

(2007) 08 AHC CK 0198

Allahabad High Court

Case No: None

State of U.P.

APPELLANT

Vs

Vijai Pal, Umrao, Mahipal and
Ram Singh

RESPONDENT

Date of Decision: Aug. 17, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 307, 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 the Court has been preferred against the judgment and order dated 27.05.2002 passed by Sri Ran Veer Singh, the then Additional Sessions Judge/ Spl. Judge (NDPS Act), Etah in ST. No. 653 of 1997, whereby the accused- respondents Vijai Pal, Umrao, Mahipal and Ram Singh have been acquitted of the offences punishable u/s 302/307 read with Section 34 IPC, in Case Crime No. 43/97 of P.S. Awagarh, District Etah.

2. The incident resulting in the death of Netra Pal, son of the complainant Khacher Singh, is said to have occurred on 01.05.1997 at about 7.00 a.m. in his field situated within the limits of village Borra Khurd. The case of prosecution, in brief, is that litigation regarding land was going on between the complainant Khacher Singh S/o Mewa Ram, r/o village Borra Khurd, P.S. Awagarh, District Etah and Vijai Pal etc. residents of same village. About two years ago, the complainant had won the case, but Vijai Pal has filed appeal in Etah. It is alleged that on 01.05.1997, when the complainant was ploughing the field at about 7.00 a.m. and his sons Chandra Pal, Bahadur and Netra Pal also were present there, the accused Vijai Pal, Umrao,

Mahipal and Ram Singh, all sons of Lalu Baghel, armed with tamanchas came there and Vijai Pal said that they would not get the field ploughed, on which complainant's son Netra Pal said that they have been continuing to cultivate the field forever and now also they will plough the field. On this, the accused Vijai Pal and Umrao caught hold of Netra Pal and the accused Mahipal and Ram Singh committed his murder by shooting him. When the complainant and his sons wanted to save Netra Pal, the accused-persons with intention to commit their murder fired on them. The complainant along with his son Chandra Pal rushed to village Gadesara and got the written report (Ext. Ka 1) scribed by Keran Singh Thakur and then they went to P.S. Awagarh, where on the basis of said written report, chik FIR (Ext. Ka 4) was prepared by the then constable/clerk Mahesh Narain, who registered a case u/s 302/307 IPC at Crime No. 43/97 on 01.05.1997 at 8.00 a.m. against the respondents-accused and made entry in G.D. No. 11 vide Ext. Ka 5.

3. S.I. Ram Pal Sagar (C.W. 1) was posted as Station Officer at Police Station Awagarh. He took up the investigation in his hands and after recording statement of complainant, proceeded to the place of incident along with other police personnel. After making spot inspection, he prepared site plan (Ext. Ka 6) and thereafter conducted inquest proceeding on the dead body, during which inquest report (Ext. Ka 12) and connected papers (Ext. Ka 9 to Ext. Ka 11) were prepared. Thereafter, the dead body was sealed and sent through constables Shamsheer Ahmad and Dal Chand for post-mortem examination which was conducted by Dr. A.K. Saxena (P.W. 3) on 01.05.1997 at 4.25 p.m. According to post mortem report (Ext. Ka 2) the following ante-mortem injuries were found on the person of deceased:

1. Fire arm wound of entry 1 cm x 1 cm. on the left side chest lateral aspect just below axilla with blackening all around in 5cm.x 5cm. Area, 9 cm. away from left nipple at 4 O'clock position. On dissection one metallic bullet was recovered from liver, left lung also was lacerated.

Direction being from left to right, slightly downwards and backwards.

2. Abrasion 2.5 cm x 1 cm on front of abdomen on left iliac fossa.

3. Abrasion two in number 3 cm x 1 cm each on the back of left hip just below iliac crest. One...(paper torn)

4. Firearm wound of entry 0.5 cm x 0.5 cm on left side of waist just above iliac crest. On dissection (paper torn), a metallic bullet was recovered from fossa & membranes, below small intestine, perforating a part of small intestine ? Direction being from left to right, upwards & forwards.

In internal examination, left pleura, left lung and peritoneum were found lacerated. Left thoracic cavity was full of blood. Digested material in small intestine and faecal matter & gases in large intestine were found present. Liver was lacerated and one metallic bullet was recovered.

According to Dr. Saxena death was caused about 4 day before due to shock and haemorrhage as a result of ante mortem injuries.

