

(1999) 02 AHC CK 0154

Allahabad High Court

Case No: Criminal Appeal No. 1196 fo 1979

Acchuta Singh and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Feb. 26, 1999**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 149, 194, 201, 302

**Citation:** (1993) 17 ACR 331**Hon'ble Judges:** Surya Prasad, J; Palok Basu, J**Bench:** Division Bench**Advocate:** G.P. Dixit, for the Appellant;**Final Decision:** Allowed

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**Judgement**

1. Acchuta Singh, Kedar Singh and Jagarnath Singh have filed this appeal against their conviction and sentences awarded by the Judgment of the IVth Additional Sessions Judge, Ballia, dated 6-4-1979 in Sessions Trial No. A-95 of 1974 whereby Kedar Singh and Jagannath Singh were convicted u/s 147, 302/149, 365 and 201/149 IPC, sentenced to one near, life imprisonment, three years" rigorous Imprisonment and four years" rigorous imprisonment respectively, while Acchuta Singh was convicted u/s 147,302/149, 365/149 and 201/194 IPC and sentences to him were same as awarded to others.

2. It is an unfortunate case where the paucity of evidence is likely to secure acquittal for the appellants even though one might have enough suspicion that they have participated in the Incident. It may be mentioned here that along with these three appellants, 9 others namely Parmatma Singh, Siya Ram, Basawan Singh, Rama Shanker Singh, Te) Bahadur Singh, Nagina, Ras Bihari. Mohan Ahir and Harendra Singh were also tried but they have been acquitted by the trial judge on the ground that there was no evidence available against them.

3. We have heard Sri G.P. Dixit counsel for appellants and Shri Dudh Nath Yadav, A.G.A. for the State and entire record has been examined.

4. Broadly speaking charge against all the accused was that they in furtherance of their common intention committed the murder of Satya Narain Singh after forming unlawful assembly on 8-2-1973 at about 8.30 p.m. in village Faridpur (Dhanauti Saleem). P.S Garwar. District Ballia. punishable u/s 302 IPC and further that they kidnapped Chandrama Singh, PW 13, from the house of Satya Narain Singh where he was living for the time being, punishable u/s 365 IPC.

5. It may be mentioned here that in the instant case the prosecution has produced PW 1 Sajjad Khan and PW 13 Chandrama Singh as witness of fact, though out of these two witness Mohd. Sajjad was not an Eyewitness and Chandrama Singh admittedly was a child witness. If Chandrama Singh's statement could, therefore, be implicitly relied upon, then alone the prosecution case will have legs to stand, but if the testimony of Chandrama Singh does not inspire confidence there would be complete absence of eyewitness account. It may be noted that the case does not depend wholly upon circumstantial evidence against any of the appellants. It is argued that perhaps Chandrama Singh was made an eye-witness in this case as an innovative measure because even if the statement of PW 4 Smt. Mohini Devi is relied upon, it may at best indicate some motive on the part of appellant Kedar Singh alone.

6. It may be mentioned here that PW 5 Anirudh Singh. Indrajit Singh PW 6, Lal Bachcha Singh PW 7, Baijnath Singh PW 8, Lal Saheb PW 10 and Husain Miyan PW 12 have turned hostile and have not supported prosecution case. They have denied the recovery of dead body or arrest of appellants or any other link evidence on existence of the circumstances which the prosecution had sought to establish by their testimony. Had any one of them given true version before the court, may be that complexion of case against the appellants may have changed.

7. The story of prosecution proceeds as under: PW 4 Smt. Mohini Devi was married with Satya Narain, who had about 8-10 acres of agricultural land in village Faridpur P.S. Garwar, District Ballia. Since Satya Narain was issueless, he had brought Chandrama Singh (PW 13) to live with him. Chandrama Singh was his sister's son (Bhanja). The accused wanted to grab the land of Satya Narain Singh. Some litigation were going on and they had a notion that Satya Narain Singh would give his property to Chandrama Singh his Bhanja. Smt. Mohini Devi (PW 4) had gone to Allahabad with regard to some litigation about 2-3 days prior to 8/9-2-1973. Sajjad Khan (PW 1) had premised to give some money to Satya Narain Singh when latter had gone to his house to demand the money. On 9-2-1973 Mohd. Sajjad Khan (PW 1) had gone to deliver the money to Satya Narain Singh around 3.00 p.m. He found bullocks and a cow were tied near the cattle trough and door of the house was open. The bullocks started bellowing. On going inside the house he found Gobar (cowdung) lying there but did not find Satya Narain Singh and his nephew in the

