
(1998) 11 AHC CK 0150

Allahabad High Court

Case No: Criminal Appeal No. 2476 of 1980

Bachchu and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Nov. 20, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 120B, 147, 148, 149, 161

Citation: (1999) 1 ACR 350

Hon'ble Judges: K.D. Shahi, J; G.P. Mathur, J

Bench: Division Bench

Advocate: Dileep Kumar, for the Appellant; Dy. G.A., for the Respondent

Judgement

K.D. Shahi, J.

This appeal has been preferred by Appellants Bachchu Lal alias Vijai Bahadur, Rajendra Singh, Surendra Kumar and Kunwar Pal against the judgment and order dated November 1, 1980, passed by Sri Gaya Prasad, the then VIth Additional Sessions Judge, Mainpuri in Sessions Trial No. 463 of 1979 (district Mainpuri), whereby the learned Sessions Judge convicted and sentenced to all the aforementioned Appellants for life imprisonment u/s 302/149, I.P.C. and further to Appellant Nos. 1, 4 and 5, namely, Bachchu, Surendra Kumar and Kunwar Pal u/s 147, I.P.C. to undergo six months" R.I. and Appellant Nos. 2 and 3, namely, Lai alias Vijai Bahadur and Rajendra Singh u/s 148, I.P.C. to undergo R.I. for one year.

2. The first information report (in short "F.I.R.") in this case was lodged by Sudhar Singh (P.W.5) against Pappu, Lai Bahelia, Rajendra Nath, Narena Bahelia, Surendra, Kunwar Pal and Bachchu and the implication of accused Brijendra was found during Investigation but the learned Sessions Judge has acquitted accused Pappu and Brijendra for want of adequate evidence. No appeal was preferred by the State against this acquittal and the acquittal has become final. As regards Narena Bahelia,

he died during the trial and the case was directed to be abated against Narena Bahelia by the learned Sessions Judge himself.

3. The brief facts of the case are that Sudhar Singh, the complainant (step brother of the deceased Sagar Singh) lodged an F.I.R. at police station Karhal, district Mainpuri on 4.7.1978 at 1.00 a.m. in the night with the allegation that in the night of 3rd/4th July, 1978, a programme of Jot (singing of religious songs) was arranged at the house of Tilak Singh Bahelia. The complainant along with his brother Sagar Singh, Arjun Singh and I smile Khan went to hear the Jot at the house of Tilak Singh. At about 12.30 in the night, they were returning from there and when they just came out from the house of Tilak Singh, accused Bachchu Lai son of Govind came and asked Sagar Singh, the brother of the complainant, that somebody wants to meet him near the Mandir (temple). Sagar Singh went with Bachchu towards the Mandir and few minutes thereafter, the witnesses heard shrieks and cries of Sagar Singh on which they reached towards that side. At the field/plot of Jagdish, they saw, in the light of torch and electricity that accused Pappu, Lai Bahelia and Rajendra were assaulting Sagar Singh with knife while accused Narena Bahelia, Surendra, Kunwar Pal and Bachchu had pressed him. When the accused persons saw the complainant and the witnesses, they ran away towards the south. Sudhar Singh went near his brother Sagar Singh and found him dead. It is further alleged in the F.I.R. that accused Brijendra and Kunwar Pal had conspired to kill Sagar Singh. The conspiracy was hatched at the hotel of Kunwar Pal. Accused Kunwar Pal wanted to grab the property of Sagar Singh.

On the above said F.I.R. Ext. Ka-1, a case was lodged at the police station Karhal, district Mainpuri. On the basis of said F.I.R. a chick report Ext. Ka-6 was prepared and a case was registered in the G.D., copy of which is Ext. Ka-7. The Investigating Officer Sri P. C. Chaturvedi (P.W. 8) visited the spot. He was having some pains in his hands and therefore the papers were written by Harish Chandra, Constable 517 at the dictation of the Station Officer. Shri P.C. Chaturvedi. The Investigating Officer took blood stained and simple earth and prepared Ext. Ka-6. The Investigating Officer further recovered a country -made pistol of 12 bore along with 4 (four) cartridges from the Tahmad of deceased Sagar Singh. He also recovered a broken knife, two pairs of Hawai Chappal, one Hunter of electric cable, one Batan and one Angochha from the spot and took the same in his possession and prepared Ext. Ka-3. The Investigating Officer also inspected the dead body and on his dictation the inquest report Ext. Ka-8 was prepared by Constable Harish Chandra. P.W. 7. The Investigating Officer further wrote letter for post-mortem and prepared photo lash and challenge lash and prepared the Fard Ext. Ka-9 to Ka 12 respectively. He submitted the charge-sheet in the Court Ext. Ka-13.

