

**Piara Singh Vs. the State**

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**Court :** Allahabad

**Decided On :** Sep-21-1961

**Reported in :** AIR1963All119; 1963CriLJ30

**Judge :** D.P. Uniyal and ;K.B. Asthana, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 288

**Appeal No. :** Criminal Appeal No. 666 of 1961

**Appellant :** Piara Singh

**Respondent :** The State

**Advocate for Def. :** J.R. Bhatt, Adv.

**Advocate for Pet/Ap. :** Pratap Narain Misra, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Asthana, J.**

1. The appellant Piara Singh stands convicted for an offence under Section 302, I.P.C., and has been sentenced to life imprisonment by the first Additional Sessions Judge of Shahjahanpur. He has filed this appeal against his conviction and sentence.

2. The prosecution case is that the deceased Karnail Singh, a resident of village Chathia, police station Kuthar, district Shahjahanpur, on 23-8-1960 called accused Piara Singh along with some others for ploughing the field of one Dalip Singh in the village. At about 4 p.m. after ploughing operations had finished, the accused along with other friends, named Surendra Singh, Sant Singh of village Chathia, Girja Singh of village Rampur and another Karnail Singh resident of a village which lay across the river who all had ploughed Dalip Singh's field collected at the house of Karnail J. Singh deceased. The prosecution story further la that Karnail Singh deceased was resting on a cot under a chappar, south of his house, while the accused along with persons just named was sitting on a cot in another chappar and drinking wine. Under the influence of intoxication Piara Singh accused became boisterous and noisy. Smt. Charan Kaur, wife of Karnail Singh deceased, Mho was preparing tea inside the house came out on hearing the noise and asked them to behave properly. Piara Singh accused, however, continued to be boisterous and broke the cot on which all of them were sitting. Thereupon Karnail Singh deceased came to the scene and there were exchange of abuses between the deceased and the accused. The accused thereupon took out a country-made pistol from his Tahmat and shot at the thigh of Karnail Singh deceased who fell down injured. After this the accused and other persons ran away. The loud noise of the altercation between the deceased and the accused attracted to the scene Niranjn Singh, Autar Singh and Harnam Singh. One Basant Singh who was living in a portion of the house of Karnail Singh deceased was also attracted to the scene by the loud noise and he also saw the incident and so did Smt. Charan Kaur wife of Karnail Singh deceased. It is further alleged by the prosecution that half an hour later accused Piara Singh returned to the house of Karnail Singh and persuaded Karnail Singh injured not to make any report to the police. It is further alleged that the accused also threatened Smt. Charan Kaur that she should not make any report and promised that he Will get the wounds of Karnail Singh treated at his own expense. The prosecution story then proceeds that the accused had brought a Larhia (small bullock-cart) and carried Karnail Singh injured along with his wife Smt. Charan Kaur and daughter to Kuthar. It is alleged that the party reached Kuthar sometime at about night fall when the stars were visible. Dr. Nandalal, private doctor of Kuthar, attended to the injuries of Karnail Singh and the

accused made arrangements for the stay of the party and Karnail Singh injured at the house of one Mahendra Singh. During the day on the 24th of August 1960 Dr. Nanda Lal is alleged to have attended the injured, again and changed the dressing. Towards the evening the condition of Karnail Singh deteriorated and Dr. Nandial was again called and he administered an injection. In the early hours of the morning just before sun-rise on the 25th of August 1960 Karnail Singh died at the house of Mahendra Singh. When Smt. Charan Kaur discovered that her husband was dead she started weeping and one Khandara Singh and Mahendra Singh on hearing the lament of Smt. Charan Kaur came and removed the corpse along with the charpoy and kept the charpoy with the corpse on it under a nearby thatch of one Shafiullah which was lying vacant at that time. It is further alleged that about the same time Ram Dayal Tripathi, Ram Chandra Misra and Ram Rakhan Vaishya and some other persons also reached the spot and seeing Smt. Charan Kaur weeping enquired as to what the matter was. Smt. Charan Kaur thereupon narrated the whole incident to them and at that moment Piara Singh accused is alleged to have slipped away. Sri Ram Dayal Tripathi is said to have prepared a report of the incident at the dictation of Smt. Charan Kaur who lodged it at the police station Kuthar at 6.25 a.m. on 25-8-1960. Thereupon a first information report was prepared on the basis of this report and a case under Section 304, I.P.C. against Piara Singh accused was registered.