house. Then he came out of the house. He did not notice Kedar Singh. Parma and parmatma ma in their nearby houses. There was no other house in the neighbourhood While returning to his house Mohd. Sajjad noticed blood in the agricultural field of Satya Narain Singh and crop was trampled. PW 1 Sajjad gathered the impression that Satya Narain Singh and his nephew have been murdered. Consequently, he disclosed these facts to the Pradhan and went to the police station Garwar and lodged an oral report on 9-2-1973 at Police Station Garwar at about 5.00 p.m. which was taken down by Head Mobarrir Shiv Muni Singh and a case u/s 302/201 IPC was registered on this First Information Report (Ex. Ka 1). In the meantime, Smt. Mohri Devi while returning from Allahabad came to know about the murder of her husband when she was in the village Asam Pokhara. She also came to know that Chandrama Singh has been kidnapped. On reaching her house she found a DHOTI, KURTA and A CHADAR of Satya Narain Singh having blood stains bring on the floor. A towel was also found lying there, which is said to belong to appellant Kedar Singh. The said clothes were allegedly given by her to the Investigating Officer.

8. Sri Gorakh Nath Singh (PW 14) was Station Officer, Police Station Garwar in whose presence the first information report was lodged by Mohd. Sajjad Khan He took the statement of Mohd. Sajjad Khan after commencing investigation and went to the spot on 9-2-1993 He recorded the statement of PW 4 Mohni Devi and prepared the site plan on 10-2-1973. Memorandum of the recovered articles and clothes were also prepared on the said date and some other documents were also prepared which have been proved as Ext. Ka 7 to Ex. Ka 9 and Ex. Ka 12 to Ext. Ka 14 respectively.

9. The statement of Investigating Officer further shows that on 12-2-1973 at about 12 O' clock, the dead body of Satya Narain Singh was taken out from a well in the village Rajiparsia which was tied to cement bags. Smt Mohni Devi was present when the dead body was taken out. who identified the dead body of Satya Narain An inquest report was prepared in the presence of the witnesses which was proved as (Ext. Ka-10. The other documents relating to dead body were proved as Ext. Ka 17, Ext. Ka 18 and other documents relating to the recovery of Cement bags were proved as Ext. Ka-19 and Ext. Ka 20. The dead body was sent through constable for post-mortem examination.

10. Dr. T.N. Singh (PW 11) was posted as District T.B. Officer in Ballia On 13-2-1973 at 12.30 p.m. he had performed the post-mortem examination on the dead body of Satya Narain Singh. He states that the deceased was about 55 years in age and had a stout body. The dead body was decomposed. Rigor mortis had passed off from the entire body and he had expired about 4-5 days before the post-mortem examination. The witness had found the following ante-mortem injuries on the dead body.

1. Lacerated wound 2 cm x 1/2 cm x skin deep over outer part of left eye-brow. Transverse.

2. Lacerated wound 4 cm x 1/2 cm x bone deep over the middle of chin. Transverse.

3. Incised wound 5 cm x 1 cm x muscle deep over right side of neck just above the Adam's apple.

4. Incised wound 5 cm x 1 cm x bone deep over front of inner part of right wrist, lower part of right ulna was partially cut.

5. Gun shot wound 7 cm x 7 cm x chest cavity deep over right side of back 3 cm below the inferior angle of right scapula going from back-wards in front upwards and towards midline. Margins of the wound were inverted. This was the wound of entry.

6. Lacerated wound 3 cm x 3 cm x chest cavity deep over right side of chest just adjacent to mid line 9 cms from right nipple at 2 o'clock position. Sternum and ribs were shattered below the wound. Direction of the wound was from front backwards downwards and outwards. Margins of the wound were communicating with the injury No. 5 mentioned above. This was the wound of exit.

7. Gun shot wound 7 x 7 cm x chest cavity deep over left side of chest from left nipple at 11 o'clock position. Margins of the wound were inverted. This was the wound of entry. Direction of the wound was from left to right.

8. Punctured wound 1/2 cm x 1/2 cm x 1 cm deep just above the root of the penis 1 cm to the left of the mid-line.

11. On internal examination he found haematoma below injury Nos. 5 and 6 on the chest and lungs. Ecchymosed was present in an area of 8 cm x 8 cms and hematoma was present on the entire area towards left on the chest. There was fracture of sternum and the third and fourth rib and they were shattered. There was blood in the chest cavity. Left pleura and hilum were lacerated. The right lung was lacerated and shattered over the hilum. One brass bullet was recovered from the chest right side which was sealed on the spot and sent to the Station Officer, Garwar. Pericardium was lacerated over the left auricle of the heart. A wound 3 cm x 2 cm x 2 cm x through and through was present over the left auricle.

