDGMENT

SARKARIA J. -

1. Jarnail Singh, Mukhtiar Singh, and one Gurmail Singh were tried by the Session 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 34, Penal Code, and each of them was sentenced to imprisonment for life and fine of Rs. 1000. They were further convicted under Section 27 of the Arms Act and sentenced to four year's 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 November 6, 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 Das PW 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 Theater in Ludhiana. Two potential passengers approached the accused and inquired about the hiring charges of 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 Das 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 (PW 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 (PW 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 Das both from Village Kular. Kirpal Singh told Ramji Das that he was proceeding to Kular and if the latter had any message to deliver at Kular, the former would do so. Ramji Das replied that he had to send some of his brother-in-law. He requested Kirpal Singh to collect these clothes from the former's house. Kirpal Singh agreed. Thereafter Ajmer Lal deceased, Ramji Das, Kirpal Singh and Rup Lal proceeded in the deceased's car No. JKN-2727 driven by one Satish Kumar to the houses of Ramji Das and Ajmer Lal. Those houses are satisfied in a narrow street in Janta Nagar at a distance of three miles from the taxi stand. After covering 2 1/2miles, when they reached the junction of the Gill Road and the street leading to the house of Ramji Das, the driver remained them that the car was running short of fuel. Thereupon, Ajmer Lal, Ramji Das, Rup Lal and Kirpal Singh alighted

and proceeded to the house of Ramji Das on foot while Satish Kumar took the car for refueling to the filling station of 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 rifle. He was looking for Ajmer Lal and Ramji Das who were not present there. Jarnail Singh then fired a shot in the air and proclaimed that they would see Ajmer Lal and Ramji Das. The accused then drove off in the truck and reached the entrance of the street leading to the houses of Ramji Das 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 deceased turned round At this moment, he was hit in the abdomen by a bullet fired 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 Das, 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 PWs Kirpal Singh and Rup Lal, Ramji Das 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 (PW 14) recorded the F.I.R. and then went to the hospital and prepared the inquest report. After despatching the dead body for the 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 (Ex. C-1) of a rifle, one turban (Ex. P-3) and one shoe of a fellow was found at the scene of crime. Then investigation officer took these articles into possession and sealed them into parcels at daybreak.

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 1cm x 1cm 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 gun shot wound of entrance 1cm x 1cm 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 gunshot wound of exit 3cm x 2cm on the back of upper part of right shoulder.

7. The doctor opined that injuries Nos. 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 two different rifles of the same calibre from a distance within about 6 ft.

8. The accused Mukhtiar Singh and Jarnail Singh were arrested from the house of their uncle, Kartar Singh (PW 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 fire arms were 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 (PW 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 642, Jarnail Singh gave this version of the incident :

I operate my own truck. Ajmer Lal deceased's brother Piare Lal stole away the car of Gurcharan Singh. I spotted that car with Piare Lal and I informed Gurcharan Singh. Piare Lal was arrested and challenged. Due to this Ramji Das felt offended and his wife's brother Rup Lal also felt offended. Constable Kirpal Singh is friend of Ramji Das and he arranged his marriage in village Kular. On January 2, 1972 I was having minor repairs of my truck carried out of the Kuka's workshop at Miller Ganj. These 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, Ajmer Lal with gadasa 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 Ajmer Lal advanced towards me with his gadasa and attempted to assault me by wielding that gadasa. On this I stepped back with result that my turban went off my head by coming in contact with the body of the truck and the gadasa blow caused a slight injury on the right side of my forehead. The other portion the blade of the gadasa of course had hit the body of the truck. Ajmer Lal again wielded a gadasa 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 gadasa blows which hit on different parts of my body when I was trying to save myself by moving higher 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 Lalkara. Thereupon Ajmer Lal left me and diverted his attention towards Bhan Singh. He also advanced towards him and gave gadasa blow which landed on the butt of the rifle held by Bhan Singh. Bhan Singh then fired a shot at Ajmer Lal which hit on his right shoulder. Ajmer Lal which hit on his right shoulder. Ajmer Lal again wielded a gadasa blow towards Bhan Singh. Bhan Singh then fired another shot from the rifle hitting him in the abdomen. Thereupon, Ajmer Lal dropped on the ground. The gadasa had also fallen on the ground as Ajmer Lal had lost grip of the same. Thereafter I and Bhan Singh came in that very truck to Kartar Bhawan leaving Ajmer Lal and his gadasa 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 Patiala 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 aforesaid.

12. The High Court rejected the defence version. It is 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 eyewitnesses, namely, Ramji Das, Kirpal Singh and Rup 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 prosecution "do give rise to a strong 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 care fully 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 Das, on the other, at the taxi-stand. In the course of this quarrel the accused and threatened the deceased. The timely intercession of the Inderjit Singh (PW 10), who pacified the parties, saved the situation.
- (ii) About 15 to 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 and 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 Ajmer Lal and Ramji Das. Thereafter, the accused drove away in same truck, towards Jagraon overbridge.
- (iv) The occurrence took place about 45 minutes after the proceeding incident near the entrance to the street leading to the house of the deceased, which at distance of about 3 miles from stand.
- (v) The crime cartridge C-1, found at the scene of occurrence was proved to have been fired through the rifle, P-1 which is 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 specially adverted to the sixth circumstances, 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 findings of the courts below as to the proof of these circumstances is unreliable. 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 determinative character. They lend general assurance to the prosecution story and render it probable. At any rate, they go a long way to make out Jarnail Singh as the person who, in all probability, the fatal shots at the deceased with the rifle Ex. P-1. Instead of explaining this contention of circumstances, Jarnail Singh set up a false counter-version. This factor had also take to be taken into account.

