

(2007) 08 AHC CK 0192

Allahabad High Court

Case No: None

State of U.P.

APPELLANT

Vs

Surajpal, Nawal Kishore, Waksha
Raj and Ram Kishore

RESPONDENT

Date of Decision: Aug. 22, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: Vijay Kumar Verma, J; R.C. Deepak, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Vijay Kumar Verma, J.

This government appeal after seeking leave of Court has been preferred against the judgment and order dated 11.01.2000, passed by Sri B.L. Pandey, the then Additional Sessions Judge/ Spl. Judge (E.C. Act) Banda, in ST. No. 236 of 1991 and connected ST. No. 59 of 1992, whereby the respondents-accused Suraj Pal, Nawal Kishore, Bakshraj and Ram Kishore have been acquitted of the offence punishable u/s 302 read with Section 34 IPC in Case Crime No. 93/91 of Police Station Baberu, District Banda.

2. The incident resulting in the death of Sukhram Singh, brother of the complainant Ghanshyam Singh Chauhan is said to have occurred on 22.04.1991 at about 5.45 p.m. in Kasba Baberu. First information report was lodged by the complainant Ghanshyam Singh Chauhan S/o Indrajeet Singh, r/o Kasba and P.S. Baberu, District Banda. The case of the prosecution as per FIR (Ext. Ka 13), in brief, is that on 22.04.1991 at about 5.45 p.m., when the complainant, his mother Sunder Devi and his uncle Lal Singh were sitting on the door of their house and his elder brother Sukhram Singh was standing near the shop adjacent to the door of the house, the

accused Ram Kishore and Nawal Kishore both sons of Shiv Balak armed with double and single barrel guns respectively, Suraj Pal S/o Laxmi Narayan armed with single barrel gun (all residents of kasba Baberu) and Bukshraj son of unknown r/o village Banthari, P.S. Kamasin, District Banda, armed with single barrel gun came there and abusing and saying that you have got the case registered against them, began to fire from their weapons. Sukhram Singh sustained serious injuries, who fell down there and died instantaneously. The complainant and other persons managed to enter in the house and saved themselves. While making fire, the accused Nawal Kishore was terrorising and threatening the people that if anybody will come near, he also will be killed. Due to this incident, terror was caused in kasba and nearby shops were closed and people began to run towards their houses. After committing murder of Sukhram, the accused-respondents fled away towards village Kachendu. Leaving the dead body of Sukhram at the place of incident, the complainant went to police station Baberu and handed over written report (Ext. Ka 1), which he himself had scribed. On the basis of this report, P.W. 7 Ram Manohar Singh prepared chik FIR (Ext. Ka 13) and registered a case u/s 302 IPC at Crime No. 93/91 against the respondents-accused on 22.04.91 at 6.50 p.m. and made entry in G.D. No. 41 (Ext. Ka 14).

3. The investigation was entrusted to S.I. Babu Singh Sachan P.W. 6, who went to the place of occurrence along with police and PAC personnel and made search of the accused. Since there was low voltage, inquest proceeding on the dead body could not be conducted in night and next day i.e. 23.04.1991 inquest proceeding was conducted by S.I. Babu Singh, during which inquest report (Ext. Ka 3) and connected papers (Ext. Ka 5 to Ext. Ka 8) were prepared and thereafter, the dead body was sent in sealed condition through constable Mahipat Singh (P.W. 5) for post mortem examination, which was conducted by Dr. Sharif Alam (P.W. 3). According to the post mortem report (Ext. Ka 2), the following ante mortem injuries were found on the person of deceased:

1. Fire arm wound of entrance 5 cm. x 4 cm. x chest cavity deep situated on sternal area 6 cm. below to sternal notch. No blackening & scorching present in area 1 cm. around the wound. Margins inverted & irregular. Wound is directed inward upward toward left axilla & continue as.

