courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Ram Bahadur Singh and Others (In Jail) Vs State

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Feb. 15, 1996

Acts Referred: Penal Code, 1860 (IPC) â€" Section 302, 34

Citation: (1996) 20 ACR 573

Hon'ble Judges: K.C. Bhargava, J; I.S. Mathur, J

Bench: Division Bench

Advocate: Arun Sinha and Imtiaz Murtaza, for the Appellant; G.A., for the Respondent

Final Decision: Allowed

Judgement

K.C. Bhargava, J.
This appeal is directed against the judgment and order dated 1.6.1979 passed by the Vth Additional Sessions Judge,

Barabanki in Sessions Trial No. 86 of 1979 and Sessions Trial No. 109A of 1978 convicting the Appellants u/s 302 read with Section 34 of the

Indian Penal Code and sentencing each of them to imprisonment for life.

2. The facts of the case, stated in brief, are that on 6.12.1974 at about 4.30 p.m., the occurrence took place in village Dahadurpur, within the

police station Loni Katra, district Barabanki. It is stated that all the accused persons in furtherance of their common intention committed the murder

of Onkar Nath in the field of Jagdish Baksh Singh. There was a dispute between the Appellants and the deceased, Onkar Nath Singh, about the

fields. It is not necessary to detail that litigation here which took place between the parties as the same has already been dealt with in detail in the

judgment of the trial court. There was also election enmity between the parties. On the date of the incident Jagdish Baksh Singh (P.W. 4) was

ploughing his field at about 4.30 p.m. He was levelling the field by means of a tractor. The accused-Appellants felt aggrieved of this act of Jagdish

Baksh Singh as this field previously belonged to the family of accused-Appellant Ram Baksh Singh and Ram Baksh Singh raised an objection on

the spot that this field should not be ploughed by Jagdish Baksh Singh. At that time Bhanu Pratap Singh, one of the Appellants, was armed with a

gun and the rest three Appellants namely Ram Bahadur Singh, Kanhaiya Baksh Singh and Ram Baksh Singh, were armed with lathis. They started

quarrelling between the parties and they also started abusing each other. The two witnesses, namely Bhagwati Baksh Singh (P.W. 2) and Bikram

Shah Singh (P.W. 1) heard the noise and they came to the field of Jagdish Baksh Singh (P.W. 4). They remained standing at some distance from

these persons and saw that abuses were being hurled between these persons. At that time Ram Bahadur Singh exhorted to kill Onkar Nath Singh

whereupon Bhanu Pratap Singh who was armed with a gun fired a shot upon Onkar Nath Singh which hit him in his chest towards left. Thereafter,

Onkar Nath Singh started running towards north-east in the field of Paltoo. At that time another shot was fired by Bhanu Pratap Singh at Onkar

Nath Singh which hit him. Onkar Nath Singh, after running about 35-36 paces from there fell down in the field of Paltoo. Bhanu Pratap Singh

thereafter, tried to load his gun again but at the same time Bikram Shah Singh (P.W. 1) and Jagdish Baksh Singh (P.W. 4) snatched the lathi of

accused-Appellant Ram Bahadur Singh and thereafter they tried to snatch the gun from accused-Appellant Bhanu Pratap Singh. Since Bhanu

Pratap Singh was not handing over his gun Jagdish Baksh Singh (P.W. 4) gave lathi blows to Bhanu Pratap Singh and Bikram Shah Singh (P.W.

1) succeeded in snatching the gun. Thereafter all the four accused-Appellants ran away from the spot. Thereafter these witnesses came on the spot

where Onkar Nath Singh had fallen and found him dead. Blood had also fallen at that place. It is further alleged that one person Sahab Baksh

Singh, had also come on the spot. The dead body was left on the spot and Bikram Shah Singh (P.W. 1) and Jagdish Baksh Singh (P.W. 4) went

to the police station and lodged a written report of the incident which is Ext. Ka. 1. The gun of Bhanu Pratap Singh which was snatched by these

persons alongwith empty cartridges and the lathi which was snatched from Ram Bahadur Singh were handed over at the police station.

3. The chik report Ext. Ka. 5 was prepared by the Head Constable Jagdamba Prasad (P.W. 5) and entry in the G. D. was made, a copy of which

is Ext. Ka. 6.

4. At the time of lodging of the report Arjun Singh S. I. (P.W. 8) was also present at the Police Station. He took over the investigation of the case

and started for the place of occurrence. Before starting for the place of occurrence he recorded the statement of Bikram Shah Singh (P.W. 1) at

the police station. When the investigating officer reached the place of occurrence he could do nothing as the night was dark. On 7.12.1974

Panchayatnama Ext. Ka. 12 of the dead body was prepared in the presence of the Panches. Other necessary papers for postmortem were also

prepared by the investigating officer. Ram Bahadur Singh and Kanhaiya Baksh Singh Appellants were arrested by him. Ram Baksh Singh

Appellant surrendered in the court on 11.12.1974. As Bhanu Pratap Singh Appellant was absconding, coercive measures were taken against him.