4. After the dead body was sealed, sample of seal Ext. Ka. 14 were prepared by the Investigating Officer and the Investigating Officer dispatched the dead body of deceased Sagar Singh for postmortem through P.W. 1, Constable No. C.P. 280

Shyam Sanahi in sealed condition. P.W. 2, Dr. T.P. Sharma conducted the post-mortem of the dead body of the deceased and prepared post-mortem report Ext. Ka-1. According to the doctor the victim was aged about 26 years and he had died before one and half day of the post-mortem. The doctor has found the following ante-mortem injuries at the person of the deceased:

(1) Incised wound 4 cm. x 1.5 cm. x 1 cm. on the front middle of left thigh transversely placed.

(2) Three (3) penetrating wounds 2 cm. x 1 cm. x chest cavity deep on the left side back on the apex of (Imaginary)三角 whose distance of 10 to 11 cm. apart.

(3) One penetrating wound 2 cm. x 1 cm. x 3 cm. on the left side back near the waist 6 cm. away from mid line.

(4) Two penetrating wounds 2 cm. x 1 cm. x chest one above the Ors. 7 apart 3/4 cm. away from mid line.

(5) Two penetrating wounds 2 cm. x 1 cm. x chest cavity deep right side back middle 4 cm. apart 10 cm. away from mid line.

(6) Incised wound 0.5 cm. x 0.25 cm. x skin left arm back middle.

5. The doctor has reported that the death was caused due to shock and hemorrhage as a result of ante-mortem injuries.

6. On the committal of the case to the Court of Session, it was transferred to Shri Gaya Prasad, the then VIth Additional Sessions Judge, Mainpuri. who charged accused Surendra, Narena, Kunwar Pal and Bachchu u/s 147, I.P.C. He also charged accused Pappu alias Ramanand, Lai alias Vijai Bahadur and Rajendra u/s 148, I.P.C. because they were said to be armed with knife. He also charged Vijendra, Kunwar Pal and Rajendra u/s 120B, I.P.C. The learned Sessions Judge charged all the above said accused persons, namely, Surendra, Kunwar Pal, Bachchu, Pappu alias Rama Nand, Lai alias Vijai Bahadur, Narena and Rajendra u/s 302 read with Section 149, I.P.C. The charges were read over and explained to all the accused persons in Hindi. They pleaded not guilty and claimed to be tried.

7. In proof of the case, the prosecution examined as many as eight (8) witnesses, out of whom P.W. 1, C.P. Shyam Sanahi took the dead body for post-mortem. P.W. 2, Dr. T.P. Sharma conducted the post-mortem of the dead body. P.W. 3, Sri Mahesh Chandra took the blood stained and simple earth on the spot and prepared Fard Ext. Ka-2. He also prepared Fard of the recovered articles Ext. 3 to 10 and 11. P.W. 4, Ismile Khan and P.W. 6, Arjun Singh are the eye-witnesses but both of them turned hostile and did not support the prosecution story. P.W. 5, Sudhar Singh is the complainant of the instant case and step-brother of the deceased as well as eye-witness. P.W. 7, C.P. Harish Chandra prepared the chick report and made entry in the G.D. and P.W. 8, P.C. Chaturvedi, Station Officer of police station Karhal,

Mainpuri is the Investigating Officer of the case.

8. As already stated above, two witnesses, namely. Ismile Khan and Arjun Singh, P.W. 4 and 6 respectively have totally turned hostile and did not support the prosecution story. Ismile Khan, P.W. 4 stated only to the extent that there was Jot at the house of Tilak Singh and he was present to hear the Jot. Sudhar Singh, Arjun Singh and Ors. two persons along with the deceased Sagar Singh were coming together after hearing the said Jot from the house of Tilak Singh. One boy told Sagar Singh that he is being called by somebody, Sagar Singh went and 20 minutes thereafter he heard cries then he rushed there and saw that Sagar Singh was being assaulted by 7-8 persons. He did neither identify the assailants nor the weapons of assault. Arjun Singh, P.W. 6 stated that there was a Jot organised at the house of Tilak Singh and he returned back after hearing the said Jot at about 10.30 p.m. to his home and after taking food he slept.