2. Fire arm wound of exit 5 cm. x 5 cm. x chest cavity deep (communicating with Injury No. 1 margin everted) situated on left side of upper of lateral side of chest 2 cm. behind the anterior axillary fold Direction:- Injury No. (1) direct towards left axilla, Inward & upward communicating with Injury No. (2).

3. Fire arm wound of entrance 1.5 cm. x 1.5 cm. x chest cavity deep, on left lateral side of chest in 6th intercostal space 8 cm. lateral to left nipple Margins inverted, directed towards right lateral side of chest & continue as.

4. Fire arm wound of exit 2.00 cm. x 1.5 cm. x chest cavity deep on right lateral side of chest in 11th intercostal space. Margins everted. Direction:- Fire arm wound of entrance No. (3) direct from left to right slight backward & downward towards Injury No. (4).

5. Fire arm wound of entrance 1 cm. x 1cm. On middle of anterior aspect of left arm 7 cm. above the left elbow joint, muscle deep passing through & through as.

6. Fire arm wound of exit 1.5 cm. x 1.5 cm. x muscle deep through & through communicating with injury No. 5, situated on middle of back of left arm 7 cm. above the elbow joint. Direction:- Injury No. 5 firearm wound is directed straight backward forward Injury No. (5).

In internal examination, fractures of body of sternum, left 2nd rib (laterally) and right 11th rib (laterally) were found. Pleura was ruptured. Larynx, Trachea & Bronchi were congested. Lower lobe of right lung as well as middle and upper lobe of left lung were lacerated. Pericardium was ruptured aortic arch was also ruptured. Semi digested rice and pieces of dal about 400 gm. were found in the stomach. Pasty food & gasses were found present in small intestine whereas faeces & faecal material was found in large intestine. Right lobe of liver was ruptured. Spleen and Kidneys were congested.

According to Dr. Alam, death was caused about one day ago due to internal haemorrhage and shock as a result of ante mortem fire arm injuries.

4. During investigation, S.I. Babu Singh Sachan recorded the statement of complainant and prepared site plan (Ext. Ka 9) after making spot inspection. Rest investigation was carried out by S.S.I. Satya Narayan Singh, who after completing the investigation, submitted charge sheet Ext. Ka 11 against the accused Suraj Pal, Naval Kishore and Bakshraj. S.I. Hari Shankar Singh conducted further investigation against the accused Ram Kishore and submitted charge sheet Ext. Ka 12 against him on 20.10.1991.

5. On the case being committed to the court of session for trial, charge u/s 302 read with Section 34 IPC was framed against all the four accused-respondents, to which they pleaded not guilty and claimed to be tried.

6. The prosecution in order to prove its case has examined seven witnesses In all. P.W. 1 Ghanshyam is the complainant and eye witness also. He has proved written report (Ext. Ka 1) in his statement recorded on 12.10.1992. P.W. 2 Lal Singh is also said to be the eye witness. P.W. 3 Dr. Sarif Alam had conducted autopsy on the dead body of deceased Sukhram Singh on 23.04.1991 at 4.05 p.m. P.W. 4 S.I. Nand Kishore had gone to the place of incident along with S.I. Babu Singh Sachan and other police personnel on getting information regarding murder of Sukhram. P.W. 5 Mahipat Singh is the dead body carrier. P.W. 6 S.I. Babu Singh Sachan is the first investigating officer. He has proved inquest report Ext. Ka 3 and other documents

Ext. Ka 4 to 12, which have been mentioned above. P.W. 7 constable Ram Manohar Singh is the scribe of chik FIR Ext. Ka 13, which has been proved by him along with copy of GD No. 41 (Ext. Ka 14).

7. In their statements recorded u/s 313 Cr.P.C., the accused-respondents have denied their participation in the alleged incident and they have stated that due to enmity, they have been falsely implicated in this case.

8. The respondents-accused have not examined any witness in defence, but they have filed some documentary evidence to show the enmity between the parties.

