

## Chet Ram Vs State of U.P.

**Court:** Allahabad High Court

**Date of Decision:** March 3, 1998

**Acts Referred:** Penal Code, 1860 (IPC) â€” Section 300, 302, 307

**Citation:** (1998) 2 ACR 1264

**Hon'ble Judges:** Giridhar Malviya, J; B.K. Sharma, J

**Bench:** Division Bench

**Advocate:** A.K. Srivastava and Satish Trivedi, for the Appellant; A.G.A., for the Respondent

### Judgement

B.K. Sharma, J.

This is an appeal against the judgment and order dated 2nd February, 1994 passed by Sri V. K. Jain, the then Additional

Sessions Judge, Bareilly in State v. Chetram, Sessions Trial No. 192 of 1992, whereby he convicted accused Chetram u/s 302 of the Indian Penal

Code and sentenced him to undergo rigorous imprisonment for life.

2. The date of occurrence in this case was 12th November, 1991. The prosecution story was that about ten years before the date of occurrence,

Chet Ram, accused-Appellant, had committed the murder of Tikam Singh, grandfather of the present deceased Anand Pal ; but, in the prosecution

thereof, he had been acquitted ; that the accused-Appellant Chet Ram has suspicion that Anand Pal (the present deceased) had deployed bad

characters after him in order to take revenge of the murder of his grandfather Tikam Singh ; that Chet Ram, accused-Appellant, was a bad

character and he had committed the murder of one Natthu Lal also and in that murder case, he had been sentenced to life imprisonment ; that on

12th November, 1991 at about 5.00 p.m., the informant Deo Pal Singh, Amar Pal, Bhoj Pal and Anand Pal (deceased) were going towards the

fields and when they reached near the Chabutra of Harnam Singh, Chet Ram accused-Appellant was standing on the Chabutra having a gun in his

hand, that Chet Ram accused-Appellant stopped Anand Pal (present deceased) and retorted ""Tune Mere Pichhe Marne Ko Badmash Laga

Rakkhe Hai"" ; that in the meantime Vir Pal also came there, that Anand Pal (present deceased) replied ""Maine Koi Badmash Nahi Lagaye Tumeh

Galat Shak Hai"" whereupon Chet Ram accused-Appellant retorted, ""Tu Baaz Nahin Ayega Jhooth Bolta Hai"" and shot at Anand Pal (present

deceased) with gun and ran away towards east ; that fire-arm injury was received by Anand Pal (present deceased) on his abdomen on the right

side and due to the fire injury, he fell down on the spot.

3. The written F.I.R. (Ext. Ka-1) was got scribed by informant Dev Pal Singh from Veer Pal Singh of the village and they carried the present

deceased Anand Pal in his injured and alive condition in a tractor trolley to police station Aonla and the informant lodged his F.I.R. there at 7.55

p.m. on which chik report was prepared and a case u/s 307, I.P.C. was registered and the injured Anand Pal was despatched to the Community

Health Centre, Aonla. However, the injured Anand Pal died on the way and when he was presented before the Medical Superintendent Dr. G. D.

Rathore, he declared him dead, and made an endorsement in this respect on the Chitthi Majrubi. Thereafter the case was altered to one u/s 302,

I.P.C. and inquest proceedings were undertaken and the dead body was sent for post-mortem examination and after conclusion of investigation

charge-sheet was submitted. The Sessions Judge tried the accused and handed down the conviction as aforesaid.

4. The post-mortem on the dead body of Anand Pal accused-Appellant had been performed on 13.11.1991 at 5.00 p.m. by Dr. A. K. Sharma ,

P.W. 6. His material observations were as follows :

Probable age--18 years

Probable time since death--about one day.

External Examination

Average built body. Rigor mortis present in both upper and lower limbs. No decomposition. Eyes and mouth half open.

Ante-Mortem Injury

1. Gun-shot wound of entry 5.0 cm. ? 4.0 cm. ? abdominal cavity deep on the right side abdomen 7.0 cm. lateral to umbilicus at 8.00 O'Clock

position. Margin inverted. Lacerated margin black. Small intestine coming out. In internal examination, peritoneum was found lacerated. In the

abdominal cavity, blood fluid was present about one litre. One Gutta piece and 14 pellets were recovered from cavity. Small intestine was

lacerated at places and was empty. Seven pellets were recovered from the small intestine. The large intestine was lacerated and contained faecal

matter and also six pellets. The gallbladder was lacerated and ten pellets were recovered from it.