4. During investigation, S.I. Ram Pal Sagar collected blood stained and simple earth from the place of incident and prepared memo (Ext. Ka 7). Search for the accused-persons was made, but they were found absconding. After transfer of S.I. Ram Pal Sagar, rest investigation was carried out by S.I. Sita Ram Dwivedi (P.W. 4), who after completion of investigation, submitted charge-sheet (Ext. Ka 3) against all the accused-respondents.

5. On the case being committed to the court of session for trial, charge u/s 302/307 read with Section 34 IPC was framed against the accused-respondents, to which they pleaded not guilty and claimed to be tried.

6. The prosecution in order to prove its case examined five witnesses in all. S.I. Ram Pal Sagar was examined as Court Witness. P.W. 1 Khacher Singh and P.W. 2 Chandra Pal are said to be the eye witnesses. Written report (Ext. Ka 1) has been proved by the complainant Khacher Singh in his statement, which was recorded on 20.02.1998. P.W. 3 Dr. A.K. Saxena has proved post-mortem report (Ext. Ka 2). S.I. Sita Ram Dwevedi (P.W. 4) is second investigating officer. He has proved the charge-sheet (Ext. Ka 3). P.W. 5 constable Keshav Prakash is formal witness, who has proved chik FIR (Ext. Ka 4) and copy of G.D. of registration of case (Ext. Ka 5) by recognizing the hand writing and signature of constable clerk Mahesh Narain. C.W. 1 S.I. Ram Pal Sagar is the first investigating officer, who has proved inquest report and other papers prepared by him, as mentioned above.

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. The respondents-accused have not produced any evidence in their defence.

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

9. We have heard Sri M.C. Joshi learned AGA for the state-appellant, Sri N.K. Sharma learned Counsel for the respondents-accused and also perused the entire evidence including impugned judgment carefully.

10. Assailing the impugned judgment, it was vehemently contended by the learned AGA that on the basis of the testimony of eye witnesses Khacher Singh and Chandra Pal, which is corroborated by medical evidence, it is fully proved that murder of Netra Pal was committed by the respondents-accused on the alleged date, time and place, but the learned Trial Court did not properly appreciate the evidence and on surmises and conjectures, acquitted the accused-respondents recording unjustified, perverse and unreasonable findings and hence, after setting the Impugned

judgment, the accused-respondents should be convicted of the offences with which they have been charged.

11. The learned Counsel for the accused-respondents on the other hand submitted that the Trial Court has not committed any illegality in recording the findings of acquittal in favour of the accused-respondents, because the testimony of the alleged eye witnesses Khacher Singh and Chandra Pal is not worth relying. It was further submitted that the deceased Netra Pal was hardened criminal, who was involved in two murder cases at the age of about 22 years and his murder was committed by his enemies in early hours prior to his attending natural call, as faecal matter and gasses in large intestine and digested material in small intestine was found present at the time of post-mortem examination of his dead body. It was also submitted by learned Counsel for the accused-respondents that the findings of acquittal recorded by the learned Trial Court are neither perverse nor against the evidence and hence, this court will not be justified to make any interference in the impugned judgment, even if some other view on the evidence is possible. For this submission, our attention was drawn towards the cases of [Bhim Singh Vs. State of Haryana](#), and Kallu @ Masih and Ors. v. State of Madhya Pradesh 2007 (57) ACC 959 (SC).

12. Having given our thoughtful consideration to the rival submissions made by learned Counsels for the parties and after going through the entire evidence on record carefully, we find force in aforesaid submissions of learned Counsel for the accused-respondents and in our considered view, the findings of acquittal recorded by learned Trial Court are neither perverse or unreasonable nor against the evidence and hence, interference by this Court in the impugned judgment is not warranted.

13. From the statement of alleged eye witness Chandra Pal P.W. 2, this fact is born out that when shots were fired on the deceased, the assailants Mahipal and Ram Singh were standing in his front side at a distance of about 2-3 paces. It is specifically stated by the witness Chandra Pal that when shots were fired on Netra Pal, his mouth was towards south and mouths of the accused Ram Singh and Mahi Pal were towards north. It means that at the time of firing shots on the deceased, both the assailants viz Mahi Pal and Ram Singh were standing in front side of the deceased. If the shots were fired from front side on the deceased, then both fire arm injuries must have been caused in front side of the body, but this manner of firing on the deceased does not find corroboration from the post mortem report Ext. Ka 2, according to which ante mortem injury No. 4 on the person of deceased Netra Pal was fire arm wound of entry on left side of waist above iliac crest. The alleged eye witnesses Khacher Singh and Chandra Pal have nowhere stated that any shot was fired on the deceased from behind also. As situated above, the witness Chandra Pal has specifically stated that both the accused Mahi Pal and Ram Singh had fired on Netra Pal from front side. As such there is material Inconsistency in medical and ocular evidence in this case, which makes the presence of alleged eye

witnesses at the time of incident doubtful.