3. The station officer Sri Mahendra Saxena who was present when the first information report was lodged by Smt. Charan Kaur immediately started the investigation of the case and recorded the statement of Smt. Charan Kaur at the police station. He then proceeded to the thatch of Shafiullah where he found the corpse of Karnail Singh lying on a charpoy. A panchanama was prepared and the dead body was sent for postmortem examination to Gola dispensary. The station officer recorded the statements of other persons present there and then he went to village Ghathia where the incident had taken place and recorded the statements of the eye witnesses of the incident mentioned in the first information report. He prepared a site-plan of the place of incident. He found two talkies on the spot and prepared a list of recovery. He also took into possession the broken cot. The accused Piara Singh was then searched for but was not available in the village and the station officer made a report on 3rd September 1960 for taking action

under Sections 87 and 88 Cr. P. C. against the accused. The property of the accused Piara Singh was attached on 13-9-1960. His house was also searched but nothing incriminating was found. The accused Piara Singh eventually surrendered himself in court on 15th of September 1960. A charge sheet was submitted against him on 25-9-1960. Dr. R. D. Gupta, Medical Officer, Gola Dispensary, conducted the postmortem examination of the dead body of Karnail Singh on the 26th of August 1960 at 12-30 p.m. The postmortem report revealed the following injuries:--

4. Eight gun shot wounds of entry from 1/3' x 1/3' to 3/4' x 1/2' muscle deep and three abrasions 1/4' x 1/4' to 1/3' K 1/3' in an area 6' x 4 1/2' on inner aspect and back of right thigh upper part. The wounds were directed upwards and backwards. No tattooing of skin was present. No burns were found. The doctor also recovered four gunshots from the muscles of thigh and peritonium, four from abdominal cavity and one from right buttock, in the opinion of the doctor death was caused by shock and peritonitis resulting from the injury of peritonium and intestine caused by discharge of firearm. The medical report thus establishes beyond doubt that Karnail Singh was shot at by a firearm which resulted in his death.

5. It may be mentioned here that in the charge sheet submitted on 25-9-1960 as many as twenty prosecution witnesses had been mentioned which besides the names of others included the names of Khandara Singh, Mahendra Singh, Karnel Singh son of Ishwar Singh (other than the deceased), and Girja Singh. It is worth noting that the latter two, that is, Karnel Singh son of Ishwar Singh and Girja Singh were party to the drinking bout at the house of Karnail Singh deceased in the afternoon of 23rd August 1960. The prosecution to prove its case produced as eye witnesses of the occurrence P. W. 4 Basant Singh, P. W. 7 Harnam Singh, P. W. 11 Autar Singh and P. W. 12 Smt. Charan Kaur. The other important witness on behalf of the prosecution which was produced was Ram Dayal P. W, 2, who scribed the report at the dictation of Smt. Charan Kaur in the morning of 25th August 1960 soon after the death of Karnail Singh. In his statement under Section 342, Cr. P. C. the accused Piara Singh denied that he shot Karnail Singh deceased and further stated that Smt. Charan Kaur was accusing him at the behest of Harnam Smgn, Girja Singh and Surendra Singh. He further denied to

have absconded and stated that he was all along in his village attending to his cultivation.

6. Sri P. N. Misra, learned counsel for the appellant, has not seriously challenged the finding of the learned Sessions Judge as to the place of occurrence, that is, below the chhappar at the house of Karnail Singh deceased. He has however, contended that none of the eye-witnesses are reliable and that their testimony that they saw the accused Piara Singh taking out a pistol and shooting Karnail Singh deceased is not worthy of credence. In order to appreciate the argument of the learned counsel for the appellant it becomes necessary to scrutinise the evidence of the eye-witnesses who have been produced on behalf of the prosecution.

7. The first eye-witness examined by the prosecution is P. W. 4 Basant Singh. He has stated that he was living in the same Jhala as Karnail Singh, deceased. In the morning of the day of occurrence Karnail Singh deceased had called certain persons to plough a field and in the afternoon just before sun-set time all these persons collected at the house of Karnail Singh deceased and after giving food to the bullocks all got busy in preparing bread. Karnail Singh deceased, Surendra Singh, Girja Singh, Piara Singh accused and another person named Karnel Singh drank wine also before taking bread. The witness himself went inside to take food and while he was busy taking food he heard report of gun-fire and when he came out he found Karnail Singh injured and bleeding, The witness tied the wound with his turban. The witness further states that he did not ask Karnail Singh injured as to who hit the shot at him. This witness was declared hostile and the prosecution sought to bring on record as evidence in the case the statement made by this witness before the Magistrate in the committal proceedings. The witness was faced with a part of the statement which he had made before the Magistrate to the effect that about four or five o'clock in the afternoon he along with Piara Singh accused, Surendra Singh, Niranjana Singh, Karnail Singh 'were drinking wine in the Jhala of Karnail Singh, that Piara Singh broke the cot of Karnail Singh which led to exchange of abuses between piara Singh and Karnail Singh and then Piara Singh took out a pistol and shot at the thigh of Karnail Singh and ran away. But in the sessions court the witness denied to have made such a statement before the magistrate. This extract from the statement of the witness made before the