In the opinion of the doctor, the death of deceased was due to shock and haemorrhage as a result of ante-mortem gun-shot injury.

5. We have heard the learned Counsel for the accused-Appellant as well as the learned A.G.A. and have also gone through the record.

6. The ocular testimony has been given in this case by two witnesses, namely, Deo Pal Singh (P.W. 1) and Amar Pal Singh (P.W. 2). They have

narrated the prosecution story as outlined above. No suggestion was made to the ocular witnesses in cross-examination that the occurrence took

place in the darkness or that it took place elsewhere.

7. The evidence of the informant is that he took the present deceased to the police station in his injured but alive condition where the F.I.R. was

lodged by him at 7.55 p.m. and the deceased in his injured and alive condition was sent from the police station to the Community Health Centre,

Aonla with the Chitthi Majrubi where he was declared dead by Dr. G. D. Rathore at 8.20 p.m. There is evidence of the Head Moharrir Heera Lal

P.W. 4 who recorded the chick report and registered the case u/s 307, I.P.C. and made entry in the G.D. about it at 7.55 p.m. There is the

evidence of Dr. G. D. Rathore P.W. 3 that the body of the deceased was brought to him by the police in a dead condition at 8.20 p.m. No part of

all this evidence has been challenged by the defence. So all these circumstances corroborate the prosecution case. There is no scope left for

doubting the prosecution case that the occurrence took place at 5.00 p.m. as claimed.

8. It may be that the autopsy surgeon gave opinion that the death of the deceased could take place at 5.00 p.m. but the defence itself elicited from

the doctor that there could be a difference of 6 hours either way in his estimate. So the evidence of the surgeon is not consistent with the

prosecution case. Moreover, the positive evidence of death of the deceased between 7.55 p.m. when the F.I.R. was lodged at 8.20 p.m. when

the deceased was declared dead has not been challenged by the defence and so the opinion evidence of the doctor on the donation of death

cannot be given precedence over it, particularly, when the testimony of the doctor taken as a whole is not at all inconsistent with this positive

evidence. The doctor was not asked as to the likely interval between the infliction of injuries and the death. The deceased could have survived for

about three hours after receiving the shot in his abdomen.

9. The Investigating Officer reached the spot on the date of occurrence itself and found blood there and had taken the blood-stained and simple

earth from there and the Director, Forensic Laboratory, Agra found this sample of earth to be containing human blood. There is no challenge to the

testimony of the Investigating Officer about finding of blood at the spot by him. So the place of occurrence as well as the time of occurrence is

fixed by the prosecution evidence beyond every shadow of doubt. This circumstance goes to corroborate the ocular testimony given by the

informant Deo Pal Singh (P.W. 1) and Amar Pal Singh (P.W. 2) not only about the occurrence but also about the identity of the assailant.

10. Deo Pal Singh informant was son of Collector Singh ; and Hulsan the father of the present deceased was real brother of Collector Singh.

Hulsan and Collector Singh were sons of Tikam Singh deceased. It has come in his evidence that the present deceased, Bhoj Pal and Amar Pal

Singh (P.W. 2) had accompanied him from his house for the field. He further stated that when he started from his house, these persons also started

from their respective houses. He further stated that the field to which he was going, was having Bajra crop and the field of Anand Pal (present

deceased) adjoining to that field also contained Bajra crop. So there was nothing strange if he and present deceased were going together towards

the field. He has also testified that Amar Pal Singh (P.W. 2) had come in Mehmani at the house of Lallu Singh, who was the husband of his sister, a

day earlier. It has come in evidence that Amar Pal Singh (P.W. 2) is the resident of village Jagannathpur which was about 6 kms. away. Amar Pal

Singh (P.W. 2) has also testified that he had come to the house of his relation Lallu Singh, a day earlier than the day of occurrence. He also

testified that his sister was married to Lallu Singh. Though the defence has challenged his presence at the scene of occurrence there is no particular

reason to doubt the presence of this witness at the time and place of occurrence. He has testified that the present deceased and Ors. were going

together from the house for looking after the fields where accused-Appellant was found standing on the Chabutra. He has also given the same

narration of facts about the occurrence. He specifically testified to the presence of the informant at the spot.