Charge-sheet Ext. Ka. 20 was submitted against the accused-Appellants.

5. Post-mortem examination on the body of the deceased Onkar Nath Singh was conducted by Dr. V.N. Agarwal (P.W. 3) on 8.12.1974 at 8.30

a.m. The post-mortem examination report is Ext. Ka. 3. The deceased at the time of death was 28 years of age. He had died about two days

back. Rigour mortis was absent on the upper limb but was present in the lower limb. The doctor found the following ante-mortem injuries on his

person:

1. Gunshot wound of entry 6 cm. x 4 cm. x tissue deep on front of left side chest upper part precordial area. There was tattooing and scorching on

adjoining skin. The direction was backward and downward. Margins were inverted and burnt.

2. Gunshot wound of exit 1 cm. x 1 cm. x tissue deep on right side back lower part direction forward and upward. Margins were averted. There

was no tattooing or scorching on adjoining skin.

On internal examination the doctor found that thorax and 4th and 5th left ribs were lacerated in anterior part. The left pleural cavity contained 6 oz.

clotted blood and the right side contained 4 oz clotted blood. The right lung was lacerated in the lower part and left lung was lacerated in the

middle part. Two pieces of wadding the metallic shots were recovered from left lung. The precardium contained 1 oz. clotted blood. Left ventricle

of the heart was punctured. There was a hole 1 cm. x 1 cm. on anterior-wall and one metallic shot was recovered from left ventricle. The stomach

contained two oz semi digested food and the bladder was empty. In the opinion of the doctor the death was caused due to shock and

haemorrhage due to injuries.

6. The gun alleged to be snatched from Bhanu Pratap Singh accused-Appellant was also sent to ballistic expert for examination and the blood

stained clothes of the deceased were also sent to the Chemical Examiner and Serologist for examination. Human blood was found on the clothes of

the deceased.

7. The accused persons pleaded not guilty before the trial court.

8. The prosecution examined Bikram Shah Singh, complainant (P.W. 1) who is an eye-witness. Bhagwati Baksh Singh (P.W. 2) who is also an

eye-witness Dr. V.N. Agarwal (P.W. 3) who conducted post-mortem examination, Jagdish Baksh Singh (P.W. 4) who is also an eye-witness,

Jagdamba Prasad (P.W. 5) who is scribe of the chik, Ram Moorti (P.W. 6) in whose presence the blood stained earth was taken from the place

of occurrence. Shiv Bahadur (P.W. 7) who look the gun and cartridges in sealed cover to the ballistic expert, Arjun Singh S.I. (P.W. 8) who

investigated the case and Budul Rai (P.W. 9) who is forensic expert. In defence, the accused-Appellants have examined Dr. A. P. Mahanti (P.W.

1) and Dr. S. S. Sandhu in order to prove the injuries of Bhanu Pratap Singh accused-Appellant at Ferozpur. Dr. S. S. Sandhu who examined

Bhanu Pratap Singh accused-Appellant at Civil Hospital, Ferozpur found the following injuries on his person:

1. Bluish Purplish swelling on right fora-arm 7 cm. x 3 cm. on lower part the underlying bone fractured.

2. Purplish contusion 4 cm. x 2 cm. on right leg upper part outer side.

3. Purplish contusion 7 cm. x 2 cm. on right suprascapular region.

4. Lacerated wound 2.5 cm. x 0.5 cm. on left parital region 10 cm. above the left pinna, wound oblique in direction. Blood clots present in wound.

5. Incised wound 2 cm. x 0.25 cm. on the top of the head in intra-parital region scalp deep.

6 Lacerated wound 3 cm. x 0.25 cm. scalp deep on front-parital region 9 cms. from the base of the nose. Oblique in direction. Blood clot present

in wound.

9. The learned Vth Additional Sessions Judge, Barabanki found the Appellants guilty of the offence u/s 302 read with Section 34 of the Indian

Penal Code and convicted and sentenced them to imprisonment for life.

10. Learned Counsel for the Appellants as well as learned Additional Government Advocate have been heard. Learned Counsel for the Appellants

has argued that the prosecution has failed to prove the case against the Appellants as there are material contradictions between the direct evidence

and the medical evidence. As seen in the earlier part of the judgment, the deceased had received two injuries. Injury No. 1 is the entry wound and

injury No. 2 is the exit wound. Injury No. 1 is a gun shot wound of entry 6 cm. x 4 cm. Tattooing and scorching was present at the adjoining skin.