Magistrate was brought on record and marked Exhibit Ka-5. The witness further explained that he did not know how this statement before the Magistrate was taken down, that before the Magistrate a 'Babu' instructed him that he should say 'yes' to whatever was asked from him and he did the same. It would be seen thus that in the court of the Sessions Judge this witness has not stated that he saw the accused Piara Singh shooting at Karnail Singh deceased. What he has stated is that when he was taking his food inside he heard a gun-fire shot and when he came out he found Karnail Singh injured and bleeding. The learned Sessions Judge has treated the extract exhibit Ka-5 from the statement of this witness made before the court of the Magistrate as a substantive evidence under Section 288, Cr. P. C. and relied upon the same in support of the prosecution case.

8. In our opinion the learned Sessions Judge is in error in treating the extract exhibit Ka-5 as substantive evidence under Section 288, Cr. P. C. On examining the record of the Sessions trial we find that on 16-2-1961 an application was made on behalf of the prosecution for taking the statement given before the Magistrate by this witness on record. The learned Sessions Judge on this application noted 'show it to learned counsel for the accused'. There is no order of the learned sessions Judge either on this application or on the order sheet that the statement of this witness duly recorded in his presence by the Magistrate in the committal proceedings would be treated as evidence in the case. A perusal of Section 288 of the Cr. P. C. will show that the evidence given by a witness at the preliminary enquiry is admissible as evidence in the trial before the Sessions Judge if the presiding Judge in his discretion thinks to treat it as substantive evidence in the case before him. It would appear that the extract exhibit Ka-5 was brought on record because the Public Prosecutor required that it should be put in evidence and there is nothing to show that the learned Sessions Judge ever considered the matter or ever thought that he had to decide whether the deposition should be admitted or not. Thus, there is no exercise of the discretion by the learned Sessions Judge at all.

9. It may further be pointed out that the learned Sessions Judge has treated as substantive evidence only an extract from the statement of this witness made at the preliminary enquiry before the Magistrate and not the whole statement. In our

view the learned Sessions Judge is wrong in adopting such a procedure. It appears that the learned Sessions Judge has failed to appreciate the difference in the procedure for bringing on record an extract of the previous statement of witnesses to contradict him and the procedure for treating the previous statements as substantive evidence in the case, if after exercise of proper discretion the presiding Judge thinks it fit to treat the statement made by a witness at the preliminary enquiry as evidence in the case then the statement so made at the preliminary enquiry should be brought on the record as a whole and not in part which suits the prosecution. In our opinion such a procedure is not warranted by law. The object of Section 288, Cr. P. C. is to reduce the danger of witnesses being tampered with between the commitment and trial. It is intended to provide for the contingency that may arise when a witness produced before the court of Session holds back information and evidence and tells a different story from that he gave in the preliminary enquiry before a Magistrate. If the previous statement of the witness is not brought on the record as a whole and only extracts are brought on record, obviously the court will not be in a position to judge for itself the, true effect of the statement and it may as well cause prejudice to the accused for anything stated by such a witness in his previous statement of which the accused could take advantage would not be before the court. We have seen the statement of this witness made at the enquiry before the Magistrate and we find that in his cross-examination before the Magistrate this witness has definitely stated that he did not see any pistol in the harm of anybody. This being the position, it appears that even from the statement of this witness made before the Magistrate it cannot be safely inferred that he had actually seen Piara Singh accused taking out a pistol and shooting at Karnail Singh deceased. Having ruled out the extract Exhibit Ka-5 from evidence in the case, there remains nothing in the statement of this witness before the Sessions Court on which the prosecution can rely in support of its case

10. The next eye-witness is P. W. 7 Harnam Singh. (After going through the evidence of P. W. 7 Harnam Singh their Lordships observed :) To us it appears to be more than a coincidence that this witness who is a chance witness should be present at the time of the occurrence and as well as two days later when the station officer had come to Chathia village for investigation. The learned Sessions Judge was in error in holding that these circumstances do not cast any doubt on

the presence of this witness at the scene of occurrence. The view of the learned Sessions judge that all these circumstances should only put the court to consider the evidence of this witness with caution does not appeal to us. The presence of this witness at the scene of occurrence is doubtful and it is unsafe to rely on his testimony.

11. (After considering the evidence of P.W. 11 Autar Singh their Lordships observed:) In our opinion for all these reasons it is not safe to rely on the testimony of this witness.

12. Now it remains to consider the evidence of Smt. Charan Kaur P.W. 12 who is the widow of Karnail Singh deceased and is alleged to have seen the occurrence.