11. The learned Counsel for the accused-Appellant has argued that both the ocular witnesses are related, interested and inimical witnesses so their

evidence ought not to be accepted. Certain facts and events are undisputed. Collector Singh, father of Dev Pal Singh, informant, and Hulsan, father

of Anand Pal (present deceased) were real brothers, being sons of Tikam Singh deceased. Tikam Singh had been murdered about ten years prior

to the present occurrence and the present accused-Appellant had been prosecuted for the same but he was acquitted. Tikam Singh deceased,

grandfather of the present informant ; Collector Singh, father of Deo Pal in front of Veer Pal Singh and Lallu Singh, brother-in-law of Amar Pal P.W.

2 were prosecuted for the murder of Vikram Singh which had taken place on 12.2.1981. The trial of the murder of Vikram Singh ended in

acquittal on 31.5.1982. Exts. Kha-1 to Kha-3 are the papers relating to that trial. Ext. Kha-2 is the copy of the statement of Chet Ram as P.W. 3

in that trial. He has supported the prosecution case which even then ended in acquittal.

12. In regard to the appreciation of the evidence of interested and inimical witnesses, it would be useful to keep in mind the following observations

of the Apex Court in the authority *Arjun and Ors. v. State of Rajasthan* 1994 SCC 1685:

Enmity is a double-edged sword which can cut both ways. However, the fact remains that whether the prosecution witnesses are close relatives of

the deceased victim or on inimical terms with the accused involved in the crime of murder, the witnesses are always interested to see that the real

offenders of the crime are booked and they are not, in any case, expected to leave out the real culprits and rope in the innocent persons simply

because of the enmity. It is, therefore, not a safe rule to reject their testimony merely on the ground that the complainant and the accused persons

were on inimical terms. Similarly, the evidence could not be rejected merely on the basis of relationship of the witnesses with the deceased. In such

a situation, it only puts the Court with the solemn duty to make a deeper probe and scrutinise the evidence with more than ordinary care....

13. In the prosecution against Tikam Singh, Collector Singh, Veer Pal Singh and Lallu Singh for the murder of Vikram Singh, Chet Ram present

accused-Appellant had given the evidence from the side of prosecution. However, the present accused-Appellant was only a prosecution witness

and not the informant nor does he claim himself to be a close relation of Vikram Singh deceased in that trial. Moreover, the prosecution ended in

acquittal as far back as on 31.5.1982 and as such the plea of false implication due to the accused-Appellant appearing as a witness against

Collector Singh and Ors. in the murder case of Vikram Singh appears far-fetched. If there was any grievance, it would be primarily against the

informant of that murder case. However, there is nothing to show that the present informant or Amar Pal Singh (P.W. 2) had taken any concrete

steps against those persons.

14. Another point of importance is of time-gap between that murder of Tikam Singh and the present case. True, Tikam Singh was murdered and

for that murder, Chet Ram, the present accused-Appellant was prosecuted but the trial had ended in acquittal. It may not be doubted that the

informant and the deceased must be feeling a grudge on account of the acquittal of accused-Appellant. However, the prosecution has set out a

genesis of the present occurrence and the said genesis is plausible and probable, having regard to the common course of human conduct in villages.

The testimony of the informant was that the accused-Appellant stopped the present deceased in the way and accused him of deploying had

character against him and while Anand Pal present deceased denied the accusation, the accused-Appellant did not believe his denial and told him

that he is telling him a lie, and would not desist easily and saying this, shot at him with fire-arm and injured him and then ran away. The age of the

present deceased was about 18 years as it has been assessed in the post-mortem report. It will not be surprising if the present deceased on coming

of age, may have thought in terms of setting his scores, with the present accused-Appellant with the help of others. There is, however, no concrete

evidence of any incidents with the accused-Appellant. It may also be that the present accused-Appellant Chet Ram, who appears to be a bad

character and terror in the village (as emerges from a suggestion made to the informant in his cross-examination available at page 20 of the paper-

book) and group of bad characters may be after him and he could have a feeling, whether correct or not, that the present deceased was scheming

against him, with the background of acquittal in the murder of Tikam Singh. His suspicion was very likely to fall on the present deceased and

consequently, it is not at all surprising that he stopped the present deceased in the way and sought an explanation from him and on his making a

denial, he fired a fatal shot at him and ran away it being a place of village abadi. The prosecution story is quite probable and believable and the

prosecution evidence is fit to be accepted in view of the corroborative factors, noted above.

