

(2003) 09 AHC CK 0286

Allahabad High Court

Case No: Criminal A. No. 622 of 1981

Virendra Kumar Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Sept. 29, 2003

Acts Referred:

- Arms Act, 1959 - Section 25, 4
- Penal Code, 1860 (IPC) - Section 300

Citation: (2004) CriLJ 2665

Hon'ble Judges: U.S. Tripathi, J; M. Chaudhary, J

Bench: Division Bench

Advocate: V.C. Tiwari, Manish Tiwari and A.K. Awasthi, for the Appellant; R.K. Singh, AGA, for the Respondent

Final Decision: Dismissed

Judgement

M. Chaudhary, J.

This an appeal from Judgment and order dated 11th of March, 1981 passed by Sessions Judge Allahabad in Sessions Trial No. 285 of 1979, State v. Virendra Kumar Singh convicting the accused u/s 302, IPC and Section 25 of the Arms Act and sentencing him to imprisonment for life and six months's rigorous imprisonment respectively thereunder.

2. Brief facts giving rise to this appeal are that at about 12 : 15 noon on 18th of December 1978 HC Ram Saran Singh lodgedan FIR at police station Daraganj District Allahabad alleging that in the forenoon of that very noon he was on patrol duty and at about 11.30 a.m. as he reached Matiyara crossing he saw Ratneshwar Prasad alias Raja going on a bicycle In front of the grocery shop of Gopal Das Jaisval on the road going through the Kidwai Nagar locality; that accused Virendra Kumar Singh who was also on his bicycle made the bicycle of Ratneshwar alias Raja stop telling him he used to misbehave with his sister and now he would kill him and immediately

leaving his bicycle there he gave blows to him with "Karauli" and that sustaining the fatal injuries Ratneshwar alias Raja crying for help fell down a few paces ahead and immediately Virendra fled away. HC Ram Saran Singh chased Virendra and caught hold of him by using necessary force in front of the house of one Shyam Ji Lal Srivastava with blood- stained "Karauli". He also mentioned in the FIR that the said incident was witnessed by Bhairo Din, Hira Lal, Hari Om and several others. Immediately he got injured Ratneshwar Prasad alias Raja sent to SRN Hospital, Allahabad with constable Ramanuj Shukla who was on duty and reached the scene of occurrence. H. C. Ram Saran Singh also handed over accused Virendra Kumar Singh and the Karault recovered from him and his bicycle to the police at the police station. The police registered a crime against the accused u/s 307, IPC and Section 4/25 of the Arms Act and also prepared the memo of the blood stained "Karauli" and the bicycle handed over at the police station (Exts. Kal and Ka 2). He also made entry regarding the registration of the crime in the General Diary (Ext. Ka 3).

3. It appears that by the time constable Ramanuj Shukla taking the injured reached the Hospital Ratneshwar alias Raja succumbed to the fatal injuries sustained by him. On receiving Information regarding the death of injured Raneshwar alias Raja at about 12.15 the same noon the police altered the crime u/s 302, IPC vide GD entry report No. 22 (Ext Ka 4). Station Officer J. B. Tewari who took up investigation of the crime in his hands went to SRN Hospital and drew inquest proceedings on the dead body of Ratneshwar and prepared the inquest report (Ext Ka 10) and other necessary papers (Exs. Ka 14 and Ka 15) and handed over the dead body in a sealed cover along with necessary papers to constable Ramanuj Shukla for being taken for its postmortem. Then he visited the place of occurrence, Inspected the site and prepared its site plan map (Ext Ka 16). He collected bloodstained and sample earth from the place of occurrence and picked up bicycle of the deceased lying there occurrence and prepared their memos (Exts Ka 11 and Ka 12). He also recorded statements of the witnesses and did other necessary things.

4. Autopsy conducted on the dead body of Ratneshwar alias Raja by Dr. R. B. Singh . Medical Officer SRN Hospital, Allahabad on 19th of December 1978 at about 2.30 p.m. revealed following ante mortem injuries :

1 Incised wound 1" x 1/4" cavity deep placed obliquely and transversely on the left side back of chest in infra scapular region and 3 1/2" from the 11th thoracic vertebrae.

2. Incised wound placed transversely just below the right infra scapular angle 1/2" x 1/4" muscle deep.

On internal examination the doctor found left side of pleura below injury No. 1 and posterior segment of the left lower lung punctured as well as left dome of diaphragm punctured. Peritoneal reflexion along the left dome of diaphragm below injury No. 1 penetrated. Stomach contained partially digested food about 1/4 litre.

