

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1460-1461/2010

KALI PRASAD SINGH ETC.

Appellant(s)

VERSUS

STATE OF UTTAR PRADESH

Respondent(s)

JUDGMENT

1. Heard learned counsel for the parties.
2. The appeals are preferred by the accused-appellants against the conviction and sentence imposed by the Sessions Court and affirmed by the High Court vide judgment and order(s) dated 09.10.2009 for commission of offence under Section 302, IPC.
3. Short facts of the case are that the first informant- Rajendra Singh, resident of Baijnath, Police Station Ramgarh, District Bhabhua, Bihar was preparing for civil services at Allahabad and his brothers Surendra Singh and Abhinav Rathore were residing at Varanasi. A week prior to the incident, the first informant had come to Varanasi from Allahabad. His younger brother Surendra Singh-deceased was working with Topkan Opticals Rathyatra. On 18.02.2000 at about 9 p.m., when his brother did not return from work place, Rajendra

Singh went to look for him towards Mahavir temple. At about 9.30 p.m. Surendra Singh met him near Mahavir temple and they started walking towards their house. The deceased was walking 5-6 paces behind the complainant along with his bicycle. At about 10 p.m., near the house of Pramod Dubey, the accused-Kali Prasad @ Paintol and Santosh Kumar Singh, armed with country made pistol, came from the side lane, caught hold of his brother-Surendra Singh and fired at his neck and temple (*Kanpati*). Hearing the shrieks of the complainant, constable Nepal Singh (PW-3) who also resided in the same locality came out of house and challenged the accused, who ran away. Surendra Singh died instantaneously. A number of close by residents arrived at the scene. The complainant was able to recognize the accused in the light of electric bulb. Ram Narayan was alleged to be the master-mind behind the occurrence who had conspired with the accused to eliminate the deceased.

4. The prosecution examined as many as eight witnesses. Rajendra Singh was the only eye witness and was examined as PW-1, Sanjay Kumar Rai was examined as PW-2, Constable Nepal Singh as PW-3, Constable Uma Shanker Singh as PW-4, SI R.P. Rai who performed the inquest report was examined as PW-5, Inspector M.S. Chaudhary was examined as PW-6, SI Ashok Kumar Pandey who investigated the matter under Section 25 of the Arms Act was examined as PW-7 and J.P. Tripathi was examined as PW-8.

5. Recovery of one country made pistol of 12 bore and 12 bore cartridge was made on 22.03.2000 by the police party led by Ashok Kumar Pandey along with SI Vinod Dubey. Constable Raja Ram Ranjan and constable Sanjay Kumar Ojha received information that one of the accused involved in the murder of Surendra Singh was present in the court campus. He was arrested at 12.10 p.m. and unlicensed arm and cartridge were recovered.

6. The Sessions Court vide judgment and order dated 29.01.2002 convicted both the accused under Section 302 IPC and awarded life imprisonment along with a fine of Rs.5,000/- each. In case of default of deposit of fine amount, they were directed to further undergo six months' imprisonment each. Accused Kali Prasad was acquitted from the charges framed under Section 25 of the Arms Act.

7. The High Court vide judgment and order dated 09.10.2009, dismissed the appeal(s) of the appellants and upheld the conviction and sentence. Hence the appeals.

8. Shri K.T.S. Tulsi, learned senior counsel for the appellants urged that the entire prosecution story was concocted one and the incident has not been witnessed by PW-1 Rajendra Singh. His presence at the spot is doubtful and his deposition does not inspire confidence. Being a solitary witness, his deposition requires closer scrutiny and he is not a truthful witness. He submitted that there is no corroboration of the version of complainant Rajendra Singh

(PW-1). Learned senior counsel also urged that there is manipulation as to the time when the first information was registered, it was ante timed. Apart from that, whether the police reached on the spot before the FIR was lodged or later on, is also doubtful. Learned senior counsel submitted that the complaint has been reduced in the form of written report in his house by PW-1 after he had deliberations and consultation and thereafter he had lodged it at the police station.

9. The incident occurred on 18.2.2000. The FIR has been received by the concerned Magistrate on 21.2.2000, whereas the distance of the Court from the police headquarters was 200 yards. Intimation has been sent belatedly and the same also buttresses the plea that FIR has been ante-timed and the same was registered after giving desired shape to the story later on. The version of the complainant cannot be relied upon in the absence of any corroboration.