15. It has come in evidence that the present accused-Appellant was tried and convicted for the murder of Natthulal and had been sentenced to

imprisonment for life. His appeal against that conviction is pending in the High Court. The present occurrence had taken place while he was on bail

in that appeal. So the present accused-Appellant appears to be a dare-devil, it is not surprising that even while the said conviction was staring in his

face, which may or may not be upset in his appeal, committed the present occurrence.

16. It may be that the residents of the houses in the vicinity have not been cited in the F.I.R. nor produced in the trial. However, as observed by

the Apex court in the authority of Appabhai and Ors. v. State of Gujarat 1988 SCR 559 the experience reminds that civilised people are generally

insensible when a crime is committed even. They withdraw both from the victim and the vigilante. The Apex Court had also observed in that

authority that this kind of apathy of the general public is, indeed, unfortunate, but it is there everywhere whether in village life, towns or cities and

one cannot ignore this handicap with which the investigation agency has to discharge its duties. The Court, therefore, instead of doubting the

prosecution case for want of independent witnesses, must consider the broad spectrum of the prosecution version and then search for the nugget of

truth with regard to probability, if any, suggested by accused.

17. In the present case, considering the broad structure of the prosecution version, there is no reason to doubt it. Both eye-witnesses are related

and interested witnesses, but they are not likely to leave out the real culprit who fired at the deceased and injured him which ultimately resulted into

his death while in the way to the hospital and implicated the present accused-Appellant in his name. It is not a case of implicating an innocent

person along with the guilty ones. There is only one assailant and only one shot was fired. The occurrence was of village abadi and also of day

time. The circumstances indicate very much that both these witnesses were or at any rate the present informant was present at the spot when the

occurrence took place. Has he not been there, he could not have found the deceased alive on reaching there on information received from others.

As noted earlier, he has taken the deceased in his injured and live condition to the police station from where he was forwarded alive to the hospital

with Chitthi Majrubi. It has not been suggested to the defence at the trial that the dead body of the deceased was brought to the police station and

a false case u/s 307, I.P.C. was registered and the dead body was deliberately sent from the police station to the hospital as an injured person for

medical examination. So there is every reason to believe the presence of these two ocular witnesses or, at any rate of the informant at the scene of

occurrence.

18. It has been pointed out by the learned defence counsel that as per prosecution case, the present accused-Appellant was standing on the

Chabutra while the victim was on the ground. However, he has not been able to show that the injury of the deceased could not have been caused

by a fire shot from the Chabutra. No suggestion has been made to the autopsy surgeon Dr. A. K. Sharma (P.W. 6) in his cross-examination that

this injury of the deceased could not have been caused by a fire shot by a person standing on the Chabutra on a person standing on the ground

below. The learned defence counsel has not been able to point out anything in the post-mortem report to substantiate his claim.

19. The post-mortem evidence clearly indicates that ante-mortem injury inflicted was sufficient to cause death in the ordinary course of nature and

from the manner in which the occurrence has been committed by the present accused-Appellant, it is clearly indicated that he intended to cause the

death of or, at any rate, he intended to cause the injury found on the body of deceased and that the injury intended to be inflicted by him on the

body of the deceased was sufficient to cause death in the ordinary course of nature. It is not a case of accidental injury. It is also not a case of

sudden quarrel nor is it a case of grave and sudden provocation. None of the exceptions to Section 300 of the Indian Penal Code are thus

attracted in this case. In fact, nothing of the sort has been shown or suggested by the learned Counsel for the defence.

20. For the reasons aforesaid, this appeal has no force and is dismissed. The conviction and sentence of the accused-Appellant for the offence

punishable u/s 302 of the Indian Penal Code are upheld.

The present accused-Appellant is in jail. He will serve out the sentence according to law.

Let a copy of this order be sent to the Sessions Judge concerned for information and compliance. The compliance report be sent to this Court by

the Sessions Judge concerned within one month.