

**(2016) 09 AHC CK 0209**

**ALLAHABAD HIGH COURT**

**Case No:** Criminal Appeal No. 153 of 1984.

Nan Bachcha - Appellant @HASH

State of U.P.

APPELLANT

Vs

RESPONDENT

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**Date of Decision:** Sept. 28, 2016

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2016) 97 ACrC 731 : (2016) 11 ADJ 22 : (2017) 3 AllJ 60

**Hon'ble Judges:** Arvind Kumar Tripathi and Mukhtar Ahmad, JJ.

**Bench:** Division Bench

**Advocate:** G.P. Dixit, Advocate, for the Appellant; A.G.A, for the Respondent

**Final Decision:** Allowed

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**Judgement**

**Arvind K. Tripathi, J.** - Shri G.S. Chaturvedi, learned Senior Counsel assisted by Shri Samit Gopal, learned counsel for the appellant and Shri Chandrajit Yadav, learned A.G.A. on behalf of the State appeared.

2. We have heard learned counsel for the parties and judgement was reserved on 22.8.2016.

3. The instant criminal appeal has been preferred challenging the impugned judgment and order of conviction and sentence dated 12.1.1984 passed by 4th Additional Sessions Judge, Fatehpur passed in Sessions Trial No.263 of 1982 (State v. Jamrehi and Nan Bachcha) arising out of Case Crime No.175 of 1981, under section 302 I.P.C. PS. Khaga, Sub District Khaga, District Fatehpur convicting and sentencing the sole appellant Nan bachcha under section 302 I.P.C. to undergo life imprisonment. Jamrehi Nath was acquitted giving the benefit of doubt.

4. The First Information Report was lodged by one Amar Pal Singh s/o Ramdhani Singh, village & Police Station Khaga, District Fatehpur against three persons namely

Jamrehi Nath Singh s/o Agan Singh, Chhedu Singh alias Ramsiroman Singh and Nan Bachcha s/o Jamrehi Nath Singh, village Hardo, PS. Khaga. The charge sheet was submitted against all the three accused. Before the case was committed to the court of Sessions, accused Chhedu Singh alias Ramsiroman died, hence the trial court proceeded against the appellant and co-accused Jamrehi Nath Singh, father of the appellant, hence the present appeal is only on behalf of sole appellant Nan Bachcha, against the conviction and sentence of life imprisonment.

5. The brief facts of this case is that the First Information Report was lodged by PW-1 Amar Pal Singh (brother of the deceased) with the allegation that in the night of 9th August, 1981 his brother Vijay Pal Singh (deceased), son of Ramdhani Singh, village Hardo, District Fatehpur Fatehpur was present along with the informant (Amarpal Singh) and one Ram Naresh, s/o Nandu Singh, village Hardo at the Ata chakki (flour mill). His brother Vijay Pal Singh was sleeping in the verandah and the informant with Ram Naresh Singh were grinding flour at about 1.30 A.M. (in the night). Jamrehi Nath Singh, Agan Singh, Chhedu Singh alias Ramsiroman and Nan Bachcha, both sons of Jamrehi Nath Singh of village Hardo, PS. Khaga, District Fatehpur came near cot of his brother Vijay Pal Singh, Chhedu Singh alias Ram Siroman Singh was having country made pistol in his right hand, Nan Bachcha was also having country made pistol in his right hand and cartridges in left hand. The accused Jamrehi Nath Singh abusing Vijay Pal Singh exhorted his two sons including appellant that this is the person to kill him. After hearing the same the informant and Ram Naresh who were grinding flour came out and saw that Ram Siroman Singh shot fire with his country made pistol on his brother Vijay Pal Singh causing injuries on his abdomen and Nan Bachcha also shot fire on Vijay Pal Singh. The informant and Vijay Pal raised alarm calling the villagers to rush as they killed his brother. In the meantime Narendra Singh, s/o Mahabir Singh and Surya Bhan alias Radhai s/o Surajpal Singh, Village Hardo reached there and in the meantime the said accused ran away. There was electric light and they saw and identified the accused persons. After sometime the number of villagers reached there. Since his brother was breathing and not speaking, hence he took his brother to Government Hospital, Khaga. After examination Medical Officer, Khaga declared him dead. Thereafter he took the dead body to the Police Station and after scribing the report, the First Information Report was lodged and registered at the police station Khaga. The report was proved as Ext.Ka-3. The chick report was proved as Ext.Ka.2 registered on the same day at about 3.45 A.M. The distance from the place of occurrence was about 1 km. S.I.Jadunath Dwivedi who was posted as S.H.O. Khaga District Fatehpur was present at the police station and in his presence the First Information Report was lodged. Thereafter he recorded the statement of the informant Amar Pal Singh at the police station, Panchayatnama of the dead body of Vijay Pal Singh was prepared. Necessary papers were proved as Ext.Ka.6 to Ext. Ka.11. The dead body of the deceased Vijay Pal Singh was sealed and sent for postmortem examination. Thereafter the investigating officer went to the place of occurrence at about 9.00