10. Learned senior counsel also referred to the inimical background between the parties. With respect to availability of the source of light, there is doubt. The witnesses have given the different heights of walls. As such, it is doubtful whether light was at all available and the same has not been described in the inquest memo prepared by the IO. It was approximately 10 p.m. in the night when the incident had taken place. In the absence of source of light, the entire prosecution story falls down. No test identification parade

was held. It was necessary, as Nepal Singh had seen the accused persons running from the spot. Blackening of skin was not found on the entry wounds at injury Nos.1 and 3 on the person of the deceased, according to the ocular evidence and it appears from the nature of injuries that gun shots were fired from a short distance. Hence the guilt has not been established beyond reasonable doubt and the appellants deserve to be acquitted.

11. Mr. Garvesh Kabra, learned counsel appearing for the State contended that there is nothing to doubt the version of the complainant. The incident had taken place at 10 p.m. The correction made in the FIR as to the time it was lodged has been explained by PW-4 namely, Constable Uma Shanker Singh. The correction was reflected in the carbon copy as well. Thus, it was made at the time of recording of FIR and not later on which was recorded on the basis of the written report submitted by the complainant.

12. With respect to the source of light also evidence indicates that light was coming from the house of Pramod Dubey. There was sufficient light for the identification of the accused. Rajendra Singh (PW-1) had deposed that his brother was murdered at 1 or 2 steps north side of the plot of Dr. S.N. Singh. The height of boundary wall of the plot of Dr. S.N. Singh has been stated to be about six to eight feet in the version of different witnesses whereas the other witnesses except PW-1 have not been cross examined as to the

height of the boundary wall of the house of Pramod Dubey which was stated to be the source of light. The height of boundary wall was 2 $\frac{1}{2}$ feet only.

13. The version of Nepal Singh supports to a great extent the version of complainant PW-1, the fact that the incident had taken place at the time when it was purported to have taken place and presence of the complainant PW-1 at the spot, and he had seen the dead body of the deceased also, namely, Surendra Singh. The solitary eye witness PW-1 is a reliable witness as supported by the other evidence on record. The shots were fired from short distance as stated by Rajendra Singh (PW-1). As regards blackening of skin not being present, the High Court has given a cogent reasoning for holding that since a Jacket was put on by the deceased, mark of blackening powder has not been found on the two entry wounds. The fact remains that gun shots were fired from a short distance and that fact is not disputed and is also established by the nature of injuries caused to the deceased and duly corroborated by medical evidence.

14. Firstly, we come to the question that the first information report has been ante timed. The FIR had been reduced to writing on the basis of the written report lodged by the complainant Rajendra Singh (PW-1). Constable Uma Shanker Singh (PW-4) reduced it to writing. The PW-4 has clearly stated that he prepared Chik No.48/2000 case No.66/2000 under Section 302/120B, IPC. Entry in the general

diary of the police station was made by the SHO at 2305 hours. The carbon copy of the FIR also reflects the position in FIR. The aforesaid documents were marked as Ex.KA-5 and KA-6, respectively. A bare perusal of the FIR indicates that there is no correction as to the time of the offence i.e. 10 p.m. and as to date on which it has been recorded. There is correction in time in writing at 2205 hours or 2305 hours. It appears that figure of 2205 hours has been corrected to 2305 hours. However, considering the fact that carbon copy has also been produced of the document, the same also indicates that 2305 hours was corrected at the time when KA-5 was recorded. The time of 2305 is also supported by general diary entry. Thus, it appears that correction had been made at the time of reducing the FIR to writing at the relevant time and no dent is caused to the prosecution cast as to the time of incident. The date of recording of FIR was 18.02.2000. There is no scope for ante timing the FIR within two hours of night available on 18.02.2000. The FIR cannot be said to be ante timed.