According to the learned Counsel for the Appellants tattooing and scorching would have come if the shot had been fired within the distance of 4

feet. Accoridng to him, this type of injury could not have been found if the shot had been fired from a distance of 15-20 paces.

11. Now we scrutinise the oral evidence in order to see that the same corroborates the medical evidence or not. Bikram Shah Singh (P.W. 1) has

stated in para 5 at page 50 of the paper book that two shots were fired by Bhanu Pratap Singh accused-Appellant. At that time he was about 20

paces away from the deceased. This means that the distance was about 30 feet. Bhagwati Baksh Singh (P.W. 2) has stated that two shots were

fired by Bhanu Pratap Singh from a distance of 20.25 paces. In the same way Jagdish Baksh Singh (P.W. 4) has stated at page 87 of the paper

book that when the shot was fired Bhanu Pratap Singh accused and deceased Onkar Nath Singh were at a distance of 18.20 paces. It is thus clear

from the prosecution evidence that the distance between the two, namely deceased Onkar Nath Singh and the Appellant Bhanu Pratap Singh was

about 30 feet when the shot was fired. According to medical evidence, scorching and tattooing was present which could only be caused if shot is

fired within the distance of 4-5 feet. It is thus clear from the evidence on record that the first shot which hit the deceased Onkar Nath Singh and

which was fired by Bhanu Pratap Singh accused-Appellant, could not have caused scorching and tattooing if the shot was fired from a distance of

20 paces. This type of injury could have been caused only if the shot would have been fired from a distance of 4-5 feet. Thus there is material

contradiction between the medical evidence and the statements of the prosecution witnesses referred to above. These two evidences cannot be

reconciled. The only conclusion which can be drawn is that the fire which hit the deceased was fired from a distance of 4-5 feet and not from 18-

20 feet or 30 paces. Thus the statement of prosecution witnesses on this point cannot be relied upon and is liable to be rejected.

12. All the eye-witnesses whose statements have been referred to above have stated that after the first shot which hit the deceased another shot

was fired by Bhanu Pratap Singh accused-Appellant. The post-mortem examination report, as mentioned above, clearly shows that only one shot

hit the deceased. Injury No. 1 is the entry wound of the shot and injury No. 2 is the exit wound. This also shows a contradiction between the

prosecution evidence and the medical evidence. The, medical evidence shows infliction of only one shot while according to the prosecution

witnesses two shots were fired. It is not the case of the prosecution that one shot missed. Therefore, there is also a contradiction between oral

statements of the prosecution witnesses and the medical examination of the deceased.

13. According to prosecution version between the places where the deceased was first hit by bullet and the place where he fell down, there was a

distance of about 36 steps. According to them, there was a trail of blood between these two points and the investigating officer also took this

blood in his possession. Ext. Ka. 15 is the map of the place of the occurrence. In this map, the investigating officer has nowhere mentioned this

fact. It is nowhere mentioned that there was a trail of blood between these two places. All the prosecution witnesses have stated about the

presence of this blood. Even the investigating officer Arjun Singh (P.W. 8) admitted in his statement that he did not mention this fact anywhere

either in the site plan or in the index. He has stated that there was a trail of blood between the two points. According to him this trail is shown in the

map by him in red lines. In absence of this fact being noted anywhere in the map, it is not possible to believe the statement of the investigating

officer on this aspect of the matter as the same is not corroborated by any evidence on record. Learned trial court on this point has come to the

conclusion about the presence of trail of blood between the places A and B as shown in the site plan on the basis of the red lines in the site plan for

showing the distance from where Bhanu Pratap Singh fired shot towards Onkar Nath Singh deceased. This distance has been shown by blue

dotted lines. It is merely a conjecture and conjectures cannot take place of evidence. The investigating officer should have mentioned the fact of

blood being present between the points A and B in his case diary in order to refresh his memory. It is not possible to believe that the investigating

officer would remember this fact after a long gap of 4 years. Therefore, the statement of the investigating officer on this point is rejected as

uncorroborated from any evidence on record.

14. Thus on the basis of the evidence on record, the prosecution has failed to prove that the Appellants committed the murder of Onkar Nath

Singh. Therefore, all the accused persons are entitled to acquittal.

15. The appeal is allowed and the Appellants, namely Ram Bahadur Singh, Kanhaiya Baksh Singh, Ram Baksh Singh and Bhanu Pratap Singh are

acquitted of the charge u/s 302 read with Section 34 of the Indian Penal Code. They are on bail. They need not surrender. Their bail bonds are

cancelled, and sureties discharged.