

(1991) 04 AHC CK 0129**Allahabad High Court****Case No:** Government Appeal No. 2697 of 1977

State of U.P.

APPELLANT

Vs

Jagdish Singh and Others

RESPONDENT

Date of Decision: April 18, 1991**Citation:** (1991) 15 ACR 452**Hon'ble Judges:** Palok Basu, J; P.P. Gupta, J**Bench:** Division Bench**Advocate:** D.N. Wali, V.K. Tomar and C.S. Saran, for the Respondent**Final Decision:** Dismissed**Judgement**

P.P. Gupta, J.

This is an appeal filed on behalf of the State of U.P. against the judgment and order dated 17-8-1977 passed by the III Additional District and Sessions Judge, Saharanpur, in S.T. No. 63 of 1977, acquitting the Appellants.

2. The charge against the Appellants was that they in the night between 18th and 19th December, 1976, at about 11.00 P.M. at the house of Bakshish Singh in the jungle of village Kulheri, P.S. Nakut, District Saharanpur, formed an unlawful assembly and in prosecution of the common object of such assembly viz., in committing the murder of Gurmail Singh and Kirpal Singh, committed the offence of rioting and also committed the murder by intentionally and knowingly causing the death of Gurmail Singh and also intentionally fired shots at Kirpal Singh with such intention and knowledge and under such circumstances that if by that act they have caused the death of the said Kirpal Singh, they would have been guilty of murder and that hurt was caused to said Kirpal Singh by the said act.

3. The prosecution case, in brief, is that in the night between 18th and 19th December, 1976 at about 11.00 P.M., the Appellant, variously armed, came to the house of the complainant Bakshish Singh in village Kalheri. The Appellants Lamber Singh, Jagdish Singh and Bhajan Singh were armed with their licensed guns, while

Appellants Chhindu Singh, Mahender Singh and Makhan Singh were holding Lathis. They knocked at the main door of Bakshish Singh and asked him to come out. However, Bakshish Singh declined to open the door. All the Appellants thereupon hurled abuses on him. Sharvan Singh, the real brother of Bakshish Singh, accompanied with his two sons, viz. Kirpal Singh and Gurmail Singh and servants Manga, Nanga and Persa, who were working on their nearby crusher, on hearing the noise, rushed to the house of Bakshish Singh. On being enquired by Sharvan Singh, the Appellant Jagdish Singh said to him that he had come to ask as to why Bakshish Singh had sold his land to Bhajan Lal, an outsider. Recognising the voice of Sharvan Singh, the complainant, Bakshish Singh, and his sons, viz. Shalender and Mahender came out of the house, armed with Lathis and Gaudasa. Sharvan Singh, however, warned Bakshish Singh not to come out of the house as the Appellants were holding guns. Simultaneously, the Appellants Jagdish, Lamber and Bhajan Singh fired their guns and Kirpal Singh and Gurmail Singh fell down injured. The complainant, Bakshish Singh, and his companions then attacked the Appellants with the arms, which they were carrying, and managed to apprehend the Appellants Jagdish, Lamber, Chhindu and Mahinder on the spot. Jagdish and Lamber Singh were relieved of their guns. Hearing all these hue and cry, the residents of the village also arrived at the spot. Bakshish Singh escorted his injured nephews in a bogie to Nakur.

4. A written report, Ex. Ka-1, scribed by Ved Prakash, Munim, was delivered by Bakshish Singh at P.S. Nakur on the same night at 0.15 A.M. S.I., Shivraj Singh, (PW 4) investigated the case. He interrogated the injured, Kirpal Singh and Gurmail Singh, as also the complainant, Bakshish Singh, at the police station. Both the injured were sent to Civil Hospital at Nakur and were finally taken to District Hospital, Saharanpur. The Investigating Officer reached the place of occurrence at about 30.00 A.M. He took into custody the Appellants Jagdish, Lamber, Mahindra and Jhandu. He found Jhandu injured. All these four Appellants were then sent to the Police Station. The complainant, Bakshish Singh and his brother, Sharvan Singh, handed over two guns and nine live cartridges as also three used cartridges to the I.O. Simple and blood stained earth was collected and other necessary formalities were completed. Thereafter, the Station Officer, P.S. Nakur, Sri Satendra Pal Singh, took up the further investigation of the case himself. The Appellant Bhajan Singh was arrested from his house and his licensed gun was taken into custody. The Appellant Makhan Singh surrendered in court. Meanwhile, the injured Gurmail Singh, died at the District Hospital, Saharanpur on 19-12-1976 at 2.30 A.M. Charge-sheet against the accused was submitted on 29-12-1976.

