

Lakha Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Feb-12-1992

Reported in : 1992(1)WLN250

Judge : Kanta Bhatnagar and; Rajendra Prasad Saxena, JJ.

Appeal No. : D.B. Criminal Appeal No. 417 of 1989

Appellant : Lakha Singh

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. Vijay Agarwal

Disposition : Appeal dismissed

Judgement :

Kanta Bhatnagar, J.

1. Appellant Lakha Singh, along with two others viz. Balbir Singh and Sajjan Singh (since acquitted by the trial Court], was tried for the charges under sections 302 read with 34 I.P.C. and Section 27 of the Indian Arms Act by the Additional Sessions Judge, Raisinghnagar. Vide judgment dated September 26, 1989, the learned Additional Sessions Judge acquitted Balbir Singh and Sajjan Singh. He, however held the case against appellant Lakha Singh proved and sentenced him to imprisonment for life under Section 302 I.P.C and six months R.I, and a fine of

Rs. 500/-, in default of payment of fine to undergo one months R.I. Under Section 27 of the Armed Act.

2. Feeling aggrieved by his conviction and sentences, appellant Lakha Singh has preferred appeal in this Court .

3. Succinctly, narrated the prosecution case is that on June 7,1986 at 10.00 P.M. Rathha Singh (P.W.3) lodged the report Ex.P/5 at Police Station, Raisinghanagar to the effect that his sister Jeeto had been married to Santokh Singh resident of 35P.S. That before ten months Lakha Singh and Balbir Singh belaboured Arjun Singh and the case was pending in the Court. In that case Santokh Singh being a witness, Lakha Singh and Balbir Singh were annoyed with him. That, on that day i.e. on June 7, 1 986 at about 6.30 P.M. when he i.e. Ratha Singh was at his house and his wife Mahender Kaur and daughter Geeta had gone to fetch water from the 'diggi' [water reservoir], he heard the report of the gun fire and rushed towards the ' diggi'. That, at that time the one more fire shot infront beneath a tree where Lakha Singh, Balbir Singh and Sajjan Singh were. He saw Lakha Singh loading the gun. Sajjan Singh was lying on the ground and Ladhu Ram Meghwal was there at the door of his house. That, on his 'lalker' as to why they were killing Santokh Singh, Lakha Singh again fired a pistol shot at Santokh Singh lying on the ground. Santokh Singh expired. That, at that time Balbir Singh and Sajjan Singh told Lakha Singh that he i.e. Santokh Singh may not remain alive. That, thereafter all of them run away from there. Bhim Singh (P.W.7) S.H.O. Raisinghnagar registered the case and went to the site and made a search for the accused in the night. On June 8, 1986, he prepared the site inspection memo Ex.P/6 and site inspection memo Ex.P/6A and other necessary memos at the site. Two wads of cartridges found at the site were taken in possession vide memo Ex.P/13. One black colour rubber tube, smelling alcohol was taken in possession vide memos Ex.P/14. The postmortem examination of the dead body of Santokh Singh was conducted by Dr. Mahavir Prasad (P.W.6), Medical Officer, Incharge Government Hospital, Raisinghnagar. The postmortem examination report is Ex.P/10. The Doctor noted external injuries on the dead body as under:- '

(1). External Injuries:

One big wound of entry, lacerated with inverted edges, oval shaped, with powder deposition (tattooing) and scorching. Size: 1' x 1/2' x thoracic cavity deep situated over 6th space, left side, front of chest 4' below left nipple, 1/2' on left to midline 1 1/2' above the epigastrium and 7 1/2' below the medial end of left Clavicle. Directing from front to back and almost horizontally.

There is fracture of the internal ends of left 6th and 7th ribs. Edges of wound scorched (burnt). There is powder deposition over 6 1/2' x 4' area surrounding the wound as shown in the diagram. Greivous fireram.

(2). Wounds-Position, Size and Nature:

One big wound of entry, lacerated, with inverted edges, oval shaped, with powder deposition (tattooing) and scorching size : 5'x2' skull cavity deep site situated on right parietal and frontal region 1 1/2' above the right eyebrow, 1/2' right midline, directing from above downwards. There is powder deposition (tattooing) over 7'x4' area surrounding the wound. Scorching of edges and hair present. There is fractures in multiple pieces of right frontal and parietal bones. Greivous, Firearm.

