
(1988) 01 AHC CK 0026
In the Allahabad High Court
Case No : Criminal Appeal No. 999 of 1978

Bacchu Lal Singh and Ors.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-01-1988

Acts Referred:

Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1988) 01 AHC CK 0026

Hon'ble Judges : K.Nath, J and Rajeshwar Singh, J

Final Decision : Allowed

Judgement

Rajeshwar Singh, J.—The Sessions Court convicted Bachchu Lal Singh, Naib Singh, Sheo Narain Singh and Lalau Singh under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life. They have filed this appeal against their conviction and sentence.

2. This case relates to the murder of one Guji Singh. This Guji Singh assaulted accused Lalau Singh and this resulted in fracture of both the bones of a forearm of appellant Lalau Singh. Guji Singh was arrested and he was sent to jail. He was released on bail, two or three days after his release on bail and about 40 days after the earlier occurrence in which fracture was caused to accused Lalau Singh, the present incident occurred. On that day deceased Guji Singh alongwith some of his companions was going to market, from his village Patkhauri. They started from the village at about 11.30 a. m. and reached at about 12.30 noon near one pond called Gulai Talab. There the appellants met the deceased and his party. Appellant Sheo Narain Singh had a spear and remaining accused had lathis. They abused deceased Guji Singh and said that he would not be spared as he had assaulted accused Lalau Singh earlier and it had to be revenged. Appellants started attack with lathis and spear. His companions made a request that Guji Singh be spared but the appellants did not pay any heed. The companions being unarmed could not do anything. The deceased Guji Singh ran towards the pond which was dry. The attack continued. Guji Singh fell down in the pond. Some

persons residing nearby were seen coming towards the spot, then the appellants escaped. A charpai was brought by the companions of the deceased Guji Singh and they proceeded to take Guji Singh who was then alive on that charpai towards the Police Station. On the way Guji Singh died. Then one of the companions of Guji Singh, namely, Gajraj Singh P. W. 1 lodged the First Information Report at the Police Station at 3.15 p. m. The distance of Police Station from village Khargoopur near which the incident took place, is five miles. Thereafter the usual investigation followed and finally chargesheet was submitted resulting in conviction and sentence as said earlier. The Investigating Officer found blood stained earth at the spot and took it in his possession. In postmortem examination ten injuries were found. They were contusions and punctured wounds.

3. Accused pleaded not guilty and they asserted that they had been implicated falsely out of illwill. They did not lead any evidence.

4. Besides the formal witnesses such as Doctor and Investigating Officer the prosecution examined three persons as eyewitnesses. They are Gajraj Singh P. W. 1, Deshraj Singh P. W. 2 and Jagdish Singh, P. W. 3. They all supported the case of prosecution and gave an eyewitness account in support of the prosecution case as has been mentioned earlier. The entire prosecution case rests on the reliability of these three witnesses.

5. It may be pointed out at the very outset that one of these witnesses, namely, Deshraj Singh P. W. 2 is the brother of deceased Guji Singh, Gajraj Singh P. W. 1 and the deceased had a common great grand father. The last witness Jagdish Singh had also common great grand father with the deceased. Thus all the three witnesses are such who are expected to have a soft corner for the deceased and who may be interested in conviction. But, this is no ground to disbelieve their evidence. We have only to look at their evidence with caution and if once their presence at the spot can be established beyond reasonable doubt, it may not be difficult to accept the version given by them. But if their presence at the spot becomes doubtful, then they cannot be relied upon, because they will be interested in petition those persons convicted against whom they have suspicion that they are responsible for committing the murder.

6. These three witnesses claim to have been present on the spot because according to all of them they were going to the market with the deceased as all of them had to make some purchases. So it becomes relevant to examine the theory whether these three witnesses and the deceased were going to market. On behalf of the appellants this theory of going to market is being attacked.

7. The thing is as to how the deceased and the witnesses started from their village. Gajraj Singh P. W. 1 says that all these persons started from the village together and they all assembled in front of his house before starting. He adds that programme of going to market had been settled one and half hour earlier at his door. The other two witnesses do not agree with it. According to them some

of these persons met outside the village while the witness was going to market. Thus, the very theory as to how the persons started from the village and where they met each other, becomes doubtful and this becomes somewhat important in the context that they all belong to one khandan.

8. Deshraj Singh P. W. 2 is brother of the deceased and he is aged only between 18 to 20 years. He says that the deceased was going to market to purchase domestic goods. The witness said that he did not have bush shirt and the deceased replied that this witness should accompany him he would get the such shirt purchased from the market, so this witness accompanied him. Under the circumstances it was expected that the deceased should go to market with some money but on the body of the deceased no money was found, Gajraj Singh P. W. 1 tried to explain by saying that the deceased had a bag with him and he might have taken money with him but he could not tell as to what happened to that bag, even though the deceased was never left alone while he was alive or dead till the dead body was taken in possession by the police.

9. The market where they were going is not less than one and half mile from the village of deceased. It is in a statement of Deshraj Singh P. W. 2 that deceased used to wear Dhoti and Kurta and he owned three or four Dhotis at the time when occurrence took place. But, it will appear from the postmortem report that as regards upper garments they were three, namely, banyan, shirt and saluka. But, he was wearing only underwear and he had no dhoti. It does not stand to reason that the deceased who used to wear dhoti, kurta and who had dhotis, would go to market putting on only underwear. The statement of Deshraj Singh P. W. 2 that whenever the deceased used to go to market be used to put off good clothes and he used to put on inferior clothes does not found true because there seems to be no reason for it. This witness has added that on the date of occurrence Guji Singh had put off his dhoti and he went to market only after putting on underwear. When upper garments were three, there seem to be no reason as to why the deceased would wear only underwear and not dhoti.

10. Thus, the position is that all the eyewitnesses are interested, the deceased is laid to have gone to market to make purchases, but he had no money with him, it is said that he had a bag but none of the prosecution witnesses discloses as to what happened to that bag, and he was going to market putting on only underwear when he had dhotis and he used to wear dhoti. They also differ regarding the place where they met each others. This makes the theory of going to market open to doubt and when once we doubt theory, the presence of the witnesses also becomes doubtful because they claim to be present only because all of them were going to market and not for any other reason. The place of occurrence is not near the village. It is more than one or one and half mile away. Evidence of the eyewitnesses cannot be accepted when their presence itself is doubtful. No doubt, there is strong motive in this case because deceased had earlier assaulted one of the appellants and he was killed two or three days after his being released on bail. But, conviction cannot be recorded only on the basis

of the motive. It may be that only some of the appellants or some persons hired by the appellants, might have killed the deceased but when none has seen the occurrence, these appellants cannot be convicted merely on the basis of suspicion, So the appeal will have to be allowed.

11. We, therefore, allow the appeal and set aside the conviction of the appellants and sentence passed against them. They are found not guilty of the charge under Section 302 read with Section 34, I. P. C. and they are acquitted of the same. Learned counsel for the appellants informs that the appellants are bail. Their bail bonds are discharged and they need not surrender to them.

Appeal aliened.