9. P.W. 5, Sudhar Singh, the complainant of the case alone supported the prosecution story. He stated that he along with Sagar Singh, Arjun Singh and Ismile Khan went for hearing Jot, which was organised at the house of Tilak Singh. At about 00,30 in the night, they were coming out from the house of Tilak Singh, accused Bachchu came and told Sagar Singh that somebody is calling him near the Mandir and wants to meet him. Thereafter, Sagar Singh went near the Mandir along with Bachchu. After sometimes he heard the shrieks and cries then he along with Ismile Khan, Arjun Singh and Ors. rushed to the spot and saw that Surendra Singh, Kunwar Pal, Narena and Bachchu Bahelia were catching hold of his brother and Lai alias Vijai Bahadur, Rajendra Master and one unknown man were assaulting the victim with knife. On their reaching the spot, they went towards the south and his brother was assaulted in the field of Jagdish and was lying there. He further stated that he was having torch and the assailants were recognized in the light of electricity and torch during the course of assault. In the cross-examination he stated that he has got written the F.I.R. that he was holding a torch. From the bare reading of the F.I.R., it is clear that there is no specific mention of the fact in the F.I.R., that he was holding any torch. The allegations are only general in nature that there were torches and electricity on the spot. He stated further that from the death of Sagar Singh nobody was benefited. He stated further that he did not enquire from Bachchu Bahelia that who wants to meet Sagar Singh and why he had been called in the night. He stated that after Sagar Singh went upto the plot of Jagdish, he proceeded towards his house. He did not go along with Sagar Singh. He further admitted that a Katta (country made pistol) was recovered from the spot and he reached at the place of occurrence after about 6-7 minutes after hearing the cries. He further stated that at the time of occurrence, he did not know whether Parmanand Sadhu was residing in the Mandir or not.

10. P.W. 8, Sri Prakash Chandra Chaturvedi, Investigating Officer of the case admitted that the inquest report was prepared in the morning. He stated that in his

statement u/s 161, Code of Criminal procedure Ismile Khan has stated that the victim was assaulted by knife and sharp-edged weapon with a long blade. It appears that this sharp-edged weapon with long .blade was not a knife and was introduced in the statement u/s 161, Code of Criminal Procedure only to cope with the injuries at the persons of the victim. He further stated that the dead body was recovered in the field of Jagdish and from the Feta of Tahmad of the deceased one country-made pistol and four cartridges were recovered.

11. After the close of the prosecution evidence, the accused persons were examined. They denied the entire prosecution story. They did not lead any evidence in their defence.

12. After hearing the learned Counsel for the parties, the learned Sessions Judge acquitted accused Pappu and Brijendra giving benefit of doubt and convicted and sentenced the above said five Appellants Under various Sections, as discussed above, who preferred this appeal before this Court.

13. We have heard Sri Dilip Kumar, the learned Counsel for the Appellants and the learned A.G.A. and have gone through the record carefully.

14. There are three eyewitnesses in the instant case. Out of whom two, namely, Ismile Khan (P.W. 5) and Arjun Singh (P.W. 6) did not support the prosecution story. The case rests merely on the statement of Sudhar Singh, the complainant who is the step-brother of the deceased Sagar Singh. It is to be seen whether his sole statement is sufficient to convict the accused persons. It is true that on the single testimony of a witness, accused persons can be convicted but in that case, the witness should be wholly reliable and his statement should transpire full confidence.

15. We have examined the judgment recorded by the learned Sessions Judge, Mainpuri and we find that the learned Sessions Judge has traveled only on the open surface of the case. He did not enter into the intrinsic merit of the case and did not discuss the broad probabilities and improbabilities emerging out of the case.

16. The factum of death of deceased. Sagar Singh has been admitted. His identity has not been challenged but the case of the accused persons is that they have been falsely implicated in this case, they have got absolutely no motive to kill Sagar Singh. Sagar Singh was himself a criminal and also of a loose character, he could have been killed by anybody in the peak hours of the night and no witness did see the occurrence.

