

**Pyara Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Apr-23-1986

**Reported in :** 1986WLN(UC)340

**Judge :** Jas Raj Chopra, J.

**Appeal No. :** S.B. Criminal Appeal No. 251 of 1978

**Appellant :** Pyara Singh

**Respondent :** State of Rajasthan

**Disposition :** Appeal allowed

**Judgement :**

**Jas Raj Chopra, J.**

1. This is an appeal against the judgment of the learned Additional Sessions Judge, Sri Ganganagar dated June 30, 1978 where by the learned lower court has held the accused-appellant Pyara Singh guilty of the offence under Section 326 IPC and has sentenced him to three years' rigorous imprisonment together with a fine of Rs. 200/- and in default, to undergo two months' rigorous imprisonment. He has also been held guilty of the offence under Section 27 of the Arms Act and has been sentenced to one year's rigorous imprisonment. Both the substantive sentences were ordered to run concurrently.

2. The facts necessary to be noticed for the disposal of this appeal briefly stated are that PW 3 Avtarsingh, PW 4 Jaisingh, PW 5 Ajayabsingh, PW.8 Shankarsingh and accused-appellant Pyarasingh are the real brothers. They belong to village 5 C.C. in District Sriganaganagar. It is alleged that they have some land in District Firozpur in Punjab and, therefore PW 8 Shankar Singh has shifted to Firozpur and and he was cultivating the land there. They owned 15 killas of land in villages 5 C.C. Although, this land was in their joint Khatedari in the revenue records but for the sake of convenience, Pyarasingh who was living separately from them has been given exclusive possession of three killas bearing Nos. 1,10 and

12. The remaining four brothers were cultivating the rest of the 12 killas jointly although, as stated earlier Shanker Singh was cultivating the joint land at village Kaliyawala in Firozpur(Punjab), There was some dispute about the share of land allotted to Pyara Singh by mutual agreement. Certain disputes arose amongst the brothers which have resulted in certain court cases. It is is alleged that on 18-6-1975 at about 1.30 p.m. Ajayab Singh, Avtar Singh and Jai Singh were to water their field in the regular course when their turn came. They were to receive water at 1.30 p.m. on that day and so, they went to the field in the early hours of the morning at about 7 or 8 a.m. and were cleansing the Khala (water course) so that water may easily be taken in their fields. When they came to the field to clean the Khala, it is alleged that accused Pyara Singh was moving in Killa No. 22 of square No. 1 armed with a rifle. His son Nand Singh, his brother-in-law Iqbal Singh and his son-in-law Jagga Singh were sitting on the boundary of killas No. 9 and

10. It it alleged that out of these three accused persons, Iqbal Singh was armed with a rifle and Nand Singh and Jagga Singh were armed with pistols. These three brothers Avtar Singh, Jai Singh and Ajayab Singh started cleansing the water course. At that time, Pyara Singh fired from his rifle. The shot first hit the wall of the water-course and then it hit Avtar Singh on the left side of his mandible. It is alleged that Pyara Singh then exhorted his son, brother-in-law and son-in-law to lire at these persons, whereupon, all the: three accused-persons fired about 10-15 shots with the weapons which they were having with them but it appears that none of those shots have hit any of these three persons who were cleansing the water-course. On hearing the sound of gun-fire, it is alleged that Pahalwan Singh,

Laxman and Shanker Singh came from the village, which is locally called Chak and they challenged these accused-persons where upon, these three persons who were sitting on the boundary of Killas No. 9 and 10 went in Killa No. 22 where Pyara Singh was present. After that, Pahalwan Singh, Laxman and Shanker Singh first bandaged the wounds of Avtar Singh and then took him to the Government Hospital, Padampur where his injuries were examined by Dr. B. M. Choudhary. The injury report has been marked Ex. P X-ray examination of the injury was also advised. The X-ray plates have been marked Ex. P 14 and

15. The X-ray reading report discloses the fracture of the left lower jaw. The X-ray reading report has been marked Ex. P

2. The report of the incident was lodged at Police Station, Padampur by an eye witness, i.e., PW 4 Jai Singh. This First Information Report which was lodged at 10.30 a.m. on that very day has been marked Ex. P