9. The learned Trial Court after taking entire evidence into consideration, acquitted the accused-respondents vide impugned judgment, which has been challenged in this appeal by the state of U.P.

10. We have heard Sri P.S. Pundhir learned AGA for the state-appellant, Sri A.K. Awasthi learned Counsel for the respondents-accused and perused entire evidence including impugned judgment carefully.

11. Assailing the impugned judgment, it was vehemently contended by learned AGA that on the basis of the testimony of the eye witnesses Ghanshyam and Lal Singh, which is corroborated by medical evidence, it is fully proved that murder of Sukhram Singh was committed by the accused-respondents on the alleged date, time and place, but the learned Trial Court did not properly appreciate the evidence and on the basis of surmises and conjectures, acquitted the accused-respondents recording unjustified, perverse and unreasonable findings and hence after setting aside the impugned judgment, the accused-respondents should be convicted of the offence with which they have been charged.

12. On the other hand, it was submitted by the learned Counsel for the accused-respondents that there is no scope to make any interference in the impugned judgment by this Court, because findings of acquittal recorded by the learned Trial Court are neither perverse nor against the evidence. It was further submitted that murder of Sukhram Singh was committed by some unknown persons in some other manner and at some other time and place and on getting information, the police carried his dead body to police station Baberu, where it was kept in the night and next day due to previous enmity between the parties false FIR was lodged against the accused-respondents showing it to be lodged on 22.04.91. Next submission made by learned Counsel for the accused-respondents was that medical evidence is not supporting oral evidence in this case.

13. Having giving our thoughtful consideration to the rival contentions of the learned Counsel for the parties, we are of the considered opinion that prosecution has failed to bring home the guilt to the accused-respondents and interference by this Court in the impugned judgment is not warranted.

14. Murder of deceased Sukhram is said to have been committed on 22.04.1991 at about 5.45 p.m. This time of murder is falsified by the post mortem report (Ext. Ka 2). According to this report, about 400 gm. Semi digested rice and pieces of dal were found in the stomach of the deceased at the time of post mortem examination. Dr. Sharif Alam, who conducted post mortem examination on dead body, has stated that the death of deceased might have been caused within two hours after taking meal. This opinion of Dr. Alam is based on availability of semi digested rice and dal in the stomach of deceased. P.W. 1 Ghanshyam has stated in his statement that on the day of occurrence, he and the deceased Sukhram had taken their meal before noon and thereafter, Sukhram had slept. It is also stated by this witness that prior to the incident neither Sukhram nor he or his mother and Lal Singh had taken tea. From this statement of P.W. 1 Ghanshyam, this fact is born out that after taking lunch before noon on the day of occurrence, the deceased had not eaten any food till his death. If this statement of Ghanshyam is believed, then murder of Sukhram Singh might have been committed much earlier from the time of incident mentioned in the FIR, because the food of any nature is almost completely digested within about six hours from taking meal. If the deceased had not eaten any food after taking his lunch before noon on the day of occurrence, then his stomach must have been found empty at about 5.45 p.m., but as mentioned above, semi digested rice and pieces of dal about 400 gm. were found in his stomach at the time of post mortem examination. It is not disputed that it is a case of instantaneous death. As such the time of incident as mentioned in the FIR and told by the witnesses Ghanshyam and Lal Singh becomes doubtful. The finding recorded by the learned Trial Court on this point is most reasonable. On the basis of aforesaid discussion, murder of Sukhram Singh appears to have been committed two or three hours after his taking dinner, in which rice and dal was taken. Therefore, the story of the prosecution regarding murder of deceased at about 5.45 p.m. is extremely doubtful.