13. (After looking into the evidence of P.W. 12 Smt. Charan Kaur their Lordships observed :) Having held that it is not possible to rely on the testimony of the three eye-witnesses, that is, P.W. 4 Basant Singh, P.W. 7 Harnam Singh and P.W. 11 Autar Singh, we are left with the evidence of this woman alone and naturally the question arises whether her evidence is so convincing and clear that the charge can be brought home to the accused on her sole testimony. It appears to us that there are certain inherent improbabilities in the story which she has stated before the court and which lead us to view her statement with suspicion. To us it appears most improbable that she herself having seen that Piara Singh accused had shot at her husband would be persuaded to go alone with him with her daughter and with her injured husband to Kuthar in the evening. It is not the prosecution case that immediately after Karnail Singh was shot, he had become unconscious or was not able to speak. In fact according to the prosecution case when he was at the house of Mahendra Singh next day he talked and said that his condition had worsened. It can therefore be safely presumed that Karnail Singh had not lost his power of speech and was conscious at the time when he was injured. This witness claims to be present when Piara Singh accused is alleged to have come for the second time and had craved pardon from her husband and entreated him not to make any report. It is also very unnatural and improbable that Basant Singh who was residing in the house, though was requested by her to make a report against Piara Singh and carry her injured husband to the hospital, did not do so. Her

subsequent conduct to agree to go to Kuthar with Piara Singh accused is a circumstance which would show that it is highly improbable that she saw or knew that Piara Singh was the person who shot at her husband.

14. She has admitted that neighbours were attracted to the spot but it is significant to note that no person has been produced by the prosecution who belonged to the neighbourhood to prove that Piara Singh was the person whom either they saw shooting or immediately after incident were told that Piara Singh was the person who shot the deceased. None of the other persons, who were present under the eastern chhappar where the drinking party was held, have been produced by the prosecution to support the prosecution case. From her statement before the court it appears that she in fact never came out below the eastern chhappar. She had stated that at first she was in the kitchen preparing tea and refreshment and then when the accused Piara Singh and others were drinking wine she had gone inside the Kotha and on hearing the noise she had come out from the Kotha to the kitchen which abuts the outer door. It is extremely doubtful that she actually saw the person who shot at her husband. Again according to this witness the distance between her husband and Piara Singh accused at the time when the shot was fired was about one or one half hand. If this were so, the bullet injuries would show the scorching of the skin as the bullet was shot at a very close range. This witness claims to have seen the pistol when it was taken out by the accused and according to her statement in the cross-examination it was more than one or one half balishta, that is, more than eight or nine inches. Any injury caused by a bullet fired from such a weapon at a close range must show such signs as are usual in Such circumstances. This circumstance also leads us to the conclusion that it becomes doubtful that the shot was fired at such a close range as is alleged by the prosecution. It will also be noted that after taking her injured husband to Kuthar an interval of one whole day and one night elapsed before the death of her husband occurred and it is surprising that she would not tell anybody and her husband who was, according to the prosecution case, able to talk could not say to anybody as to who was the person who shot him. The prosecution case that the accused Piara Singh had entreated and requested Karnail Singh deceased and had threatened his wife not to make a report and hence a report to police was not made is hardly to be believed considering the normal conduct of persons in such circumstances.

For all these reasons we hold that it is also not safe to rely on the sole testimony of this witness in support of the prosecution case.

15. It is not necessary, in our opinion, to discuss the evidence of other witnesses. Suffice it to say that Ramdayal Tripathi and other witnesses who testified to the happenings on the morning of 25th August 1960 immediately after Smt. Charan Kaur discovered that her husband had died are not witnesses to the actual occurrence and what they state is no more than the version of Smt. Charan Kaur, whose evidence, as already said above, is not convincing as to how the occurrence took place and who shot her husband. It may be noted that no explanation has been given by the prosecution as to how other important witnesses have been left out. An application appears to have been made on behalf of the prosecution on the 17th February 1961 that Kandhara Singh, Niranjan Singh, Mahendra Singh, Girja Singh, Surendra Singh and Karnel Singh who were named as witnesses have become hostile and it was alleged that they have been won over by the accused and would not be produced. The learned Judge simply has made an order on this application that they may be summoned on behalf of the defence if so desired. We think that whatever may be the reason for their not being produced as prosecution witnesses when they were named, their absence from the witness box is a matter which creates doubt in our minds as to the truthfulness of the prosecution case.

16. For all these reasons given above, we hold that the prosecution has failed to prove beyond reasonable doubt its case against the appellant. The appeal is allowed and the conviction and sentence passed on the appellant are set aside. The appellant is in jail. He shall be set at liberty forthwith unless required in connection with some other case.

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