3. One bullet was recovered from the wound of Avtar Singh and that was seized in bottle by the Doctor. The bottle was handed over to the Police. Its seizure memo has been marked Ex. P

5. The blood stained clothes of the injured were seized vide memo Ex. P

6. The site was inspected and the site plan and site inspection memo have been prepared. They have been marked Ex. P 7 and Ex. P 7A respectively. Accused Pyara Singh was arrested vide memo Ex. P

8. The other three accused-persons were arrested vide memo Ex. Ps 9 to 11 respectively.

3. Accused Pyara Singh gave information about the recovery of one country-made gun. This information has been recorded in memo Ex. P 12 and on the basis of this, one country-made gun has been recovered vide memo Ex. P 4. The sanction of the District Magistrate was obtained to prosecute the accused Pyara Singh for the offence under Section 3 and read with Section 25(1)(c) of the Arms Act.

4. After usual investigation, the case against all the four accused-persons was challenged in the court of learned Judicial Magistrate, Karanpur from where it was committed for trial to the court of learned Sessions Judge, Sri Ganganagar, who transferred this case for disposal to the court of learned Addl. Sessions Judge, Sri Ganganagar. The learned Addl. Sessions Judge charged the accused Pyara Singh for the offence under Sections 307, IPC and 27 of the Arms Act where as all the other accused-persons were charged with the offence under Section 307/34, IPC. The accused-persons did not plead guilty to the charges and claimed trial where upon, the prosecution examined as many as 10 witnesses in support of its case. The statements of the accused under Section 313 Cr.PC were recorded. They led no defence. After hearing the final arguments, the learned lower court has acquitted accused Nand Singh, Iqbal Singh and Jagga Singh for the offence under Section 307/34, IPC but it has convicted and sentenced the accused-appellant Pyara Singh as aforesaid and hence, he has come up in appeal before this Court.

5. I have heard Mr. M.L. Garg, learned Counsel for the accused-appellant Pyara Singh, Mr. S.K. Mathur, learned Public Prosecutor for the State and Mr. B.N. Calla, learned Counsel for the complainants.

6. Mr. M.L. Garg has submitted that the learned lower court has erred in holding the accused Pyarasingh guilty of the offence under Section 326 IPC and Section 27 of the Arms Act. According to him, it was a definite case of the prosecution that Pyarasingh was standing in Killa No. 22. Although in the FIR and during the investigation, the prosecution witnesses have stated that in this Killa No. 22, sugar-cane crop belonging to Pyara Singh was standing but now, the prosecution witnesses have stated that sugar-cane crop did not belong to Pyarasingh but it belonged to Hakamsingh. Be that as it may, the prosecution upto the stage of investigation has never come out with a case that Pyarasingh has ever left Killa No. 22 of square No. 1 and has gone either on the boundary of Killa No. 8 and 9 or on the boundary of Killas No. 9 and 10 of square No. 4. The case of the prosecution upto the stage of investigation was that Pyarasingh was in Killa No. 22 of square No. 1 and he fired from his rifle from that Killa and that has hit Avtarsingh on his left jaw. The prosecution witnesses have now changed their