A.M. recorded the statement of Ram Naresh Singh, Narendra Singh etc. inspected the place of occurrence and prepared the site plan Ext.Ka.12. He took the plan and furnished the rope of cot (badh), sample of plain blood, mud from the place of the occurrence which were kept and sealed separately. On the spot he also found three ticklies which he sealed and covered as Ext.Ka.15. Postmortem examination was conducted on 9.8.1981 at 5.00 P.M. by Medical Officer, Dr. G.S. Gaur who was examined as PW-3. As per medical report, three firearm injuries were noted, two entry and one exit wound.

1. One firearm wound of entry, 1.5 x 1.5 x Abdomen cavity deep on left side of Abdomen 1" lateral to umbilicus at 3 O'clock position. Margin inverted, blacking and tattooing present. Direction from front to backward and downward.
2. One firearm wound of entry 1" x 1" x brain deep on left side of head 2.5" above left ear. Blackening and tattooing present. Margin inverted. Direction from back to front and slightly towards right side.
3. Firearm wounds of exit each ♀" x ♀" x brain deep on left side of forehead. Margins everted. It is inter-related to injury no.2. 26 (twenty six) small size bullets and two big size pellets and one wadding piece recovered from the body.
6. On an internal examination, skull was found lacerated, fracture under the injury no.2 & 3. Membrane lacerated. Brain lacerated, two shots (big size-pea size). Peritoneum lacerated. Stomach contained half ounce food digested present. Small intestine found lacerated empty. Six small size pellets recovered. Big intestine was found full. Bladder lacerated. 20 small size pellets recovered. According to opinion of doctor cause of death was shock and haemorrhage as a result of anti-mortem injuries. Dr. G.S. Chaturvedi was examined as PW-3.
7. After receipt of the postmortem examination report and completing the necessary formalities, the charge sheet was submitted. The charges were framed on 20.8.1983 under section 302 I.P.C. against accused Nan Bachcha and a separate charge under section 302 read with section 34 I.P.C. was also framed against the accused Jamrehi Nath Singh. which was read over and explained to the accused appellant in Hindi. He pleaded not guilty and claimed to be tried.
8. The prosecution to prove its case examined as many as six witnesses and three witnesses of fact claimed to be eyewitnesses. PW-1 Amar Pal Singh, brother of the deceased, PW-2 Ram Naresh, witness of the informant, PW-3 Dr. G.S. Gaur, Medical Officer, District Hospital, Fatehpur who conducted the postmortem examination on the body of the deceased Vijay Pal Singh, PW-4 Narendra Singh who is claiming that he was returning after watching film Abdulla from Khaga and after hearing alarm he reached at the place of the incident. PW-5 Surendra Prasad Shukla, Head Constable who proved the chick report and First Information Report and G.D. entry, PW-5 Jadunath Dwivedi, the then SHO Khaga who conducted the investigation and submitted the charge sheet.

9. After the evidence was closed, the statement of the accused was recorded under section 313 Cr.P.C. The accused appellant denied the charges and submitted that he was falsely implicated. Witnesses grudged against him but neither any evidence was adduced in defence nor any reason of any enmity was mentioned. Subsequently when question was put regarding report submitted by J.E. Electrical Department, Khaga regarding supply of electricity in the intervening night of 8/9 June, 1981, he submitted that the report was forged one. At the time of incident there was no supply of electricity and said Junior Engineer whose report was submitted was not at Khaga.

