
Kripal Singh and others Vs State of U.P.

Criminal Appeal No. 2678 of 1982

Court: Allahabad High Court

Date of Decision: Dec. 7, 2007

Acts Referred:

Penal Code, 1860 (IPC) " Section 302, 307, 34

Hon'ble Judges: M.Chaudhary, J and R.N.Misra, J

Final Decision: Dismissed

Judgement

M. Chaudhary, J.

This is a criminal appeal filed on behalf of the accused appellants from judgment and order dated 13th of October, 1982

passed by II Additional Sessions Judge, Budaun in Sessions Trial No. 491 of 1980 State v. Kripal Singh and others convicting the

accusedappellants under sections 302 and 307 each read with section 34 IPC and sentencing each of them to life imprisonment and rigorous

imprisonment for five years respectively there under.

2. The prosecution case as unfolded during the trial in nutshell is that accused Kripal Singh, Urman Singh and Amar Singh are real brothers being

sons of Bhim Sen and used to reside at village Barkhera. Siya Ram and Hazari were real brothers being sons of Niranjana Singh and they were also

residents of village Barkhera. Neksi is the daughter of Siya Ram. In August, 1980 millet crop was sown by Siya Ram and Hazari in their field

situate at the outskirts of Purohit Khera adjoining to south of the field of Kripal Singh and his brothers. At about 9:00 a.m. on 29th of August,

1980 Siya Ram with his brother Hazari and daughter Neksi went to his fields to cut the grass. On reaching their millet field they saw that northern

menh of their field was dismantled and millet crop scrapped in a strip measuring 22 1/2 feet in width from east to west. Then Siya Ram and

Hazari asked Kripal Singh and his brothers Urman Singh and Amar Singh present in their field as to why they dismantled the northern ridge of their

field and turned millet crop sown there. Then they told them that they were already prepared to see them. At that time Kripal Singh was armed

with his licensed gun and Urman Singh and Amar Singh with lathis. Immediately they assaulted them and Amar Singh and Urman Singh gave lathi

blows to Hazari and as Siya Ram tried to save his brother and catch hold of their lathis one lathi blow was given to him and Kripal Singh fired at

him with gun twice. On hearing the hue and cry and sound of firing one Bhimsen, Choori Singh and Jasram rushed to the scene of occurrence and

challenged the miscreants. All the three threatened them with murder if they followed them further and bolted away. Immediately after making

arrangement for a bullockcart Siya Ram went with Jasram to the police station and asked some of the covillagers to bring injured Hazari in another

bullock cart. On reaching police station Bisauli situate at a distance of four miles from village Barkhera Siya Ram lodged an FIR of the occurrence

at 10:45 a.m. that very forenoon. The police registered a case under sections 307 and 323 IPC. In the meanwhile injured Hazari also reached the

police station in bullock cart. SI Dinesh Chand Sharma to whom investigation of the crime was entrusted recorded statements of injured Siya Ram

and Hazari at the police station itself.

3. Injured Siya Ram was medically examined by Dr Chandan Singh at Primary Health Centre, Bisauli at 12:15 noon. His medical examination

revealed below noted injuries on his person:

1. Lacerated wound 2 cm x 1/2 cm x muscle deep vertically on left side of forehead just lateral from the mid line of forehead.

2. Two lacerated wounds 1/2 cm x 1/2 cm x muscle deep with faint blackening around over both sides of chin. Advised Xray.

3. Seven circular wounds 1/2 cm x 1/2 cm x muscle deep with faint blackening around over the abdomen below nipples in an area of 14 cm x 20

cm. No wound of exit seen. Advised Xray.

4. Lacerated wound with profuse bleeding 11/2 cm x 1/2 cm x bone deep over the dorsum medial aspect of left forearm 9 cm below the elbow

joint. Bending of bones seen indicating fracture of forearm bone. Advised xray.

5. Seven circular wounds 1/2 cm x 1/2 cm x probing not done in an area of 10 cm x 7 cm over the ventral aspect of left forearm upper half with

faint blackening around. Advised Xray.