17. Out of the three witnesses, definitely and admittedly two witnesses, namely, Ismile Khan and Arjun Singh, P. Ws. 4 and 6 respectively, did not see the occurrence. The only question is whether Sudhar Singh was with the deceased and whether he saw the occurrence or not. For this, we have to discuss the statement of Sudhar Singh read with the F.I.R. lodged by him.

18. In the F.I.R., the complainant has specifically mentioned the name of the assailants. He stated that Bachchu came near his brother and told that somebody wants to meet him. He further stated that in the light of torch and electricity, he identified Pappu, Narena, Kunwar Pal and Bachchu but when he entered into the statement, which was recorded in the Court, he stated that there was also one unknown person whom he did not identify. There is no allegation of this fact in the F.I.R. that there was also one unknown person who the complainant could not identify. Why this fact has been suppressed from the F.I.R. is not clear. If the complainant could not identify one, he should have specifically mentioned this fact in the F.I.R. and if he suppressed this fact, it may lead to presumption that he could not identify anybody and has incorrectly named the assailants in the F.I.R.

19. In the F.I.R., there is specific mention that in the light of electricity and torch, he identified Pappu, Lai alias Vijai Bahadur and Rajendra assaulting his brother. He has named Pappu as first accused to assault but in the statement in the Court he left Pappu, it means that Pappu was not there. If Pappu was not there, there is nothing to explain why Pappu was named as first assailant in the F.I.R. If Pappu has been incorrectly implicated in this case, the Court cannot be sure that Ors. Have been correctly implicated in this case.

20. From perusal of the site plan, it is clear that there was house of Tilak Singh and also there was a Pakar tree. Then there was a Pakka road, then there was a big grove of Vrindawan, then in the south there was plot of Jagdish in which the dead body of Sagar Singh was recovered. The light is said to be on the Pakar tree and from there, no light can come in the grove of Vrindawan or on the vacant field/plot of Jagdish. The light is also there on the Pakar tree by the side of the road but in between the road and plot of Jagdish, there was big grove of Vrindawan. The trees will not allow the light to pass up to the plot of Jagdish. The complainant stated that Bachchu came and stated that somebody is calling him near the Mandir, he wants to meet him. It is not clear from the statement whether Bachchu was enemy of Sagar Singh or friend of Sagar Singh. If Bachchu was enemy of Sagar Singh, Sagar Singh should not have gone with him and if Bachchu was friend of Sagar Singh, there is no question of any assault by Bachchu. However, at any rate, Bachchu may be friend or enemy of Sagar Singh but nobody will go in the midnight with anybody to meet an unknown person. It is strange and cannot be believed that Sagar Singh and Sudhar Singh only on hearing that somebody wants to see Sagar Singh, Sagar Singh proceeded with him alone and none of the two enquired who that person was. Naturally, if that unknown person was an enemy, nobody will go with Bachchu, if unknown person was his friend his name should have been disclosed. At any rate, there was no question of Sagar Singh to go with Bachchu to meet an unknown person towards the dark side. Everybody will naturally ask him to come in the light but the complainant stated that it was never asked. This fact itself makes the entire prosecution case unbelievable and shows that neither Bachchu would have told Sagar Singh that he was asked by anybody nor Sagar Singh would have gone to

meet an unknown person. If this theory is false, the entire case is falsified and it cannot be believed that Sudhar Singh heard Bachchu calling Sagar Singh. This in itself makes the entire prosecution story unbelievable.

21. Still more surprising fact is that after Sagar Singh left, Sudhar Singh proceeded towards his house, Nobody will allow his brother to go in the dark night towards the still more dark plots all alone but Sudhar Singh stated that he proceeded in the north towards the house and Sagar Singh went towards the south and after 6-7 minutes, he rushed towards the place of occurrence as stated by him in Para 27 of his statement. For killing any person by six persons and in causing 8-9 injuries, a few seconds are sufficient. No assailants will wait up to 6-7 minutes for coming of the witnesses to identify the assailants. If Sudhar Singh reached at the plot after 6-7 minutes, he could not have seen the assailants. This fact is also falsified from the statement recorded in Para 25 of his statement that when he went towards north, the assailants had ran away towards the south. The exact words are: "Main utter se daurkar gaya tha aur marne wale dakshin ki ore se hokar bhag gaye the." Furthermore, even if they were in the process of running, there would also have been the back side of the assailants towards the face of Sudhar Singh and in the said dark night; Sudhar Singh could not have identified any of the assailants, although he specifically admitted that he did not identify one of them. He did not name Pappu in the statement to whom he has specifically mentioned in the F.I.R. if one is not identified, he could not have identified Ors. accused persons as well.