version. Although, even now they stick to their version that it was Pyarasingh who fired the first shot but they have come with a case that accused Pyarasingh who was standing in Killa No. 22 of square No. 1 came on the boundary existing either between Killas No. 8 and 9 or on the boundary existing between Killas No. 9 and 10 of square No. 4 and he fired from his rifle from that place. He has, therefore, submitted that the prosecution has changed its entire version. Earlier, its case was that Pyarasingh has fired from his rifle from Killa No. 22 and his three companions fired at the complainant party from the boundary of Killas No. 9 and 10 of square No. 4. Now, they have stated that Pyarasingh also went from Killa No. 22 to the boundary of Killas No. 8 and 9 of square No. 4. His companions were also there on the boundary of Killas No. 8 and 9 and initially, Pyarasingh fired from his rifle which hit Avtarsingh and later, on exhortation of Pyarasingh, his son, brother-in-law and son-in-law also fired at the complainant party from the weapons in their possession. If the evidence of the prosecution is critically examined, it comes to this that the shot which has hit Avtarsingh was fired from the boundary of Killas No. 8 and 9 of square No. 4 or in the alternative from the boundary of Killas No. 9 and 10 of square No. 4. This omission on their part that Pyarasingh travelled from Killa No. 22 of square No. 1 and thereafter, came to the boundary of Killas No. 8 and 9 of square No. 4 is only an after-thought attempt to shift the venue to fasten the guilt on accused Pyarasingh because it is totally new case which has been developed at the trial. Actually, according to the prosecution case put forth at the trial, the shot which has hit Pyarasingh has been fired from the boundary of Killas No. 8 and 9 or Killas No. 9 and 10. When the accused has never left the Killa No. 22 of square No. 1 then this shot might have been fired by any of these three accused-persons who have been acquitted. He submitted that in any case, it cannot be held on the strength of such a contradictory testimony that Pyara Singh is the author of this injury. In this respect, he further canvassed before the Court that all the three eyes witnesses of the occurrence have stated that they were busy in cleansing the water course and so their attention was engrossed in cleansing the water-course. Their attention was drawn towards the incident when the shot was fired and it has hit Avtarsingh. Thus, they cannot say with any certainty as to who is the author of the first shot and from under it was actually fired. He has further submitted that although, PW 8 Shankersingh has stated that he reached

the place of the occurrence, when Pyarasingh was aiming his rifle at Avtarsingh but that testimony of Shankersingh is totally unreliable because it has come in the FIR and in the testimony of witnesses that Shankersingh met them in the way when they were taking injured Avtarsingh to the Chak and, therefore, he could not have seen the occurrence and so, his testimony regarding the fact that Pyarasingh is the author of the first shot, cannot carry and conviction with any court of law. Under these circumstances, he has submitted that accused appellant Pyarasingh deserves the benefit of doubt and consequent acquittal.

7. Mr. S.K. Mathur, learned Public Prosecutor appearing for the State has submitted that accused-appellant Pyarasingh initially was moving in Killa No. 22. He was not sitting at a particular place. A moving man can also move to Killas No. 8 and 9 and can fire from there. All the three alleged eye witnesses have categorically stated that the first shot was fired by accused Pyarasingh from the boundary of Killas No. 8 and 9 and, therefore, the learned lower court was perfectly justified in holding the accused-appellant Pyarasingh guilty of the offence of the above said two offences. He has further submitted that shifting of the venue is only a minor contradiction and it hardly affects the case of the prosecution on merits.

8. I have given my most earnest consideration to the rival submissions made at the bar. In this case, the FIR has been lodged by an eye witness of the occurrence i.e. PW 4 Jaisingh. He has stated in portion A to B of the FIR that Pyarasingh was moving in Killa No. 22 of square No. 1 of village 5 C.C. In portion C to D of this FIR it has been got recorded that the other three accused-persons were present with their arms on the boundary of Killas No. 9 and 10 of square No. 4. In portion A to F, it has been got recorded by this witness that after these 3 accused-persons who were present on the boundary of Killas No. 9 and 10 of square No. 4 were challenged by Shankersingh and others, these three accused-persons went to the Killa where sugar cane crop was standing and in which Pyarasingh was present. When this witness has been examined in the court as PW 4, he was confronted with three portions, which he got them recorded in the FIR to which he has replied that he cannot say why it was recorded in portion A to B of Ex. P. 3 that the sugar cane crop belonged to Pyarasingh. He has now stated at the trial that this crop did

not belong to Pyarasingh but it belonged to Hakamsingh. He has further stated that he never got it recorded that Pyarasingh was moving in that Killa. Actually, he was standing there. He has stated that portion C to D of Ex. P. 3 is wrong. He was further cross-examined regarding the omissions Ex. P. 3. At the trial, he has stated that Pyarasingh came on the boundary of Killas No. 8 and 9 and from there, he fired at Avtarsingh. It was asked to him why these facts are not mentioned in Ex. P. 3, to which, he has replied that he told all these facts to the Police but he cannot say why they were not written. All these facts are also missing in his police statement Ex. D 2. His explanation was also sought regarding these material omissions and there too, he has stated that he cannot say why these facts are not contained in Ex. D. 3. At the trial, he has developed the case that initially Pyarasingh was standing in Killa No. 22 of square No. 1 and thereafter, he came to the boundaries of Killa No. 8 and 9 of square No. 4 and from there, he fired from his rifle at Avtarsingh. The tenor of his cross-examination, which has been discussed by me in detail reveals that this is an after thought story developed by this witness.