Small intestine was half full and large Intestine empty. The doctor opined that the death was caused due to haemorrhage and shock as a result of In- Jury No. 1 about one day ago.

5. The bloodstained clothes and earth and the bloodstained "Karauli" were sent to Forensic Science Laboratory Agra for the Serologist's opinion if the articles contained human blood and if so of the same blood group. A perusal of the Serologist's report goes to show that bloodstained earth, "Karauli" and clothes contained human blood and the blood on clothes and earth was found of group "B", Blood stained on the "Karauli" were found Insufficient for classification of blood group (Exts Ka 19 and Ka 20).

6. After completing investigation the police submitted charge sheet against the accused accordingly.

7. The accused pleaded not guilty denying the alleged occurrence altogether stating that he was not apprehended by the police nor any "Karauli" or bicycle was recovered from him by the police at the time and place as alleged by the prosecution. He also stated that Ratneshwar son of Hira Lal was a ruffian; that the alleged forenoon he was returning from the house of K. D. Singh who happened to be his "Mausa"; that on the way Ratneshwar alias Raja along with his associate whom he did not know made him stop and started hurling abuses and as he asked them not to abuse him both of them gave him "Danda" and knife blows. Apprehending danger to his life he gave knife blow to Ratneshwar alias Raja in his self defence and that thereafter he went to the police station to lodge an FIR of the said incident but his report was not taken down by the police and he was confined in the lock up there.

8. In order to bring the charge home to the accused the prosecution examined H. C. Ram Saran Singh (P.W. 1) Bhairo Deen (P.W. 2) and Hari Om (P.W. 3) as eye-witnesses of the occurrence. Testimony of the remaining witnesses is more or less of formal nature. P.W. 4 H. M. Raghubar Dayal who recorded FIR lodged by H. C. Ram Saran Singh at the police station and prepared the memo of bloodstained "karauli" and bicycle handed over to him by the first informant and made entry in the G. D. regarding the registration of the crime and the handing over of accused Virendra Kumar Singh along with "karauli" and bicycle at the police station has proved these papers (Exts. Ka 1 to Ka 3). Constable Ramanuj Shukla (P.W. 9) who took the in- jured to the Hospital and handed over memo informing the police regarding the death of Ratneshwar issued from the Hospital and to whom dead body in a sealed cover along with necessary papers was entrusted for being taken for its postmortem has filed an affidavit in support of these facts. P.W. 11 constable Udai Vir Singh who took blood- stained articles in sealed cover to Forensic Science Laboratory Agra for Serologist's opinion and thereafter deposited the same in sealed packets in the Sadar Malkhana has also filed an affidavit in support of these facts. P.W. 5 Nanhku Singh, Assistant Moharrir Sadar Malkhana has filed an affidavit

that the case property in sealed bundles was sent to Forensic Science Laboratory, Agra for chemical examination and was received back in the Sadar Malkahana thereafter in sealed cover. P.W. 6 Mauji Lal is the witness of the inquest report. He also stated that Virendra Kumar Singh is related to K. D. Singh; that the house of Hira Lal, father of the deceased is situate adjacently to the house of K. D. Singh and his house is abutting the house of Hira Lal; that in the evening of 16th of December, 1978 Narendra Singh, son of K. D. Singh had come to the house of Hira Lal and complained that Ratneshwar alias Raja used to tease his sister Madhurima and thereon Hira Lal told him that if it was a fact he would rebuff him and that at that time he was also present there. P.W. 7 Hira Lal, father of the deceased also-stated that in the evening of 16th of December, 1978 Narendra son of K. D. Singh had come to his house and complained that his son Ratneshwar alias Raja used to misbehave with his sister and thereupon he had told him that if there was any such thing he would rebuke him. P.W. 8 Dr. R. B. Singh Medical Officer SRN Hospital Allahabad who conducted autopsy on the dead body of Ratneshwar alias Raja has proved the post- mortem report stating that ante mortem injuries sustained by the deceased were sufficient to cause death in ordinary course. P.W. 10 Station Officer J. B. Tewari who investigated the crime has proved the police papers.

9. The accused examined Dr. Arvind Kumar, Medical Officer Central Jail Naini, Allahabad (D.W. 1) and Basant Lal (D.W. 2) in his support. (D.W. 1) Dr. Arvind Kumar who medically examined Virendra Kumar Singh in Central Jail Naini on 20th of December 1978 at about 9.45 a.m. has proved the injury report filing true copy thereof (Ext. Kha 5). D.W. 2 Basant Lal who was a teacher in Sardar Patel Junior High School Allahpur, Allahabad stated that on 18th of December 1978 he was the class teacher of Class V-A and that he took attendance of the students of his class at about 7.00 a.m. that day for both the shifts and Hari Om was present in the class.