15. It was submitted by learned Counsel for the accused-respondents that on getting information about the murder of Sukhram Singh, the police of P.S. Baberu had carried his dead body to the police station, because by that time the name of assailants were not known and next day i.e. 23.04.1991 after lodging FIR, inquest proceeding was conducted at P.S. Baberu and from there the dead body was sent to mortuary Banda for post mortem examination and hence on this ground also, the story of the prosecution becomes doubtful. This submission also has got force. Although the witness Babu Singh Sachan (P.W. 6) has stated that inquest proceeding on the dead body was conducted on 23.04.1991 in the morning at the place of incident, but this statement is falsified by the complainant Ghanshyam (P.W. 1), who has stated that dead body of his brother Sukhram Singh was carried by the police at about 7-8 p.m. to the police station and they also had gone with the dead body to P.S. Baberu, but he had come back before mid night and on the next day in the morning, he again went to the police station, where his statement was recorded and at about 12,00 O'clock, he departed from police station to Banda with the dead

body. There is no reason to disbelieve this statement of P.W. 1 Ghanshyam and on the basis of his testimony, this fact is fully established beyond doubt that on getting information about the murder of Sukhram Singh, the police had carried his dead body to police station Baberu, where it was kept in the night and after holding inquest proceeding next day, the dead body was sent from police station direct to mortuary Banda at about 12.00 noon. On the basis of the statement of P.W. 1 Ghanshyam, the place of holding inquest proceeding on the dead body as mentioned in the inquest report Ext. Ka 3 becomes false.

16. According to the witness Ghanshyam, the accused are said to have fired 25 shots, but even a single pellet or bullet or any incriminating article was not found on the place of occurrence, which makes the place of incident doubtful.

17. According to prosecution case, the accused Ram Kishore is said to be armed with double barrel cartridge gun, whereas other accused are said to be armed with single barrel cartridge guns. Dr. Sharif Alam, who had conducted post mortem examination has opined that keeping in view the size of ante mortem injuries No. 3 and 5, it can be said with certainty that there is more possibility of causing injuries No. 3 and 5 by means of rifle, pistol or revolver. It is specifically stated by Dr. Alam that cartridges, which were used in causing ante mortem injuries No. 3 and 5, might not have contained pellets. On the basis of this statement of Dr. Alam, the story of prosecution about commission of murder by firing from cartridge guns becomes doubtful.

18. On the basis of aforesaid discussion, we come to the conclusion that the prosecution has not succeeded to prove its case beyond reasonable doubt. Hence, this Court will not be justified to make interference in the impugned judgment. The Hon"ble Apex Court in the case of [Bhim Singh Vs. State of Haryana](#), has held that:

Before concluding, we would like to point out that this Court in a number of cases has held that an Appellate Court entertaining an appeal from the judgment of acquittal by the Trial Court though entitled to reappreciate the evidence and come to an independent conclusion, it should not do so as a matter of routine. In other words, if from the same set of evidence two views are possible and if the Trial Court has taken one view on the said evidence, unless the Appellate Court comes to the conclusion that the view taken by the Trial Court is either perverse or such that no reasonable person could come to that conclusion or that such a finding of the Trial Court is not based on any material on record, it should not merely because another conclusion is possible reverse the finding of the Trial Court.

In the case of Kallu @ Masih and Ors. v. State of Madhya Pradesh (LVII)2007 ACC 959 it is held by Hon"ble Apex Court that:

While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one

significant difference is that an order of acquittal will not be interfered with, by an Appellate Court, where the judgment of the Trial Court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the Trial Court merely because a different view is possible. The Appellate Court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the Trial Court.

Therefore, Keeping in view aforesaid observations made by Hon"ble Apex Court, there is no scope to make any interference in the impugned judgment, because as mentioned earlier also, the findings of acquittal recorded by the learned Trial Court which are based on proper appreciation of the evidence, are neither perverse nor against the evidence.

19. In the result, this government appeal lacks merit and is hereby dismissed. The respondents-accused are on bail. Their personal bonds and surety bonds of the sureties are cancelled and the sureties are discharged.

The Office is directed to return Trial Court record expeditiously along with a copy of this judgment.