14. The learned Trial Court giving cogent reasons has not believed the manner of firing as alleged by the witnesses. Learned Trial Court has held that the manner in which firing is said to have been made on the deceased is not believable. This finding cannot be said unreasonable. The alleged eye witness Chandra Pal has stated in his statement that when both hands of Netra Pal were caught by the accused Vijai Pal and Umrao, he was making efforts to rescue himself and scuffle was going on between them. We agree with the finding of the learned Trial Court that in such situation, the assailants Mahipal and Ram Singh would not take the risk of making fire on the deceased, because by firing in such situation, there was possibility of shooting co-accused Vijai Pal or Umrao. This shows that shots were not fired on the deceased in the situation and manner as alleged by the witness Chandra Pal. This also makes presence of witnesses at the time of incident doubtful.

15. Much thrust was laid by the learned Counsel for the respondents-accused that FIR of this case is ante-timed and was lodged after preparation of the inquest report and due to previous long standing enmity, the accused-respondents have been falsely implicated in this case. This submission also has got force. P.W. 2 Chandra Pal has made the following statement during cross-examination "Mahendra mere gaon ke chaukidar hai. Chaukidar Mahendra bhi mauke par aa gaya tha. Enhe lekar hum thane gaye. Thane men darogaji mile the. Darogaji ne thane men puchha tha ki kisase ranjish chal rahi the, to hamne bataya tha ki Vijai Pal se ranjish chal rahi hai. Phir darogaji mujhe va mere pitaji ko jeep mein bithakar mauke par aaye aur lash ki likha padhi shuru kar de lash ke pas gadeshra gaon ke Keran Singh Bhi maujud the, Jo thane se sath hi aaye the".

From the afore cited statement of witness Chandra Pal, this fact is born out that FIR regarding murder of the deceased Netra Pal was lodged after inquest proceeding, because according to the witness Chandra pal, when they reached at P.S. Awagarh with village Chaukidar Mahendra, it was enquired by the Station Officer as to with whom their enmity Is going on and when they told that their enmity is going on with Vijai Pal, then just after the Station Officer (Darogaji) carried them in jeep to the place of incident and began to conduct inquest proceeding on the dead body and at that time Keran Singh resident of village Gadesra was also present, who had come with them from the police station. The witness Chandra pal has no where stated that FIR" was lodged before their departure from the police station Awagarh with police. Although the complainant Khacher Singh (P.W. 1) has stated in his statement that when the accused persons fired towards them, they rushed to village Gadesara and after getting the written report scribed by Keran Singh, they went to P.S. Awagarh and lodged FIR there, but this statement of complainant is not worth relying. Had the complainant gone to P.S. Awagarh having written report Ext Ka 1 with him, then there was no occasion for the station officer to inquire from the complainant and his son Chandra Pal as to with whom their enmity is going on. Making of inquiry by the

station officer from the complainant and his son Chandra Pal about the persons with whom their enmity is going on, indicates that no report was scribed till then. The constable/clerk Mahesh Narayan, who had scribed the chik FIR, has not been examined in Trial Court for the reasons best known to the prosecution. Therefore, having regard to all these facts, the possibility of ante timing the FIR cannot entirely be ruled out. If the FIR of any case is shown to be ante timed, the entire case becomes doubtful.

16. There are some material contradictions in the testimony of the witnesses, which have been mentioned by the learned Trial Court in the impugned judgment. It is not necessary to reproduce such contradictions here again, because for the reasons hereinabove mentioned, the case of the prosecution as disclosed in the FIR and stated by so called eye witnesses Khacher Singh and Chandra Pal has proved to be doubtful.

17. On the basis of the foregoing discussion, we come to the conclusion that prosecution has not succeeded to prove its case beyond reasonable doubt. Therefore, this Court will not be justified to make any 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 reappraise 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.

Hence, keeping in view aforesaid observations made by Hon"ble Apex Court, there is no scope to make any interference in the impugned judgment, because the findings of acquittal recorded by the learned Trial Court are based on proper appreciation of the evidence led by the prosecution and the said findings are neither perverse nor against the evidence.

18. 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.