10. On the basis of prosecution evidence, the trial court held the appellants guilty for committing the offence under section 302 I.P.C. He was convicted and sentenced to undergo life imprisonment under section 302 I.P.C. However, the benefit of doubt was given to the co-accused. Against the impugned judgement the present Criminal Appeal was preferred which was admitted and prayer for bail was allowed on 16.1.1984.

11. Learned counsel for the appellant challenged the impugned judgement and order of conviction and sentence on the ground that none of the witnesses were present so that it was a blind murder. The assailants chosen the time of mid night or after mid night so no person could saw them committing murder of the deceased Vijay Pal Singh. The role of firing was assigned to two persons namely the appellant Nan Bachcha and the co-accused Chheddu Singh alias Ram Siroman Singh and the role of exhortation was assigned to their father Jamrehi Nath Singh. Father and two sons were implicated in the present case. Jamrehi Nath Singh was aged about more than 80 years. According to prosecution case, the informant and his servant PW-2 were grinding flour and due to noise of grinding machine, it is unnatural that they heard exhortation. If the accused appellant and co-accused chosen the dark night for committing the offence and the deceased was found sleeping in the veranada, then they would shot fire and ran away from the spot instead of raising voice to invite the witnesses to watch the incident and identify them that it was a dark night and supply of electricity was also not proved. The investigating officer did not take any pain to verify whether there was electricity in the night of 8/9.6.1981 in village Hardo or not. He also did not verify whether on the date of incident film Abdulla was shown in the picture hall at Khaga or not because PW-4 is a chance witness. According to him he was returning after seeing film into picture hall at Khaga and reached near the place of the incident at the same time. When the incident took place and the informant raised alarm it was also unnatural that during night he went to see film and was returning at 1.30 A.M. in the night. He also contended that only due to village rivalry the appellant, his brother and father were falsely implicated in the present case, hence benefit of doubt was given to the co-accused his father Jamrehi Nath Singh and he was acquitted to whom the role of exhortation was assigned. According to the prosecution case after hearing the exhortation the accused and Jamrehi Nath Singh came out. PW-4 Narendra Singh is not only a

chance witness but he is relative of the family of the deceased.

12. He submitted that in view of the fact the prosecution story is doubtful and the appellant is also entitled for the benefit of doubt, hence the impugned judgment and order of conviction and sentence is liable to be set aside.

13. Learned A.G.A. opposed the aforesaid prayer. There are three witnesses of the incident and according to their statement, the appellant Nan Bachcha and co-accused Chheddu Singh alias Ramsiroman shot fire. Only role of exhortation was assigned to their father Jamrehi Nath Singh, hence the benefit of doubt was given to him considering his old age. There was no reason of false implication of the appellant. The presence of the witnesses are not doubtful. There are no contradiction and discrepancy in their statement which are corroborated by the medical report though there are negligence on the part of the investigating officer, merely on that ground the prosecution story will not be disbelieved which has been proved by the witnesses adducing the oral evidence merely because the benefit of doubt was given to one of the co-accused to whom the role of exhortation was assigned, on the ground of old age, hence the appellant is not entitled to any benefit of doubt on that ground.