6. Three circular wounds 1/2 cm x 1/2 cm x muscle deep over anterior aspect of left thigh upper 2/3 part with faint blackening around. No wound

of exit seen. No metallic object palpable. Advised Xray.

7. Circular wounds each measuring 1/2 x 1/2 cm x muscle deep in an area of 18 cm x 7 cm over anterior aspect of right upper 2/3 thigh with faint

blackening around. No metallic object palpable. Advised Xray.

The doctor opined that injuries No. 1 and 4 were caused by some blunt object and rest by firearm and all the injuries were fresh in duration.

4. Injured Hazari was also medically examined by Dr. Chandan Singh at Primary Health Centre, Bisauli at 1:00 p.m. His medical examination

revealed below noted injuries on his person:

1. Contusion with red colouration 5 cm x 4 cm over right temporal head just above the upper lateral edge of forehead. Advised xray.

2. Lacerated wound 11/2 cm x 1/2 cm x bone deep over the anterior aspect of the lower part of left arm 8 cms above left elbow joint. Bending of

bones seen indicating fracture of arm bone.

3. Multiple contusions with red colouration measuring 6 cm x 21/2 cm over the lateral aspect of left chest and abdomen. Advised Xray.

The patient was unconscious. The doctor opined that injury No. 2 was grievous and the remaining two were kept under observation. The doctor

opined that all the injuries were caused by blunt object and fresh in duration.

5. It appears that both the injured were got admitted in District Hospital, Budaun the same day. Injured Hazari succumbed to the injuries sustained

by him in the said incident in the Hospital on 29th of August, 1980 at 4:20 p.m. Inquest on the dead body of Hazari was drawn on 29th August,

1980 by SI Police Lines, Budaun.

5. Autopsy conducted on the dead body of Hazari by Dr O.P. Chhimpa, medical officer T.B. Clinic Budaun at 1: 40 p.m. on 30.8.1980 revealed

below noted ante mortem injuries on the dead body:

1. Scabbed abraded contusion 4 cm x 2 cm on frontal region of skull 12 cm above bridge of nose in midline.

2. Dressed medicated wound measuring 1.5 cm x 1 cm x bone deep fracture on outer aspect of left upper arm lower third. Laceration of muscles

under the wound around fracture present. Blood clot present in membranes. Fracture of humerus at lower onethird present. On internal

examination frontal bone under injury No. 1 was found fractured and membranes were congested. Haematoma was present there under. Brachial

tissues under injury No. 2 were lacerated.

The doctor opined that the death was caused due to shock and internal haemorrhage.

Then the crime was altered under section 302IPC.

After completing investigation the police submitted chargesheet against the accused.

7. After framing of charge against the accused the prosecution examined Siya Ram (PW1), Neksi (PW2) and Bhimsen (PW 5) as eyewitnesses of

the occurrence. PW 7 HM Ganga Ram who recorded FIR as told by Siya Ram, the first informant and made entry regarding registration of the

crime in the GD proved these papers (Exts Ka 1 and Ka7). PW 8 Dr Chandan Singh, Medical officer incharge PHC Bisauli who examined both

the injured proved the injury reports (Exts ka 9 & ka 10). PW 4 R.B. Abbhi, Radiologist District Hospital Budaun who xrayed abdomen, thigh,

left arm of Siya Ram proved the xray reports (Exts Ka 1 to Ka 3). Xray of abdomen, thigh, left arm of Siya Ram revealed small metallic foreign

body shadows therein and fracture of ulna bone in upper one third. PW 3 Dr O.P. Chhimpa, Medical officer T.B. Clinic Budaun who conducted

autopsy on the dead body of Hazari proved the post mortem report deposing that the ante mortem injuries sustained by Hazari were sufficient to

cause the death in ordinary course of nature (Ext Ka 2). PW 6 SI Dinesh Chand Sharma who investigated the crime and after completing

investigation submitted chargesheet against the accused proved the police papers.