10. On an appraisal of the parties' evidence and after hearing the parties' counsel the learned Sessions Judge found the accused guilty of the charge levelled against him and he convicted and sentenced him as stated above.

11. Feeling aggrieved by the impugned Judgment and order the accused preferred this appeal for redress.

12. We have heard Sri A.K. Awasthi Amicus curiae for the appellant and Sri R. K. Singh the learned AGA for the State and gone through the record.

13. Firstly, it has been argued on behalf of the appellant that the FIR is ante timed and it was recorded at the police station after consultations and deliberations. The said argument advanced by the learned Amicus Curiae is devoid of any force for the following reasons : (i) the crime was registered at the police station on 18th of December, 1978 at 12.15 noon soon after the alleged incident u/s 307, I.P.C. and Section 4/25 of the Arms Act and that on receiving the information regarding the death of injured Ratneshwar alias Raja through constable Ramanuj Shukla from the

Hospital at 12.50 noon the crime was altered u/s 302, I.P.C. vide GD entry report No. 22 (Ext. ka 4). An affidavit duly sworn by Ramanuj Shukla (PW 9) has been filed asserting that on 18th of December 1978 HC Ram Saran Singh apprehended accused Virendra along with the "Karauli" and on his directions he took injured Ratneshwar alias Raja lying injured near the shop of Gopal Das in a rickshaw at about 11.45 a.m. to the Hospital but by the time he was rushed to the Hospital he succumbed to the injuries sustained and that he took the memo regarding information of his death from the Hospital to the police station and taking the memo he reached at PS Dara Ganj at 12.50 noon and the entry was made In the GD (report No. 22). Opportunity was given to the defence counsel to cross-examine him but this witness was not cross examined at all by the learned counsel of the accused, (ii) Special report of the said crime was sent to the Higher Authorities vide GD entry No. 27 at 2.50 p.m. through constable Paras Ram (Ext. ka 5). (iii) After completing inquest proceedings on the dead body of Ratneshwar alias Raja the Investigating Officer handed over the dead body in a sealed cover along with the necessary papers to constable Ramanuj Shukla to be taken for its post mortem at 4.45 p.m. the same day. These facts completely dislodge the appellant's plea that the FIR was ante timed and was not lodged at the police station at the time it purports to be.

14. Secondly, it has been argued on behalf of the appellant that the alleged incident occurred In a thickly populated area where several shops and houses are situate but no Independent witness from the vicinity has been examined in support of the prosecution case. It is true that the alleged occurrence took place in broad day light in the thickly populated area where there were several shops and houses; but it is a matter of common experience and knowledge that generally the people keep themselves away from the Courts unless it is inevitable as they do not want to invite trouble for them- selves.

15. Besides it out of the three eye witnesses examined by the prosecution even if the testimony of PW 3 Hari Om is left out of consideration as he is a child witness and admittedly at the time of the occurrence he was studying in Class V and according to the school register he attended the class on the date of the incident and there is no convincing reason as to why he did not go to the school the fateful day the incident took place there remains the testimony of PW 1 HC Ram Saran Singh and PW 2 Bhairo Din. As far as the testimony of PW 1 HC Ram Saran Singh is concerned, he is absolutely an independent witness. As stated by him he did not know even the deceased and the accused at the time he apprehended the latter when he was running away after assaulting Ratneshwar alias Raja and it was after nabbing him that he inquired from him and asked his name, the name of the victim and the witnesses with their addresses and noted their particulars on a piece of paper and then taking the accused along with the "Karauli" recovered from him and his bicycle lying on the spot he went to the police station and lodged an FIR of the occurrence with the help of that piece of paper on which he had noted down the names of the accused, the victim and the witnesses. Under these circumstances