15. Coming to the question of reliability of solitary eye witness Rejendra Singh (PW-1). We have gone through the entire deposition anxiously with the help of learned senior counsel for the appellants. We find that his version is quite truthful. He has clearly stated that one week before the incident he had come from Allahabad to Varanasi. He went out strolling to search for his brother and when he reached

near Mahavir temple he met his brother Surendra Singh and they both started walking towards home. While they were returning back, he was 5-6 paces ahead of Surendra, his brother. When they reached in front of the house of Pramod Dubey at about 10 p.m. Kali Prasad and Santosh appeared from the Western side street. Both of them were having pistols in their hands. They caught his brother Surendra and fired at his temple and neck. His brother fell down. Thereafter on hearing the hue and cry Constable Nepal Singh came out of the house. He challenged the accused persons and ran towards them to catch them but the accused persons fled away towards north side and disappeared. His brother died on the spot. He went to his house and immediately, reduced the report to writing, then went to the police station and lodged the report in the night itself. In the cross examination, it has been deposed that the reason for killing was that there was enmity between them and the accused Kali Prasad had a doubt that deceased was also involved in murder of his brother. On further cross examination, he has clearly stated that there was a case pending regarding beating incident between the parties also under Section 107, IPC. He has also stated that Pramod Dubey and several other persons came out of their houses after hearing hue and cry. There is nothing brought in the cross examination as to doubt the version given by the witness that is medically corroborated also and substantially corroborated by the version of Nepal Singh (PW-3), who came to the spot immediately after gun shots were fired.

16. When we consider the statement of Nepal Singh (PW-3), he has clearly stated that he knew complainant Rajendra Singh. He used to live in the house adjacent to the house where he lived. Rajendra Singh was studying at Allahabad but occasionally he used to stay at Varanasi. The incident took place at about 10 p.m., on 18.2.2000. He was in his house, when he distinctly heard the sound of gun fire, he came out shouting and saw Rajendra Singh (PW-1) was running towards his house and on seeing him complainant, came to him and started narrating the incident. He saw two people running away to the North side. Body was lying in the pool of blood in front of the house of Pramod Dubey. A bicycle was also lying near the body. Thus, he has corroborated version of complainant. He has narrated about the presence of Rajendra Singh at the spot.

17. Coming to the question whether there was any source of light, we find that the height of the house of Pramod Dubey was 2-1/2 feet whereas the height of boundary wall of plot of Dr. S.N. Singh was 6-8 feet as is apparent from the depositions of witnesses. The height of house boundary wall of Dr. S.N. Singh is hardly material for the purpose of the case. The fact remains that there was source of light from the house of Pramod Dubey and boundary wall was stated to be 2-1/2 feet which could not have obstructed the light as suggested in cross examination. Thus, as to the visibility and source of light, we have no doubt as to the version of

complainant.

18. It was further submitted that intimation of first information report has not been sent promptly to the police station. A perusal of the first intimation report dated 18.02.2000 and its receipt indicates that it has been dispatched on 19.2.2000 as it had been sent by post to the Magistrate and received on 21.2.2000. In the circumstances of the case, it cannot be said to be a case of belated intimation particularly, when it was sent by post. In the facts of the case, it cannot be said that the shape has been given to the story later on or that there was delay in receipt of the intimation of the report by the Magistrate. The submission on behalf of accused has no legs to stand in the aforesaid factual matrix of the case.

19. Coming to the submission with respect to the non-presence of the blackening powder, it appears that gun shots have been fired from a close range but exact distance has not been put to Rajendra Singh(PW-1) who is eye witness of the incident. It is apparent and was not disputed rightly that considering the nature of injuries the gun shots were fired from a close range; what was the exact distance has not been brought out. Apart from that, since the deceased was wearing a hooded Jacket, obviously the absence of blackening on the skin could not be found. In the case of hooded Jacket, there may be blackening of the Jacket portion only but at the same time the skin may not have marks. That explains the version

of the doctor that no blackening marks were found on injuries Nos.1 to 3.

20. Thus, we find that the prosecution has proved case beyond reasonable doubt and the High Court and trial Court have rightly convicted the appellants for offence under Section 302, IPC.

21. Considering the facts and circumstances of the case, we find that no case is made out to interfere in the impugned judgment and order(s).

22. The appeals are dismissed. The conviction and sentence imposed by the Courts below are confirmed.

.....J.
[ARUN MISHRA]

.....J.
[NAVIN SINHA]

NEW DELHI;
MARCH 28, 2019.