5. All the Appellants did not plead guilty to the charges. Their defence was that the Appellant Jagdish, while on way back to his village in the night of occurrence, met Sharvan Singh, Gurmail and Kirpal, who invited him to their house for tea. Surendra and Mahindra, the two sons of the complainant, Bakshish Singh, were also present there. When they finished with the tea, Sharvan Singh and his family members

asked Jagdish to sign a blank document to be converted into an ante dated agreement for sale of his land in its favour. The Appellant Jagdish had already entered into an agreement for sale of his land in favour of Appellant Bhajan Singh. He, therefore, refused to be a party to such manipulation Sharvan Singh and his family members then indulged in abuses. Jagdish Singh got up and started moving out of the house, but Gurmail Singh inflicted a Bhala blow on his back and his companions surrounded him. It was at that moment Jagdish Singh fired his gun in self defence. He fired two shots whereupon he was over powered and deprived of his gun and was given further beating. The complainant, Bakshish Singh, brought the police party on the spot and the injured Gurmail and Kirpal were immediately sent for medical treatment. The police party escorted Jagdish Singh to his house and from where his close relation, Chhindu, was arrested. Soon after, the Appellants Mahender and Lamber were also arrested from their houses situate closely and the licensed gun of Lamber was also taken into custody.

6. The prosecution examined the three persons, viz. PW 1, Bakshish Singh, PW 2, Kirpal Singh and PW 3, Persa Singh, as eye-witnesses of the incident. The only other witness examined at the trial, was S.I. Shivraj Singh (PW 4) who conducted the investigation. Formal proof of the documents, such as injury report and post-mortem report were dispensed with on behalf of the Appellants. Kirpal Singh was examined at the District Hospital, Saharanpur in the night of the occurrence at 2.00 A.M. One lacerated wound, 8 1/2 cm x 4 cm, on the right side chest, lower part, bone deep, with multiple gun-shot wounds around was found on his person. The injury report is Ex. Ka-10. Gurmail Singh was examined at 2.29 A.M. and multiple gunshot wounds on the front of outer side of whole of the thigh and penis, each 1/4 x 1/4 cm, were found on his person. He expired during examination at 2.30 A.M. His injury report is Ex. Ka-11 on record. The post-mortem on the dead body of Gurmail Singh was performed on 19-12-1976 at 4.40 P.M. and the post-mortem report is Ex. Ka-13 on record. This document bears out that Gurmail Singh was aged about 19 years and had the average built body. Multiple gun-shot wounds of entrance in an area of 38 cm x 12 cm on the left side of lower part of abdomen, male organ and front of left thigh were found as ante mortem injuries. The cause of death was described as shock and haemorrhage due to the aforesaid injuries.

7. The learned Additional Government Advocate, Sri R.C. Deepak, and the learned Counsel for the Appellants, Sri D.N. Wali, were heard at length and the evidence on record was also carefully perused.

8. For the reasons, to be given later, the prosecution story of rioting by the Appellants and the arrest of four of them on the spot, as also the motive part, are highly improbable, unnatural and unworthy of credence. According to the FIR and the prosecution witnesses, the three Appellants, Jagdish Singh, Lamber Singh and Bhajan Singh, fired with their licensed guns hitting Kirpal Singh and Gurmail Singh, and were seriously injured, Gurmail Singh succumbed to the injuries and died at the

District Hospital, Saharanpur. It has come in the eye-witnesses account that both the injured were first taken to the complainant's Arart shop at Nakur and were left uncared for to bleed till the written report of the incident, Ex. Ka-1 was drafted by the Munim, Ved Prakash. It is highly improbable. The first endeavour of the complainant must have been to save the life of his nephews. Instead, they were first taken to the Arat shop where the FIR was dictated and they continued to bleed during all these time. Further, it has come in the testimony of the I.P., Shivraj Singh, (PW 4) that they were put to long interrogation by him. Gurmail Singh is said to have given a lengthy statement, Ex Ka-4, in that precarious condition. It is also unworthy of credence. According to FIR and the eye-witnesses account given by the prosecution witnesses, the Appellant Jagdish, Lamber, Chhindu and Mahander were beaten by Bakshish Singh and his companions with Gandasa and Lathis. This, however, appears to be false because none of the three Appellants, viz. Lamber, Chhindu and Mahender suffered any injuries or even a scratch. It leads to the irresistible inference that they were not arrested on the spot in the manner alleged by the prosecution. PW 1, Bakshish Singh, has stated that Chhindu and Mahendra were over powered with their Lathis. As to what happened to those Lathis is not known. No Lathi was delivered to the i.o. or at the Police Station. The fact that the complainant party did not suffer any Lathi injury and none except the Appellant, Jagdish Singh, suffered any injury in the scuffle go a long way to establish that the Appellant, Jagdish, alone was involved in the scuffle and alone caused gun-shot injuries to Gurmail and Kirpal. There is not an iota of evidence to support the plea that other villagers had assembled on the spot and the Appellant Jagdish and his three companions were entrusted to their custody till they were handed over to the police. The main stay of the prosecution is the testimony of the complainant Bakshish Singh (PW 1), the injured Kirpal Singh (PW 2) and their servant Persa Singh (PW 3). They have not stated about the presence of any co-villager on the spot. They have not deposed to corroborate the FIR that the Appellants were entrusted to the custody of co-villagers. No co-villager has entered the witness box to support the prosecution story of arrest of four accused persons on the spot. No independent person from the vicinity has come forward to support the prosecution case.