9. PW 3 Avtar Singh has also stated that initially Pyara Singh was moving in Killa No. 22 of square No. 1 and they were cleansing the water course situated in Killa No. 8. The accused along with his companions came towards them and accused Pyara Singh fired at him from his rifle, which hit him on his left mandible. On receiving this injury, he sat down in the Khala (water course) and later, all the other accused persons fired at them. In his cross-examination, he has categorically stated that Pyara Singh who was initially present in Killa No. 22 of the square No. 1 started from there and joined his companions who were on the boundary of Killa No. 10. There, they stood for about 10 minutes and after that, Pyara Singh fired at them. Later, he has stated that from Killa No. 10, they came to the boundary of Killa No. 9 and from there, Pyara Singh fired at them. He too, has been confronted with his earlier police statement Ex. D 1 portion A to B but he has stated that this has wrongly been recorded by the Police. He too was cross-examined regarding the omissions of the case developed by him at the trial in contradiction to his earlier police statement. He has stated that he told the Investigating Officer that actually Pyara Singh came to Killa No. 9 and from there, he fired at him but he cannot say why this particular fact has not been mentioned

in his police statement Ex. D. 1. He was further asked as to how it is written in his police statement Ex. D. 1 that Pyarasingh who was moving in Killa No. 22 all of a sudden fired at him from that sugarcane crop? He has stated that he cannot say how this particular portion has been recorded by the Police in Ex. D. 1 Rather, he told the Investigating Officer that the accused Pyarasingh moved from Killa No. 22 and he came to Killa No. 10 and joined his companions and later, he came to the boundary of Killas No. 8 and 9 and from there he fired. From this statement, it is clear that the earlier story put forth by this witness was that accused Pyarasingh was present in Killa No. 22 of square No. 1 and while he was moving in that Killa, all of a sudden, he fired from his rifle at him from Killa No. 22 but now he has given a totally different story at the trial by saying that the accused Pyarasingh first came to the boundary of Killa No. 10 and later he came on the boundary existing between Killas No. 8 and 9 and from there, he fired at him. This later after thought improvement cannot be believed. To the same effect is the testimony of PW 5 Ajaib Singh He too has stated that from Killa No. 22, Pyarasingh came on the boundary existing between Killa No. 8 and 9 of square No. 4 and from there, he fired at Avtarsingh from his rifle. This particular part of his testimony does not find mention in his police statement Ex. D. 3. He has been cross-examined regarding these omissions and he has stated that he cannot say how all these facts are missing from his statement Ex. D. 3. A close scrutiny of the evidence of all these eyes witnesses will reveal that the earlier statements before the Police were that Pyarasingh has fired from Killa No. 22 and that shot has hit Avtarsingh on his left mandible but the case that they have developed at the trial is totally different from one stated by them in the FIR and their police statements Ex. D. 1 to 3. They have carved out a totally different story. All the three witnesses have stated at the trial that the accused Pyarasingh who was present in Killa No. 22 came to Killas No. 8 and 9 and from there, he fired at Avtarsingh. I find great force in the argument of M.L. Garg, learned Counsel for the accused-appellant Pyarasingh that from the evidence of all these three witnesses, it can be said that the shot which has hit Avtarsingh on his left mandible was fired from a place which existed on the boundary of Killas No. 8 and 9 of square No. 4 and accused Pyara Singh never came to that place. This story which the witnesses have developed at the trial that he came there is an after thought improvement and no body can be held guilty of