(3). Bruises--Position, Size and Nature: Twelve wounds of entry, lacerated, with inverted edges, circular shaped, spread over area of 4 1/4'x2' on front and outer aspects of lower half of right thigh, each sized 1/6'x 1/6' tissue to muscle deep, situated 3/4' above the right knee joint and 9 1/2' below scorching seen. Directing from front and right to back and left. Simple Firearm.

4. According to the Doctor all the injuries were antemortem in nature.

5. On dissection of the dead body, the Doctor noted as under:

Right frontal and right parietal bones had multiple fractures with pieces inside the brain matter. Right temporal, occipital and left parietal bones also got fractured. Base of skull showed fractures in interior and middle cranial fossae. Membranes were lacerated. Brain had massive laceration. There Was in-tracranial haemorrhage. Pallets were removed from cranial cavity from brain matter base of skull.

6. In the opinion of the Doctor, cause of death was massive injuries on lungs, heart, liver and brain with disfunctioning of there major vital organs with intracranial, intra-thoracic and intra-abdominal haemorrhages and shock as a result of fire arm injuries on chest and head.

7. On June 8, 1986, accused Lakha Singh was arrested on a bridge near 35 P.S. At the time, he was having a 12 bore gun and one empty cartridge of 12 bore gun in the pocket of his shirt. The pistol was loaded with a live cartridge. These articles were taken in possession vide memo Ex.P/21. The other two accused were also arrested and one pistol without licence was recovered from Balbir Singh.

8. Upon completion of necessary investigation, chargesheet against the appellants was submitted in the Court of Additional Chief Judicial Magistrate, Raisinghnagar. The learned Magistrate committed the case to the Court of Additional Sessions Judge, Raisinghanagar. The learned Judge chargesheeted the appellant and the co-accused. All of them denied the indictments and claimed to be tried. Prosecution examined seven witnesses in all. In their statements under Section 313 of the Code of Criminal Procedure, Balbir Singh and Sajjan Singh denied their presence at the site. Lakha Singh appellant, while denying the allegation levelled against him, stated that he was not present at the site on the day of the occurrence was working as a labourer at the house of Ladu Ram Meghwal. That, in the evening Santokh Singh was drunk and was having a rubber tube containing illicit liquor. He hurled abuses to him and warned him that in case he would not get the compromise done in the case instituted against them by his maternal uncle, it will not be good. That, he and Ladu Ram asked Santokh Singh to go away from there but he pointed the gun. That, he tried to snatch the pistol and in that process the pistol went off on the head of Santokh Singh. That, he went away from there. Thereafter, Rathha Singh who had enmity with the deceased killed him with the pistol. No defence witness was examined. The learned Additional Sessions Judge did not hold the prosecution case of Balbir Singh and Sajjan Singh instigating Lakha Singh to fire the shot, acquitted them of the charges, Lakha Singh was however held guilty of committing the murder of Santokh Singh and sentenced as stated earlier.

9. We heard Mr. Vijay Agarwal, learned Counsel for the appellant and Mr. K.L. Thakur, learned Public Prosecutor for the State and carefully examined the record of the case.

10. The learned Counsel for the appellant has assailed the findings of the trial Court on the ground of its being based on inadequate evidence. It has been strenuously contended that the prosecution case rests on the testimony of Rathha Singh [P.W.3) and his wife Mahender Kaur (P.W.4) who happened to be the near relatives of the deceased and their statements without corroboration from independent witnesses should not have been made the basis of conviction, specially when Rathha Singh was not having cordial relations with the deceased Santokh Singh. It has also been argued by the learned Counsel that, Mahender Kaur has been implanted as a chance witness and Rathha Singh, even if prosecution case is taken to be true, could not be on the scene of occurrence.

11. The learned Public Prosecutor justifying the conviction of the appellant submitted that the Investigating Officer has tried to find out as to who were the persons present there at the time of the incident but none claimed to have seen the incident. That, Ladu Ram had been examined but he has obliged the accused and therefore, it was not possible to get the statements of Rathha Singh and Mahender Kaur corroborated by independent witnesses. The learned Public Prosecutor contended that the cogent, convincing evidence of Rathha Singh and Mahender Kaur, has rightly been taken to be sufficient to hold the appellant guilty of the charge.

