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## State of U.P. Vs Jagdish Singh and Others

## Government Appeal No. 2697 of 1977

Court: Allahabad High Court

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 Chindu 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 documenr to be converted into an ante dated agreement for sale of his land in the it 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 resistence 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 difer from them. Consequently, this appeal fails, and is hereby dismissed. The order dated 20-2-1991 is not to be executed

any more.