22. This was a dark night; the occurrence took place at about midnight. The complainant did not mention in the F.I.R. that he was having a torch. The Investigating Officer did not prepare any Farad of the torch. This rules out that the witnesses had no torches with them.

There is no evidence at all that the deceased Sagar Singh was having any torch. If there was no torch after the road, nobody could have been identified in the grove Vrindawan or in the plot of Jagdish. This fact itself rules out that there was any light or any assailant could have been identified. There was electricity at the house of Tilak Singh was to be proved by the prosecution. The complainant appears to be an unbelievable witness. Tilak Singh has not been examined to prove that there was any Jot at his house; that the witnesses and the deceased were present at his house up to 00.30 a.m. in the night; that there was any light at his house. In the absence of any Ors. independent witness, Tilak Singh was best witness to corroborate this fact but his non-examination shows that if he would not have been examined, he would not have supported the prosecution story.

23. There is an Ors. Astonishing fact, which rules out the entire prosecution story? It is not said that the country-made pistol or cartridges were planted with the dead body of the deceased. Rather the Investigating Officer has recovered these articles from the Feta of Tahmad of the deceased as admitted by the Investigating Officer in his statement in para 9. If Sagar Singh was having a country-made pistol, that too

loaded, Bachchu could not have dared to call him. Even if Bachchu dared to call him and when Sagar Singh went with Bachchu and saw an unknown friend or enemy, he would have definitely taken out the country-made pistol in hands and he could not have been assaulted by knives, one country-made pistol and four cartridges are sufficient to kill these four persons. A person with knife cannot dare to attack on a person holding pistol. This fact itself shows that Sagar Singh was caught any where all of sudden, he was overpowered and was killed by anybody otherwise a person holding loaded pistol could not have been so leisurely killed, he also would have attacked somebody and this probability, if found to be correct that Sagar Singh was overpowered all of a sudden, then the theory of being called by Bachchu and the theory that the witnesses saw the occurrence is totally false.

24. All the facts taken together show that the sole witness Sudhar Singh is an unbelievable witness, he did not see the occurrence. It is admitted fact that a case u/s 307, I.P.C. was pending against Sagar Singh. His possession of an unlicensed country-made pistol and four cartridges clearly indicate that he himself was a criminal and all of a sudden in the said dark night, unknown assailant killed him. There was no motive for the accused persons to have killed Sagar Singh. There is absolutely no proof of this fact that the accused persons wanted to grab the plots of Sagar Singh. Even after his death, this is admitted fact, as has specifically come in the statement of Sudhar Singh in para 14 that no accused could get any benefit after the murder of Sagar Singh, then for no reasons the accused persons will arrange any ambush in the said night and will unnecessarily kill the victim. At any rate, the evidence produced against them is totally unbelievable that any person did see the occurrence.

25. We have gone through the judgment recorded by learned Sessions Judge; we do not approve his finding because he did not discuss these broad aspects of the case. The charges could not be established against any of the accused persons when the complainant himself exonerated Pappu and the main assailant and Brijendra, who is also said to be pressing, have been acquitted by the Sessions Judge, the entire case became totally doubtful.

26. The appeal is fit to be allowed and is, accordingly, allowed. The judgment and order dated November 1, 1980, passed by learned Sessions Judge; Mainpuri convicting and sentencing the Appellants is hereby set aside. The Appellants, namely, Bachchu, Lai alias Vijai Bahadur, Rajendra Singh, Surendra Kumar and Kunwar Pal are found not guilty of the charges of which they have faced trial. They are accordingly acquitted of all such charges. They are already on bail. They need not surrender. Their bail bonds are hereby cancelled and the sureties are discharged.