12. Rathha Singh (P.W.3) happened to be the brother-in-law of deceased Santokh Singh. According to the witness his sister Jeeto Bai had been married, to Santokh Singh. He has stated about the relations being cordial and had denied the suggestion that on account of ornaments, there was some ill will between him and Santokh Singh. Mahender Kaur (P.W.4) has however admitted that because of Santokh Singh not returning the ornaments, Rathha Singh was not happy with him. However on careful examination of the evidence of these two witnesses, it is not believable that because of any enmity Rathha had killed Santokh Singh. Even the defence version is that in scuffle between deceased Santokh Singh and

appellant Lakha Singh, the pistol went off. Ladu Ram (P.W.5), though a hostile witness supports the prosecution witnesses on the point of Santokh Singh and Lakha Singh consuming liquor together and picking up quarrel. The witness contended that, he went inside when Santokh Singh took out the pistol. As already observed, this witness has been disowned by the prosecution because of his resiling from his previous statement Ex.P/9 where he has supported the prosecution case.

13. Mahender Kaur (P.W.6) had gone to fetch water from the 'diggi' and she had seen the quarrel and the incident since very beginning. According to her Lakha Singh fired three shots. The only question put her to discredit her testimony is that she used to take water from the tap outside the house of Nanak and she stated that there is water tap inside the house of Nanak and she was occasionally taking the water from the tap. She has stated about her not taking the water from the tap on that day. According to her when she went to the ' diggi' Santokh Singh was consuming illicit liquor from a tube and when he died because of the gun shot, the tube was lying near him. The witness further stated that on hearing the report of the gun fire, her husband Rathha Singh also came at the site. That, when he was in the way second shot was fired and when the third shot was fired, Rathha Singh had reached near the place of the incident. Rathha Singh has also stated about his seeing the second shot while he was on the way and the third shot being fired when he reached the site. If there is private water tap inside the house of somebody it is not necessary that a neighbour should always fetch water from there. There is nothing unnatural in Mahendra Kaur going to 'diggi' to fetch water on the day of the incident. The house of Rathha Singh is only at a little distance from the site of the incident and there was nothing unnatural in his hearing the report of the gunfire and reaching the site. The defence version about Santokh Singh taking out the pistol and it going off while he and the appellant scuffled is not believable in view of the medical evidence. Doctor Mahavir Prasad (P.W.6) has categorically stated that one shot could not cause all the injuries sustained by Santokh Singh, however bent or curved he might be in the scuffle. The Doctor has stated about the three injuries by gun shot and that supports the version of Mahender Kaur. The possibility of Santokh Singh sustaining injuries in a scuffle by a pistol going off accidentally having thus been ruled out by the medical evidence,

there is no person to disbelieve the evidence of Mahender Kaur supported by Rathha Singh.

14. The argument of the learned Counsel for the appellant and the defence version is that after sustaining injuries in the scuffle, through the gun shot being fired accidentally Rathha Singh killed Santokh Singh with the pistol, has no force, because Rathha Singh had no such animosity with his brother-in-law so as to commit his murder. Apart from it the trend of defence is that Mahender Kaur being the near relative of the deceased was supporting the prosecution case.

15. It is pertinent to note that there is no suggestion about Mahender Kaur having any enmity with the appellant so as to falsely implicate him. She has admitted that number of ladies were fetching water at the 'diggi' but she was unable to tell as to who they were. She admitted that houses of Pyara Singh, Bhagirath, Imichand, Nand Ram etc. were near the 'diggi' but she also stated that none of them was there at the site and they had shut the doors of their houses. According to her, Ladu Ram was there at the door of his house and thereafter went inside. In such circumstances, Investigating Officer was correct to state that he made efforts to find out as to who were there and came to know that nobody was there and that the neighbours had closed the doors of their houses. In such circumstances non examination of independent witness in the case does not cast a doubt on the fairness of the investigation.

16. Basing conviction on the statements of relatives is not illegal. All that is required is a careful scrutiny of their evidence to find out whether they are witnesses of sterling worth and are narrating the true facts or are simply trying to involve innocent persons with an anxiety to get the prosecution case established. From the careful perusal of the statements of Rathha Singh and Mahender Kaur, it appears that the two witnesses are of sterling worth and their statements suffer from no infirmity so as to raise any suspicion regarding their testimony.

No other argument has been advanced.

17. In view of the above discussion, we feel inclined to agree with the findings of the learned trial Judge. The reasoned order calls for no interference.

18. Consequently, the appeal filed by Lakha Singh having no merits is dismissed.

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