8. The accused pleaded not guilty denying the alleged occurrence altogether stating that they were got implicated in the case falsely. Accused

Urman Singh stated that the alleged day he was not present at his field as on 23rd of August, 1980 he had gone to attend the meeting at Saghan

Sanakari Samiti Ghosli and that place is situate at a distance of 80 kms from his village. He also stated that Siya Ram and Hazari had taken loan

from Saghan Sahkari Samiti, Panauri 1516 years ago and he got them arrested for realization of that loan. Accused Amar Singh stated that Lakhan

and Harnam happened to be the relatives of Siya Ram and that he and his cousin had appeared as witnesses in a criminal case against Lakhan and

Harnam and therefore they were implicated in the case falsely, the accused examined DW 1 Ram Autar, Secretary Saghan Sahkari Samiti Panauri,

DW2 Prem Pal Singh, Secretary Ghosli Anirudh Ram Sahai Vikas Kshetra Junamai and DW 3 HC Ram Kumar Singh. DW 1 Ram Autar

produced the Register of loans for the years 197176 and 198182 and stated that Hazari had taken loan from Saghan Sahkari Samiti Panauri thrice

and said the loan and there were entries to that effect therein and that there was no entry in he Register to show that Hazari or his brother Siya

Ram was ever arrested in realization proceedings of the loan. DW 2 Prem Pal Singh deposed that he took over charge as Secretary of the Samiti

on 23rd of September, 1982; that there was an agenda dated 18th of August, 1980 that meeting of he Samiti shall be held on 23.8.1980 but the

proceedings Register of the year 1980 was lot given in his charge and that it was stolen in the theft but he could not say if in the report of theft it

was mentioned or not that Register of Proceedings was stolen. DW 3 HC Ram Kumar Singh stated that in the rear 1957 injured Siya Ram, son of

Niranan resident of Barkhera, police station Bisauli was ordered to execute bond for his good behaviour for a period of one year under section

109 of the Code of Criminal Procedure with default stipulation.

9. On an appraisal of the parties evidence the learned Trial Judge held the accused guilty of the charge levelled against them.

Feeling aggrieved by the impugned judgment the accusedappellants preferred this appeal for redress.

10. Heard Sri Brijesh Sahai, learned Counsel for the accusedappellants and Sri Karuna Nand Bajpai, learned AGA for the Staterespondent.

PW 1 Siya Ram, injured and the first informant narrated all the facts of the occurrence from the beginning to the end as stated above deposing that

at about 9:00 a.m. the alleged morning he alongwith his brother Hazari and daughter Neksi went to his field for cutting grass, that on reaching at

their millet field they saw that northern ridge of their field was dismantled and millet crop sown was scrapped in a strip about 22 1/2 feet in width

along the ridge; that at that time Kripal Singh, Urman Singh and Amar Singh were standing in the westernsouthern side of their field situate"

adjacent towards north to his field; that as he and his brother Hazari asked them as to why they dismantled the ridge of their field and turned the

crop the accused stated that they should keep standing as they came there prepared for making their arrangement; that immediately Amar Singh

and Urman Singh gave lathi blows to Hazari and as he tried to catch hold of the lathis he was also given lathi blow and Kripal Singh fired at him

with his gun twice; that on hearing the hue and cry raised one Bhim Sen, Choori Singh and Jasram rushed towards the scene of occurrence

witnessing the incident and that then the miscreants took to their heels. PW 2 Neksi, grown up married daughter of injured Siya Ram corroborated

him stating likewise. However, PW 5 Bhim Sen did not support the prosecution case as he stated in his examinationinchief that he did not witness

the incident as he was not present there. He was declared hostile and crossexamined by the prosecution with the permission of the Court but to no

use. Both the eyewitnesses namely PW 1 Siya Ram and PW 2 Neksi were subjected to searching and gruelling crossexamination but nothing

substantial could be elicited there from to render their testimony doubtful or unreliable. Both the eyewitnesses withstood their crossexamination

firmly. Testimony of both the eyewitnesses stands corroborated by FIR of the occurrence lodged promptly at the police station (the incident took

place at 9:00 a.m. and FIR of the occurrence was lodged by Siya Ram, the injured at police station, Bisauli situate at a distance of some four miles

from the village at 10:45 a.m. the same forenoon). Moreover, testimony of PW 1 Siya Ram, the injured has got its own relevance and efficacy as

his presence at the scene of occurrence cannot be doubted. He sustained injuries at his forehead, face, abdomen, thigh etc.