14. Considered the submissions of counsel for the parties and perused the record.

15. In the present case co-accused Jamrehi Nath Singh and his sons namely Chheddu Singh who died before the case was committed to the court of Session and Nan Bachcha the appellant are accused. The role of exhortation was assigned to co-accused Jamrehi Nath Singh, father of the appellant and he was acquitted of the charges under section 302 I.P.C. read with section 34 I.P.C. Three witnesses of fact have been examined by the prosecution, PW-1 Amar Pal Singh, brother of the deceased, PW-2 Ram Naresh, servant of Amar Pal Singh and PW-4 who was relative of the informant. The first information report was lodged by PW-1 Amar Pal Singh. According to his statement, in the night of 9.6.1981 at about 1.30 A.M. his brother Vijay Pal Singh was sleeping on cot in verandah. There was electric light. He was having a flour mill which was being run by electric motor. He along with servant was grinding flour. The accused person reached where the deceased was sleeping. Co-accused Jamrehi Nath Singh, father of the appellant exhorted his son to kill Vijay Pal Singh who was sleeping there. He said "Yah Sala Pada Hai, Ise Mar Dalo" and after hearing exhortation he along with Ram Naresh came out, in verandah and saw that the co-accused Chheddu Singh and appellant Nan Bachcha who were having country made pistol, both shot fire on his brother Vijay Pal Singh causing firearm injuries. Thereafter they ran away towards west. Co-accused Jamrehi Nath only threatened. He did not pay attention whether he was having country made pistol in hand or not. After causing firearm injuries they raised alarm on which Narendra Singh and one Suraj Bhan reached there. When they reached in veranada before that assailants ran away towards west. He saw that his brother was breathing, hence he was taken to the hospital by bullock-cart to Khaga and after examining,

doctor declared him dead, thereafter he went to the police station and lodged the first information report regarding motive. He further submitted that two days before the incident Nan Bachcha was sitting with Radio at the door of one Ramjas who was neighbour of the informant. When daughter of the Ramjas came there he started misbehaving with her. Vijay Pal Singh also reached there who saw their conduct. He asked to Nan Bachcha to stop that on which Nan Bachcha threatened him to see him and to kill him. Next day he informed regarding the same. In cross examination he informed that Suraj Pal, his real brother of Ramsiroman. Chatrapal alias Chhedu, son of Suraj Pal is married to Smt. Ramsri. Ramsri is real sister of PW-4 Narendra Singh. In cross examination on suggestion from the side of defence he stated that he was not aware regarding any case for land in between the co-accused Jamrehi Nath Singh and his father and grand father but he further stated there was no other person in the village of the same name like name of his father. He also denied that he was falsely implicated. He also stated that at the time of incident flour mill was being run with electric motor and they were grinding flour while his brother was sleeping and he had not covered his face. There was a bed sheet of markin on cot which was blood stained. Tahmat was also blood stained. The cloths were shown to the sub inspector. However, according to the investigating officer PW-6 no cloth was found on the cot of the deceased. Further in cross examination PW-1 stated that immediately on exhortation by co-accused Jamrehi Nath Singh both shots were fired causing firearm injuries and accused run away. Houses were situated both sides of passage(Gali). Women were used to sleep inside the house.

16. According to PW-2 Ram Naresh, the servant of the informant, he was grinding flour at the flour mill of the deceased Vijay Pal Singh, PW1 Amar Pal was also along with him. When at about 1.30 A.M. in the night. Vijay Pal was sleeping in verandah, there was electric light. Jamrehi Nath Singh came there in verandah and said "Mar Do Sale Ko Yahni So Rai Hai". After hearing the said exhortation he and Amar Pal came out in verandah and saw that the co-accused Ramsiroman and the appellant Nan Bachcha shot fire with their country made pistol causing firearm injuries to the deceased Vijay Pal Singh. They raised alarm and thereafter the accused ran towards west. After hearing alarm, other witnesses reached there.

17. Considered the submissions of counsel for the parties.

18. PW-1 Amar Pal Singh, brother of the deceased Vijay Pal Singh is the informant. According to him, he was present at the flour mill along with Ram Naresh who was examined as PW-2 and they were working there for grinding flour (Ata). According to witnesses the work of the grinding flour was being done during night on the availability of the electricity as the same was supplied to the District during night in the village. The deceased's brother was sleeping in veranada, outside the room where Ata Chakki was being run. According to witnesses there was light of bulb. After hearing the exhortation and abusive language used by Jamrehi, the informant and his servant Ram Naresh came out of room and saw that Ram Siroman, Chheddu