9. There is no evidence on record to show that on 22-11-1976 the Appellant, Jagdish Singh, entered into an agreement for sale of his land in favour of co-Appellant Bhajan Singh. The Appellant Jagdish Singh is the cousin of the complainant Bakshish Singh. Bakshish Singh has conceded to have spoken to the Appellant Jagdish Singh to sell his land to him so that the property might continue to remain in the same family and outsiders might not be benefited. The complainant Baksnish Singh says that two days before the night of occurrence, i.e. on 17-12-1976, he had spoken to the Appellant Jagdish Singh at Nakur for sale of his land in his favour, but Jagdish Singh informed him that he had already entered into an agreement for sale of that land in favour of the Appellant Bhajan Singh. Bakshish Singh then told the Appellant Jagdish Singh that he would certainly acquire that land. Bakshish Singh has admitted

that he had earlier spoken to a relative of Jagdish Singh that the sale of land by him to Bhajan Singh was improper. Therefore, Bakshish Singh nourished ill-will towards Jagdish Singh when the later refused to back-out his agreement with Bhajan Singh and to transfer his land to Bakshish Singh. The testimony of Bakshish Singh bears out that he was keen to acquire the land in question by any means. He was very much annoyed by the transfer of the land by Jagdish Singh to a stranger, viz. Bhajan Singh. In this back ground, there was absolutely no reason for the Appellants to form an unlawful assembly in the manner as alleged and to appear in front of the complainant's house at that late hour in the night. There was, therefore, no motive or any remote cause for the Appellants to be there. The Appellants include the purchaser, Bhajan Singh, a relative of Jagdish Singh and those who had acted as middlemen for the sale transaction of land. The Appellant Makhan Singh had married Smt. Malkit Kaur against the wishes of the complainant Bakshish Singh and Sharvan Singh, who wanted that girl to be married in their family. Thus, there was sufficient motive for the complainant to falsely implicate the Appellants. There was no reason for the Appellants to join hands with each other and to raid the complainant's house on the night of occurrence. On the contrary, Bakshish Singh, who was very keen to force Jagdish Singh to transfer his land in his favour could be expected to adopt illegal tactics to coerce Jagdish Singh to ante date the agreement of sale in his favour. The defence version is that Jagdish Singh was forced to sign a document, to be ante dated, as an agreement for sale of his land and that on his resistance the scuffle ensued resulting in injuries to him and gun-shot injuries to Gurmail and Kirpal cannot be said to be lacking in credence. In that event, the possibility that the complainant Bakshish Singh and his supporters would have enlisted support of the local police to falsely implicate other five co-accused cannot be ruled out. The other co-accused could be conveniently arrested from their houses to fit in the prosecution case of spot arrest, as they were not living far away from the place of occurrence. The motive part of the prosecution case was, therefore, false and does not conform to the pattern of the offence. On the contrary, the complainant had every motive to implicate the Appellants on a false charge.

10. It has come in the statement of PW 3, Persa Singh, that he along with the two sons of the complainant continued to keep the four accused persons in their custody till they were delivered to the local police cannot be believed. It looks highly improbable that three persons would have continued to have custody of four accused persons and still none among the arrested persons made any attempt to seek freedom from them. Had it been a fact, the arrested persons would certainly tried to have run away from the custody of these persons and in their attempt they must have received some injuries, but, as has been stated above, none of them, except Jagdish Singh, had any injury on their person.

11. In view of the above discussions, it cannot be said that the aforesaid reasons, as given by the learned Trial Judge also for acquitting the Respondents are perverse or illegal. We, therefore, find ourselves in agreement with the findings given by the

learned Additional Sessions Judge and see no reason to differ from them. Consequently, this appeal fails, and is hereby dismissed. The order dated 20-2-1991 is not to be executed any more.