11. On the other hand evidence adduced by the accused in their defence is of no avail to either of them. Plea of alibi taken by accused Urman

Singh could not be substantiated.

12. After carefully analyzing the prosecution evidence and that tendered by the accused and going through the impugned judgment we find

ourselves in concurrence with the findings recorded by the learned Trial Judge. However learned Counsel for the accusedappellants has advanced

following arguments and now we shall see if any of them has got any force in it:

13. The appellants" learned Counsel contended that since both the eyewitnesses PW1 Siya Ram and PW 2 Neksi were closely related to the

deceased as Siya Ram was real brother of the deceased and Neksi his real niece and that no independent witness of the occurrence came forward

to support the prosecution case implicit reliance should not be placed on interested testimony of the two eye witnesses abovenamed. It is true that

both the witnesses namely PW 1 Siya Ram and PW2 Neksi were closely related to the deceased but the sworn testimony of related witnesses

cannot be discarded on that ground alone if it is otherwise found to be trustworthy and credible. Testimony of a closely related or interested

witness requires scrutiny with more care and caution, and if on such careful scrutiny the evidence is found to be reliable and trustworthy it can well

be acted upon. Relationship is not a factor to effect credibility of a witness as a related witness normally would not conceal actual culprits falsely

rope innocent persons in the crime. In the instant case PW 1 Siya Ram is the injured witness who sustained injuries on vital parts of his body and

his testimony has got its own relevance and efficacy. Both the witnesses above named withstood the test of cross-examination firmly and nothing

could be elicited to shake the central core of their assertions in respect of the prosecution version. No doubt, FIR mentions presence of Jasram

and Choori residents of village Barkhera and Bhimsen that of village Purohit Khera as eyewitnesses of the occurrence. However, it has come in

evidence that Jasram and Choori happened to be the collaterals of the deceased. It has also come in evidence that Siya Ram and both these

witnesses were joint land holders. Hence there was no use of examining any of them. The prosecution examined Bhim Sen in its support but he did

not support the prosecution case as he stated that he did not witness the incident as he was not present there. He was declared hostile and

cross-examined by the prosecution with the permission of the Court. He refused in his cross-examination having given eyewitness account of the

occurrence to the investigating officer in his statement recorded under section 161 of the Code of Criminal Procedure; but he could not give any

reason as to why the investigating officer recorded eyewitness account of the occurrence in his statement. It is a matter of common experience that

generally independent witnesses remain reluctant to appear as eyewitnesses of the occurrence as by deposing against the accused in criminal cases

they do not want to invite trouble for themselves. Under the circumstances the Court finds that the said argument advanced by the learned Counsel

for the appellants has got no life and is rejected.

14. Learned Counsel for the accused appellants further argued that Kripal Singh cannot be saddled with the liability for giving lathi blows by Urman

Singh and Amar Singh to Hazari as section 34 IPC cannot be made applicable in the instant case. Section 34 IPC has been enacted on the

principle of joint liability in the doing of a criminal act. The liability of one person for an offence committed by another in the course of criminal act

perpetrated by several persons arises under section 34 IPC if such criminal act is done in furtherance of common intention of persons who join in

doing the crime. For that, the prosecution has to establish by evidence whether direct or circumstantial, that there was plan or meeting of minds of

all the accused persons to commit the offence for which they are charged with the aid of section 34 IPC, be it prearranged or on the spur of the

moment but it must necessarily be before commission of the crime. In the instant case all the three accused appellants were standing armed with

various weapons towards south west of their field and as Siya Ram and his brother Hazari asked them as to why they dismantled the northern