and Nan Bachcha were having country made pistol and both shot fire at his brother Vijay Pal Singh who was sleeping on the cot at about 1.30 A.M. in the intervening night of 8/9.8.1981. After firing they ran away towards west. The presence of PW-1 and PW-2 might not be doubtful inside the room in which they were grinding flour but no evidence was adduced to show that there was electric supply during night. The report of J.E. Electricity Department, Khaga was filed but the same was not proved. Against that report defence version was that there was no such Junior Engineer posted there at that time and the report was forged one. The investigating officer-PW-6 Yadunath Dwivedi, neither visited the electricity department nor he tried to collect the evidence whether there was electric supply in the village on the date of incident or not. He also did not peruse the register maintained at the flour mill. At the grinding mill he did not try to know regarding quantity of flour (Ata) kept there for grinding. Regarding electric supply no evidence was adduced to prove by the prosecution to show that there was electric supply on the date of incident or that flour mill was running for grinding flour during night. According to counsel for the appellant, even if the person would be present inside the room, where flour machine was operational and if there was exhortation or instigation outside the room it would not be practically possible to hear the same. It also appears to be unnatural that if the assailants chosen mid night for committing murder then it would not be expected to raise voice to invite the attention of witnesses present either inside the room or near by places. If the intention was to kill Vijay Pal Singh, who was sleeping in verandah outside the room, then they will shot and ran away from the place even they have not covered their faces to conceal their identify.

19. According to PW-1 Jamrehi Nath Singh exhorted and uttered (Yah Sala Pada Hai, Ise Mar Dalo, Yah Sun Kar Varamade Me Aya, PW-2 stated that Jamrehi Nath Singh Varamade Me Aa Kar Kaha, Mar Do Sale Ko Yaha So Raha Hai, Itna Sunkar Ham Evam Amar Pal Varamade Me Aa Gai. So after uttering above noted words, the accused were invited attention of the witnesses. They were waiting the witnesses to come in the verandah to see the incident and they fired with country made pistol. PW-1 and PW-2 raised alarm, Narendra Singh and Suraj Bhan reached there. According to Narendra Singh he was returning after watching Abdulla film but he did not tell the story of that film and name of actress and actor except the name of Abdulla. Cross examination on behalf of defence was that on the date of incident Abdulla film was not shown rather film Ram and Shyam was shown and there was only one picture hall in Khaga. No evidence was placed to prove that film Abdulla was shown. He was a chance witness and relative of the informant and deceased. His sister was married with Chhatrapal cousin of Amar Pal Singh. According to witnesses since Vijay Pal Singh was breathing, hence he was taken to the hospital but it was unnatural that neither Ram Naresh-servant of the informant and deceased nor any other relative of the informant accompanied him either to the hospital or to the police station. According to prosecution the incident took place at 1.30 A.M. in the night and the First Information Report was lodged at 3.45 A.M. The

distance of the police station was one kilometer towards south. The Investigating officer did not verify whether picture Abdula was shown on the relevant date. Witness Narendra Singh is not only chance but relative also. The investigating officer did not record the statement of doctor of Khaga Hospital. The question was also put to PW-2 that his father Nandu was convicted under section 325 I.P.C. in which accused Jamrehi Nath Singh was doing pairvi in State case under section 325 I.P.C. The trial court given the benefit of doubt to the accused Jamrehi Nath Singh and he was acquitted. The murder of Ram Siroman was committed before the case was committed to the court of Sessions, hence the appeal is only on behalf of the sole appellant Nan Bachcha who was convicted under section 302 I.P.C.

20. In view of the aforesaid discussions, facts and circumstances of the case, the prosecution story becomes doubtful. The prosecution was expected to prove the case beyond reasonable doubt to held the appellant guilty. On the same evidence benefit of doubt was given to one of the co-accused Jamrehi Nath Singh to whom the role of exhortation was assigned. Jamrehi Nath Singh, is father of the appellant and two sons were implicated, hence in view of the abovenoted discussion, the appellant is also entitled for benefit of doubt.

21. Accordingly this appeal is allowed. The impugned order of conviction and sentence dated 12.1.1984 passed by 4th Additional Sessions Judge, Fatehpur passed in Sessions Trial No.263 of 1982 (State v. Jamrehi and Nan Bachcha) arising out of Case Crime No.175/1981, under section 302 I.P.C. P.S. Khaga is hereby set aside. Since the appellant is on bail, hence his bail bonds and sureties are hereby discharged provided he furnish sureties in compliance of the provision under section 437A Cr.P.C. before the trial court. The court concerned shall ensure the compliance of the order. Office to communicate this judgement and order to the court concerned at earliest.