12. In the opinion of Dr. T.N. Singh the death was the result of shock and hemorrhage caused by the injuries to the right lung and the heart. The witness had prepared his report at the time of post-mortem examination, which is Ext. Ka 10 on record. Its carbon copy is Ext. Ka 11 on record. He has further stated that some post-mortem injuries were also present on the dead body. In his opinion such injuries could have been caused if the dead body is thrown in a well. He has further opined that the death of Satya Narain Singh could have been caused in the night between 8 and 9 February, 1973 at about 8.30 p.m.

13. Before taking up the eye witness account for discussion, it may be pointed out that the circumstances which have been sought to be proved do not in any way go to indicate the presence of any appellant in the house of Satya Narain Singh for the purpose of committing his murder. It is said that from the house of Satya Narain Singh, the Investigating Officer had found a towel which, according to PW 4 Smt. Mohini Devi, belonged to the appellant Kedar Singh. The statement of Smt. Mohini Devi is wholly unconvincing. There is no other evidence whatsoever indicating that the alleged towel belong to Kedar Singh. The other circumstances emerging from the statements of Mohd, Sajjad Khan (PW 1) and the Investigating Officer were (i) blood was found in the agricultural field of Satya Narain Singh, and (ii) the crop standing in the field was found trampled, and (iii) a spent cartridge was found near the house of the deceased, and (iv) a pellet was found embedded in the agricultural field near the place where blood was found, and (v) One piece shoe of some one was found in the field. There is no evidence about its ownership. Even if it is taken that these circumstances stand proved, those do not; point out the participation of any of the appellants.

14. The only evidence to be discussed now is the statement of the only eye witness i.e. PW 13 Chandrama Singh. His statement is that on the night of incident at about 8.00 or 9.00 p.m. the appellant Kedar Singh first came to the house of Satya Narain Singh and enquired whether he had seen his she-goat. The reply was in the negative. Then Kedar Singh went away but returned again along with 7-8 persons including Achhuta Singh, Parmatma Singh and Jagarnath Singh. Some one amongst the companions of Kedar Singh fired a shot from his pistol at Satya Narain Singh. Chandrama Singh (PW 13) immediately rushed inside a room to hide himself. Satya Narain Singh shouted for help. Then Kedar Singh entered in the room and took Chandrama Singh forcibly away with him to his house. Where he was tied with a cot and confined in a room, which was bolted from outside. Thereafter Kedar Singh and Jagarnath Singh took Chandrama Singh to Sukhpura on a cycle. From there they brought him to Ballia and kept him at the house of their sister. From Ballia he was taken to Sahatwar by train and then to the dera of Tappu Singh. He was kept at the dera of Tappu Singh for three days. After three days, Kedar Singh and Jagarnath Singh again took Chandrama Singh to the house of Ram Dayal Singh across the river and asked him to live there. Thereafter Ram Dayal Singh took him to Buxar and left him there. On 21-2-1973 the Investigating Officer Sri Gopal Nath Singh (PW 14) got an information that Chandrama Singh may be found towards Buxar. Then he proceeded by Jyarghat and found that Chandrama Singh was weeping on the road in front of the Bus Station. Then he arranged for sending Chandrama Singh for medical examination and took steps to hand-over the custody of Chandrama Singh to Smt. Mohini Devi (PW 4).

15. The statement of Chandrama Singh with regard to the kidnapping theory is not acceptable at all. Firstly, there is no reason why the accused would kidnap Chandrama Singh. Secondly, if so many accused armed with fire arms had gone to

kill Satya Narayan Singh and the only other person present there was this child at about 10 years it is impossible to Imagine why Chandrama Singh was not also killed. The whole theory of kidnapping appears to be got up one. Moreover, Chandrama Singh did not reside with Satya Narain Only two months prior to the incident Chandrama Singh is said to have been brought by Satya Narain Singh to his house. Therefore, if the motive was really existing. Chandrama Singh was not to be spared. In any case, the statement of Chandrama Singh further shows that in the night when the accused had come, there was absolute darkness. A lamp was burning outside the house near about a tree. Further statement of Chandrama Singh is that as soon as he heard the sound of firing from fire arm he rushed inside the room in the house and hid himself. There was no Hint available there. If this is so, it is impossible to say that Chandrama Singh had got any opportunity to identity the accused. The trial court has found that there exists several contradictions with regard to the place where he was taken after kidnapping His further finding that these are minor contradictions is not correct The testimony of this witness shows that he was in all likelihood a got-up witness. It is notable that Chandrama Singh has not received any injury nor has any witness been examined who may have noticed him at Buxar. This witness, therefore, fails to inspire confidence and can not be relied upon at all

16. The result of the aforesaid discussion is that the prosecution has failed to prove its case beyond reasonable doubt. Therefore, this appeal succeeds and is allowed. The appellants Achchuta Singh, Kedar Singh and Jagarnath Singh are acquitted of the charges framed against them. They are on bail, they need not surrender, their bail bonds are discharged.