the basis of such improved version which does not find place in their earlier police statements or in the FIR. Mr. Mathur has submitted that these are only minor contradictions. I am afraid, I cannot agree with him. The version of the prosecution upto the stage of investigation was that he (accused-Pyarasingh) was standing in Killa No. 22 and he fired a shot from his rifle from Killa No. 22 and then this after thought improvement on the part of these three eye witnesses that he came from Killa No. 22 to Killas No. 8 and 9 of square No. 4 cannot be believed. There is no denial of the fact that a man can move but if he has moved from Killa No. 22 to Killas No. 8 and 9, this fact ought to have been told by the witnesses in their earlier police statements or as the FIR has been lodged by an eye witness, he should have got it recorded this fact in the FIR. The prosecution witnesses cannot be allowed to change their versions at their will. Looking to these facts and circumstances of this case, I am persuaded to agree with Mr. Garg that it is quite possible that the shot which has hit Avtarsingh has been fired from a place situated on the boundary of Killas No. 8 and 9 of square No. 4 but on the basis of this testimony, it cannot be held that accused Pyarasingh is the author of this shot. There is one more strong reason in support of this view. All these three eye witnesses have categorically stated that their attention was totally engrossed in cleansing the water-course and as soon as the shot was fired and it hit Avtarsingh, their attention was diverted towards them. PW 4 Jaisingh has stated that when they heard the sound of the gun fire then alone, they diverted their attention towards the accused-persons and saw them. PW 5 Ajaibsingh has also stated that after he heard the sound of the gun fire and cries of Avtarsingh, his attention was drawn towards the incident which clearly shows that they were totally engrossed in cleansing the Khala and so, they could not have observed from where this first shot was fired and by whom, it was fired. This is but definite that Pyarasingh did not come to the boundary existing between Killas No. 8 and 9 before firing the shot and, therefore, I agree with Mr. Garg that it cannot be determined in this case that Pyarasingh alone has fired this shot which has hit Avtarsingh.

10. PW 8 Shankersingh has rightly been disbelieved by the learned lower court because PW 5 Ajaisingh has stated in his examination-in-chief that when they were taking Avtarsingh to the village, Laxman, Pahalwan Singh and Shankersingh met them in the way. This fact already finds mention in the FIR too. Under these

circumstances, the statement of Shankersingh that he saw accused Pyarasingh aiming his rifle at Avtarsingh and at that time, he told accused Pyarasingh not to fire from this rifle because the matter will be settled on the next day in the village appears to be a totally untrue statement made by this witness. If he met the complainant party while they were proceeding towards the village and he started from the village only on hearing the sound of gun-shot then the testimony of Ajaib Singh is highly reliable that he met them in the way and so, to that extent I uphold the finding of the learned lower court that Shankersingh has not seen the occurrence. Looking to all these facts and circumstances, I am inclined to agree with Mr. Garg that it cannot be held with certainty that accused Pyarasingh is the author of the injury caused to Avtarsingh and, therefore, the accused Pyarasingh deserves the benefit of doubt and, consequent acquittal.

11. So far as the recovery of gun is concerned, it has been disbelieved by the learned lower court and when it has not been established that this particular gun has been used in the commission of the crime then accused Pyarasingh cannot be held guilty of offence under Section 27 of the Arms Act. It has been alleged by the prosecution that the bullet was taken out from the wound of Avtarsingh and that bullet was sealed by the Doctor in a bottle and was handed over to the Police. Neither the gun nor that bottle containing the bullet were sent for ballastic examination. More over, it has become doubtful in this case whether Pyarasingh has ever fired from his rifle? The case of the prosecution through out is that accused Pyarasingh was armed with a rifle whereas country made up has been recovered from him. All these facts and circumstances cummulatively are sufficient to grant an acquittal to the accused-appellant Pyarasingh for the offence under Section 27 of the Arms Act.

12. In the result, I accept this appeal, set aside the judgment of the learned Additional Sessions Judge, Sri Ganganagar dated 30-6-1978 and acquit the accused-appellant Pyarasingh of the offence under Section 326 IPC and Section 27 the Arms Act. He is on bail. He need not surrender to his bail bonds. His bail bonds shall stand discharged.