

(2019) 01 SC CK 0117

Supreme Court Of India**Case No:** Criminal Appeal No(S). 138, 139 Of 2010

Kalua @ Koshal Kishore

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision: Jan. 31, 2019**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 378(3)
- Indian Penal Code, 1860 - Section 34, 302, 307

Citation: (2019) 16 SCC 683 : (2019) 2 Cricc 26 : (2019) 1 ACJ 693 : (2019) 2 Crimes 52 :
(2019) 1 RCR(Criminal) 1001 : (2019) 3 Supreme 208**Hon'ble Judges:** R. Banumathi, J; R. Subhash Reddy, J**Bench:** Division Bench**Advocate:** Charu Mathur, Ashok K. Srivastava, Jayant Bhatt, Jyoti Sharma, Ruchi Kohli, R. Gopalakrishnan**Final Decision:** Dismissed

Judgement

R. Banumathi, J

(1) These appeals arise out of the judgment and order dated 18th August, 2008 passed by the High Court of Rajasthan at Jaipur, Jaipur Bench, in

D.B.Crl.Appeal No.10/2005 and D.B.Crl.Appeal No.99/2005 in and by which the High Court affirmed the conviction of the appellants under Section

302 read with Section 34 I.P.C. and sentenced them to undergo imprisonment for life.

(2) The case in a nutshell is as follows. On the complaint lodged by one Prem Shankar (PW-9) on 17th September, 1999 stating that at about 5.00

p.m.the deceased-Lakhan was busy in the main market Bayana in inspection work of safai Karamcharis of Municipal Council/Corporation. At that

time Lakhan was surrounded by Susya @ Lokesh (A-4), Pintoo @ Kamal Kishore (A-1), Laddu @ Mool Chand (since acquitted), Dinesh (A-2),

Kalua (A-5), Satish (A-3) (since Acquitted) and other persons who were armed with gun and weapons. Pintoo @ Kamal Kishore (A-1) and Kalua @

Koshal Kishore (A-5) opened fire in the air in order to create terror in the market. Susya @ Lokesh (A-4) fired at Lakhan from his katta (country

made gun) which hit on the left side of the abdomen of Lakhan, and thereafter all the accused fled away from the spot. Prem Shankar (PW-9) and

other persons present on the spot admitted the injured Lakhan in a hospital and during the treatment at hospital Lakhan succumbed to his injuries.

Initially a case was registered under Section 307 I.P.C. against the appellants but after the death of Lakhan FIR was altered to Section 302 I.P.C.

(3) Upon consideration of evidence of Prem Shankar (PW-9) and Rakesh (PW-12) and that there was recovery of empty cartridges from the scene

of occurrence and recovery of country made gun (katta) from Pintoo @ Kamal Kishore (A-1), the Trial Court convicted Pintoo @ Kamal Kishore

(A-1), Kalua @ Koshal Kishore (A-5) and Susya @ Lokesh (A-4) under Section 302 read with Section 34 I.P.C. and sentenced each of them to

undergo life imprisonment. The Trial Court acquitted Dinesh (A-2) and Satish (A-3) and also Laddu @ Mool Chand. In appeal, the High Court

affirmed the conviction of the appellants, as aforesaid in para (2).

(4) We have heard Ms. Charu Mathur, learned counsel appearing for appellant-Kalua @ Koshal Kishore (A-5) and Mr. Ashok K. Srivastava, learned

counsel appearing for the appellants-Pintoo @ Kamal Kishore (A-1) & Susya @ Lokesh (A-4) at great length. We have also heard Mr. Jayant Bhatt,

learned counsel appearing for the respondent-State and also perused the impugned judgment and other materials on record.

(5) Mr. Ashok K. Srivastava, learned counsel appearing for the appellants-Pintoo @ Kamal Kishore (A-1) & Susya @ Lokesh (A-4), inter alia,

placed reliance upon the judgment of this Court in Balaka Singh and Other v. The State of Punjab, (1975) 4 SCC 511 to contend that false implication

of some of the accused, namely, Dinesh (A-2) and Satish (A-3), raises serious doubts on the complicity of the appellants and this aspect was not

properly considered either by the Trial Court or by the Appellate Court.

(6) The Trial Court as well as the High Court recorded concurrent findings of fact that the eye-witnesses, namely, Prem Shankar (PW-9) and Rakesh

(PW-12) are the natural witnesses of the incident. Upon appreciation of the evidence, both the courts recorded the concurrent findings observing that

Prem Shankar (PW-9) and Rakesh (PW-12) were purchasing some articles in the main market Bayana, Panchayati Raj Mandir, and that they

witnessed the occurrence that the deceased-Lakhan was surrounded by the appellants and other accused. When both the courts have accepted their

evidence as credible, we do not find any ground to discredit the evidence of these witness.

(7) After referring to various judgments, the Trial Court vide para (37) of its judgment observed that upon analysis of the fact and circumstances of

the case obtained, pointed out that grain can easily be separated from the chaff and that lie and truth can be separated easily. Considering the

evidence adduced by the prosecution, the Trial Court held that acquittal of accused no.2 and 3 viz., Dinesh (A-2) and Satish (A-3), the involvement of

the other accused in the commission of the offence cannot be doubted. The Trial Court and the High Court concurrently held that evidence of eye-

witnesses Prem Shankar (PW-9) and Rakesh (PW-12) is cogent and consistent establishing the guilt of accused Pintoo @ Kamal Kishore (A-1),

Susya @ Lokesh (A-4) and Kalua @ Koshal Kishore (A-5). Having regard to the consistent version of the eye-witnesses, we do not find any good

ground to take a different view.

(8) Insofar as the contention assailing the credibility of Prem Shankar (PW-9) that he has been convicted in another murder case and that he is

undergoing life imprisonment, in para (38) of its judgment the Trial Court recorded its findings stating that the present incident relates to the period

earlier to awarding Prem Shankar (PW-9) sentence of life imprisonment in the case of murder of one Rajesh and attempt to commit murder of

Thalesh. The Trial Court has rightly held that merely because Prem Shankar (PW-9) has been convicted in other case, it does not affect his credibility,

he being the witness in this occurrence.

(9) Insofar as the contention as to the non-recovery of the katta (country made gun) from Susya @ Lokesh (A-4) who has fired on the abdomen of

the deceased-Lakhan, both the courts have recorded concurrent findings that such non-recovery or non-production of weapon would not materially affect the case of the prosecution.

(10) Upon appreciation of evidence of the eye-witnesses and other materials adduced by the prosecution, the Trial Court as well as the High Court recorded the concurrent findings that the evidence of Prem Shankar (PW-9) and Rakesh (PW-12) are unassailable and we do not find any ground warranting interference with the concurrent findings of the Trial court and the High Court.

(11) The appeals are accordingly dismissed.

(12) Since the appellants are stated to be undergoing imprisonment for more than ten years, the appellants are at liberty to approach the competent authority for considering their case for remission. As and when such representation in this regard is made, it is for the concerned authority to take a decision in accordance with law.