17. The evidence of the eyewitness had to be appreciated against the background of the above circumstances.

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

(a) The names of the eyewitnesses do not find mention in gist of the first information report that was entered in the General Dairy of the police station in purported compliance with the provisions of Section 154 of the Code of Criminal Procedure.

(b) The version of Kirpal Singh, PW 7, that he left Kotwali at about 8 p.m. thereafter at 8.15 p.m. proceeded from the taxi stand in the company of the deceased and Ramji Das etc, to the latter's house for collecting clothes, is not acceptable because (1) he was present in the Kotwali at time of roll call which was held by Dayal Singh (DW 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 PW 10, there is any mention of visit of Kirpal Singh to the taxi stand (iii) Kirpal Singh took part in the general parade on the morning of January 3. "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 January 2."

(c) "According to Inderjit Singh PW Ramji Das and Ajmer Lal left the taxi stand around 7 p.m. and did not return thereafter. So the testimony of these witnesses (Ramji Das 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. Thereafter, his inclusion in this version falsifies the entire version justifying the theory that the witnesses above-named saw the incident."

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

(f) Inderjit Singh PW 10, is silent about the presence of Rup Lal at the taxi stand and his departure from there in the company of Ramji Das 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 (PWs) would choose to alight there," (only 160 yds from the house of Ramji Das) 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 eyewitness. He had laid great stress on the fact that the F. I. R. in this case was lodged by Ramji Das, PW 6, with utmost promptitude, and that its copy had reached the Magistrate by 11.30 p.m. Ramji Das 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 das at the scene of our occurrence could not be doubted, and his evidence alone corroborated by the F. I. R. and other tell-tale circumstances, which the courts below have concurrently held to have been established, was sufficient to bring home 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 taken 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 ((1974) 4 SCC 552 : 1974 SCC (Cri) 588) Counsel further maintains that the presence of Kirpal Singh and Rup Lal, at the same scene of occurrence was highly improbable. Apart from reiterating the reasoning of the High Court, counsel points out that the inquest report or any other record does not show the presence of these witnesses in the hospital when A.S.I. reached there to make the inquest. As a last resort, learned Counsel submits that even if the presence of Ramji Das 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 crime is not forthcoming in this case.

21. A glance at the reasons catalogued above given by the High Court would reveal 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 Das PW 6. If Kirpal Singh's evidence were to be rejected on the score of that his presence at the scene of incident was doubtful, this would not as the learned Judges of the High Court have erroneously held, to the conclusion that Ramji Das and Rup Lal were not with deceased at the time of the fatal assault on him. Ramji Das 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 Das. From the testimony of Inderjit Singh PW 10 it appears that the two brothers Ajmer Lal and Ramji Das had gone away from the taxi stand about 50 minutes after the quarrel. In fact he has stated that the 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 Das also left the place. The High Court has construed this version of Inderjit Singh to mean that the deceased and his brother Ramji Das went away at 7 p.m. while Ramji Das himself puts the time of his departure around 8 p.m. The High Court has treated this deference with regard to the time of departure in the statements of these two witnesses as a material discrepancy. We do not agree. Inderjit 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 Das 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 thereafter. The fact remains that the deceased and Ramji Das both left for their house together from taxi stand about one hour before the occurrence. In view of the threat held out by the accused at the taxi stand during quarrel, the deceased was not likely to go alone, particularly after the night fall to his house. The same would be the state of Ramji Das's mind. Rup Lal is the brother-in-law of Ramji Das. It is in evidence that the drives one 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 Das in the company of the deceased at the material time was thus highly possible. It was he who had lodged the first information report in the police station of Industrial Area, Ludhiana at 9.40 p.m. Within less than two hours of the registration of the case, a copy of the first information had reached the Magistrate. The names of the three eyewitnesses, the accused and all other material particulars of the case find mention in the first information report. The version given by Ramji Das 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 das and Rup Lal being close relations were highly interested in the prosecution. There was no love lost between Ramji Das and the deceased on one hand, and both the accused on the other. In a case of this kind, therefore, particularly where 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 independence sources against 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. From the record it emerges that only one rifle Ex. P-1 was used in the commission of the crime. Dr. Puran Singh has opined that the 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 firearm has been recovered by the investigating officer in this case. It is the rifle Ex. P-1 which is a licensed weapon belonging to Mukhtiar Singh accused. The crime cartridge according to the opinion of the ballistic expert Shri J. K. Sinha, had been fired through this rifle Ex. P-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 deposed to that fact does not say that there were two rifles or two firearms with the accused at that time. The accused had come in search of the deceased and his brother Ramji Das and they had gone away in the truck obviously to pursue the deceased and his brother. According to Inderjit 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-1 the turban of Jarnail Singh was found at he 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 other ocular account given by Ramji Das firmly lead 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. The question remains whether Mukhtiar Singh is also vicariously liable by the operation of Section 34 for the jarnail singh. The prosecution case as put by Ramji Das 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 could not, as matter of caution interfere with his acquittal recorded by the High Court.

23. In the light of what has been said above, we would partly allow this appeal, set aside the acquittal of Jarnail Singh and convicted 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 Singh.

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