there is absolutely no reason to doubt his testimony. Further, the testimony of PW 1 HC Ram Saran Singh stands corroborated on all the material particulars by the testimony of PW 2 Bhairo Din. No doubt PW 2 Bhairo Din was close neighbour of Hira Lal, father of the deceased having acquaintance with him but his sworn testimony cannot be thrown over board on that ground alone. If on a close and careful scrutiny his testimony is found to be above reproach of suspicion. Both these witnesses have given truthful and honest account of the occurrence witnessed by them as both of them were subjected to searching and gruelling cross-examination but nothing useful to the accused could be elicited therefrom. It has also been argued by the learned Amicus Curiae that PW 2 Bhairo Din was a chance witness as admittedly he was a peon in Colonel Ganj College and according to the attendance register he remained present on his duty in the college. Explaining his presence at the scene of occurrence PW 2 Bhairo Din stated that in the alleged forenoon he was going from his house to Alopin Bagh on foot and at about 11.30 a.m. as he reached near the shop of Bhola Nath he witnessed the said incident; that he had requested the Principal of the College the previous day that since he had some personal work he would come late next day. It is a matter of common knowledge and experience that in day to day working the officials are accommodated on their oral request and in spite of their attendance in the attendance register in the office they practically remain absent from duty for hours together. PW 2 Bhairo Din is resident of the same locality in which the incident took place and knew both the assailant and the victim since before and stood firmly in the test of cross-examination. Thus the said argument advanced by the learned Amicus Curiae for the appellant holds no water and is repelled.

16. Lastly, It has been argued by the learned Amicus Curiae that In the alleged forenoon the accused appellant was assaulted by Ratneshwar alias Raja and his associate who gave him "danda" and knife blows and apprehending danger to his life Virendra Kumar Singh gave knife blows to Ratneshwar alias Raja In his self defence. The said argument advanced by the learned Amicus Curiae is fallacious. A perusal of the injury report of accused appellant Virendra Kumar Singh goes to show that he was medically examined by Dr. Arvind Kumar at Central Jail, Naini on 20th of December, 1978 at about 9.45 a.m. and his medical examination disclosed traumatic swelling on his both legs and left hand besides a lacerated wound between two toes little and the 4th (sic) (Ext. Kha 5). His medical examination also revealed a lacerated wound 5 c.m. x 0.5 c.m. x 0.5 c.m. on back of head left side besides an incised wound 2.5 c.m. x .5 c.m. x .5 c.m. on palmar surface of right hand with margins everted and regular. The doctor opined that all the injuries were simple in nature and were about 1 to 3 days old in duration. He also stated that all the injuries excepting an incised wound on palmar surface of right hand were caused by blunt object and the incised wound by sharp object. D. W. 1 Dr. Arvind Kumar stated in his deposition that all the injuries were superficial. P. W. 1 HC Ram Saran Singh stated that few injuries were caused to accused Virendra as he caught

hold of him by giving "danda" blows to him. Incised wound on palmar surface of right hand and lacerated wound on back of head are not noted in the injuries of the accused in the GD. Looking to the seat and nature of the head injury and the incised wound the possibility cannot be ruled out that both the injuries could be self inflicted or self suffered in order to create a defence sometime after the incident as the doctor medically examined accused appellant Virendra opined that the injuries found on his person were about 1 to 3 days old in duration. For the above the said argument is wholly untenable and has got no substance.

17. After considering carefully all the arguments advanced by the learned Amicus Curiae in the light of the parties' evidence and the circumstances attending the case we do not find any merit in any of them. It is a broad day light murder and the FIR was lodged promptly. The testimony of the two eye witnesses corroborated by the prompt FIR and the medical evidence on the record forms the sound basis for conviction of the accused. The learned trial Judge has given cogent and convincing reasons for finding the accused guilty of the charge levelled against him and we are in complete agreement with the findings recorded by the Trial Court against the accused appellant. The appeal has got no substance and is liable to be dismissed.

18. The appeal is hereby dismissed. However it may be pointed out here that by oversight the learned trial Court framed the charge against the accused u/s 25 of the Arms Act which should have been framed u/s 4/25 of the Arms Act as the accused was possessed of a "Karauli", a sharp cutting weapon. Since the offence u/s 4/25 of the Arms Act is lesser one conviction of the accused is modified to the extent that is convicted u/s 4/25 of the Arms Act instead u/s 25 of the Arms Act. His conviction u/s 302, I.P.C. and sentence of imprisonment for life thereunder is maintained. He is sentenced to two years' rigorous imprisonment u/s 4/25 of the Arms Act. Both the sentences shall run concurrently. He is on bail. He shall be arrested and lodged in the jail to serve out the sentence imposed upon him.

19. Rs. 1000.00 (Rs. one thousand) only shall be paid to Sri A.K. Awasthi the Amicus Curiae as his legal remuneration.

20. A certified copy of the judgment and record of the case be transmitted to the Court below immediately for compliance under intimation to this Court within two weeks from today.