ridge of their field and scrapped the millet crop sown in a strip about 22 1/2 feet there all the three told them that they were prepared to see them;

that immediately Urman Singh and Amar Singh gave lathi blows to Hazari and as Siya Ram tried to catch hold of the lathis one lathi blow was given

to him and Kripal Singh fired two shots at him with his gun. On hearing the hue and cry and sound of shots fired as the villagers rushed to the scene

of occurrence all the three assailants took to their heels together towards their village. Thus the manner in which they mounted the attack at Hazari

and Siya Ram, the determination and concert with which the attack was made and their conduct in running away together from the scene of

occurrence lead to the conclusion that all the three accused joined in committing the said crime in furtherance of their common intention for which

they have been rightly convicted by the Court below. Provision of section 34 IPC is intended to meet a case in which it may be difficult to

distinguish between acts of individual members of a party who act in furtherance of their common intention or to prove exactly what part was taken

by each of them. Thus we are of the view that section 34 IPC has clear application to the facts of the case on all fours and seems to have been

rightly and properly applied by the Trial Court.

15. As to the offence made out, the appellants' learned Counsel contended that since Siya Ram did not suffer any internal damage offence

committed by the accused comes only within the preview under section 324 IPC and the lathi injuries allegedly caused by Urman Singh and Amar

Singh to the deceased under section 325 read with section 34 IPC.

PW 3 Dr. U.P. Chhimpia, Medical Officer TB Clinic Budaun who conducted autopsy on the dead body of Hazari deposed that the death was

caused due to shock and internal haemorrhage and that ante mortem injuries sustained by the deceased were sufficient to cause the death in

ordinary course of nature. In view of this medical evidence we find that the learned Trial Judge rightly held that all the three accused committed

offence punishable under section 302 read with section 34 IPC.

16. Further, a perusal of reports of the Radiologist goes to show that xray of abdomen of Siya Ram revealed eight small metallic foreign body

shadows and that of left forearm seven small metallic foreign body shadows and ulna bone was found fractured in upper half. Xray of hand also

revealed two small metallic foreign body shadows in palm and that of leg two small metallic foreign body shadows in middle of thigh. A perusal of

the injury report of Siya Ram goes to show that his medical examination revealed faint blackening around the firearm injuries. Discrepancy

regarding distance from which shots were fired has not been challenged before us. Still it may be made clear that PW 2 Neksi stated that when

shots were fired at her father Siya Ram Kripal Singh was standing at a distance of 34 paces from him. Thus shots must have been fired from a

distance within six feet. The shots were fired with gun. Ordinarily size of barrel of guns happens about 22 1/2 feet in length. Pace of persons of

normal height is ordinarily not more than 11/22 feet. No doubt PW 1 Siya Ram, the injured stated that Kripal fired at him from a distance of about

1617 paces. He might have stated so in some confusion. He might not have noted the distance exactly as before receiving the firearm injuries he

had received fracture injury at his forearm. PW 2 Neksi, daughter of the injured has given approximately correct distance from which the shots

were fired at her father Siya Ram. Considering the prosecution case and evidence from all the aspects we are of the view that the learned Trial

Judge has rightly held that all the three accused committed an offence punishable under section 307 read with section 34 IPC.

No other point was argued before us.

17. The appeal has got no merit and is liable to be dismissed. The appeal is dismissed, and the impugned judgment and order convicting

accused appellants Kripal Singh, Urman Singh and Amar Singh under sections 302 and 307 each read with section 34 IPC and sentencing each of

them to imprisonment for life and rigorous imprisonment for five years respectively thereunder is hereby affirmed. All the accused appellants are on

bail. Chief Judicial Magistrate, Budaun is directed to get accused Kripal Singh, Urman Singh and Amar Singh arrested and send them to jail to

serve out the sentence imposed upon each of them.

18. Office is directed to send copy of the judgment and record of lower Court to the Court below immediately for ensuring compliance under

intimation to this Court within two months from today.