
(2004) 07 AHC CK 0195
In the Allahabad High Court
Case No : Criminal Appeal No. 1154 of 1981

Bharat Singh and Others (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-07-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2004) 3 ACR 3019 : (2005) 98 RD 203 : (2005) 1 RD 203

Hon'ble Judges : M.C. Jain, J; D.P. Gupta, J

Bench : Division Bench

Advocate : P.N. Misra and Apul Misra, for the Appellant; Sudhir Kumar Agarwal and T. Rathore, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—Harnam Singh, Bharat Singh, Bharat Singh's son Awadh Bihari Singh and Ram Pal Singh were named as accused of Case Crime No. 42 of 1979, P.S. Derapur, District Kanpur. Out of them, Harnam Singh came to be murdered after the incident. The remaining three namely, Bharat Singh, Awadh Bihari Singh son of Bharat Singh and Ram Pal Singh were charge-sheeted and tried in Sessions Trial No. 141 of 1979 before the IVth Additional Sessions Judge, Kanpur for committing the murder of one Jagdeo Singh at about 5.30 p.m. on 13.3.1979 in the graveyard of one Mendhi Manihar in village Bachit Bhartu. They came to be convicted u/s 302 read with Section 34, I.P.C. and each sentenced to life imprisonment by judgment dated 16.5.1981/19.5.1981. All these three preferred this appeal. Bharat Singh and Ram Pal Singh died during the pendency of the appeal. The appeal in respect of the former abated under order dated 5.4.2004 and in respect of the latter under order dated 28.4.2004. The Court is, therefore, presently concerned only with Awadh Bihari Singh son of Bharat Singh.

2. The relevant facts may be set out for appreciation of the discussion that has to follow.

3. Of the incident in question, the F.I.R. was lodged the same day at 10 p.m. by Vishwanath Singh nephew of the deceased Jagdeo Singh. Accused Bharat Singh and some others had committed triple murder of one Mukut Singh, his wife-Chameli and daughter Raja Beti in 1977. The deceased of the present crime, namely, Jagdeo Singh had appeared as prosecution witness in that triple murder case. Two persons, namely, Ghanshyam Singh and Babbu Singh were convicted and sentenced to death by the Sessions Court in that case on 8th March, 1979. That apart, litigation was going on between Harnam Singh and Smt. Bimla Kunwar in consolidation court. The deceased Jagdeo Singh was doing pairvi in that case from the side of Smt. Bimla Kunwar against Harnam Singh. This was the background of the present case.

4. On the fateful day and time, Jagdeo Singh was returning to his village on cycle from Sithmara village market. He was being followed by his nephew Vishwanath Singh P.W. 2 and Surya Pal Singh on another cycle. When these persons reached the graveyard of Mehendi Manihar within the limits of village Bachit Bhartu, Harnam Singh and the remaining three accused-Appellants named above emerged out from an adjoining field and rushed towards Jagdeo Singh. Harnam Singh shouted that he should be killed and should not be allowed to escape. On the alarm raised by the informant Vishwanath Singh P.W. 2 and his companion on the cycle, witnesses Jagdish Prasad, Aniruddh Singh, Jai Karan Singh, Chhedi Lal and several others reached there. In the meanwhile, Harnam Singh and three accused-Appellants threw hand grenades on Jagdeo Singh with the result that he fell down and died on the spot. The assailants then took to their heels.

5. Vishwanath Singh P.W. 2 prepared an F.I.R. and lodged the same at the police station Derapur, the distance of which was about 11 miles from the scene of occurrence. Head Constable Shiv Raj Singh P.W. 4 prepared the chick report and registered a case on the basis of the same. The case was investigated by S.I. Lallan Rai P.W. 6 who was posted as S.O. of the police station. He rushed to the spot on 13.3.1979 itself. The investigation was conducted as usual. Omitting unnecessary details, it should be stated that post-mortem over the dead body was conducted by Dr. M. K. Awasthi P.W. 1 on 15.3.1979 at 3 p.m. The deceased was about 35 years of age and had died about two days before. The following ante-mortem injuries were found on his person:

(1) Extensive lacerated wound 19 cm. ? 18 cm. ? brain cavity deep on the head extending from forehead to occipital and just above the left ear, 7 cm. above the right ear. All the skull bone fractured. Left temporal, both parietal, frontal and occipital fractured into multiple pieces. Bone pieces embedded into brain substance. Brain matter lacerated and exposed. Skin around the wound in an area 9 cm. ? 8 cm. absent. Margins of wound charred surrounding hair partly burnt.

(2) Extensive lacerated wound 13.5 cm. ? 10 cm. ? oral cavity deep on the left side of face and neck extending from left angle of mouth to the neck behind and below left ear and from left ear to neck below. Skin and muscles of the area

absent. Charring of skin present around the wound. Left mandible fractured into multiple pieces and exposed. One piece of mandible with three teeth, one molar and two premolar missing from upper jaw. Upper jaw fractured and two molars of left side missing. Pieces of thread and 14 pellets removed from the under tissue. Bigger vessels of left side neck ruptured underneath.

(3) Extensive lacerated wound 18 cm. ? 16 cm. ? abdominal cavity deep on the left side of back in lumber region, extending from renal angle to iliac crest and from mid axillary line to .5 cm. away from spine. Margins of the wound charred, skin and muscles absent on the area of wound. Left kidney and bowel exposed. 17 pellets removed from the surrounding underlying tissues.

(4) Superficial burn 10 cm. ? 4 cm. on the front of right wrist and right forearm lower part, blackening and charring present.

(5) Muscle deep burn on the front of left ring finger in the middle 6 cm. ? 1 cm. Blackening present on the margins.

(6) Muscle deep burn 2 cm. ? 1 cm. on the left little finger in proximal 1/3rd region, blackening present on the margins, one sealed packet containing 45 pellets and pieces of threads removed from the wound and various organs.

As per the opinion of the Doctor, the cause of death was shock and haemorrhage as a result of extensive blast injuries.

6. The defence was of denial and of false implication due to enmity.

7. The prosecution in all examined 7 witnesses in support of its case besides relying on documentary evidence. Out of the witnesses, Vishwanath Singh P.W. 2 and Jai Karan Singh P.W. 3 were the witnesses of fact.

8. Four defence witnesses were also examined out of whom three were examined for Ram Pal Singh who has since died. D.W. 4 Narottam Singh was examined to say that he had heard the blast at about 8-9 p.m. at his house. He reached the graveyard of Mehendi Manihar and found Jagdeo Singh lying dead in a pool of blood and none of his family members was there at that time. He sent one Ranbir Singh to the deceased's house to pass on the information. Obviously, he was examined to counter the prosecution case that the incident took place at about 5.30 p.m.

9. The case and evidence of the prosecution appealed to the trial Judge who recorded the impugned judgment.

10. We have heard Sri P. N. Misra, learned Senior Advocate and Sri Sudhir Kumar Agarwal, learned A.G.A., in opposition of the appeal.

11. The finding of conviction has been assailed on the grounds that there was equal motive on the part of the prosecution side of false implication of the accused-Appellants including the surviving accused Appellant Awadh Bihari ; that Vishwanath Singh P.W. 2 and Jai Karan Singh P.W. 3 were not at all present at the

spot and at any rate, they were chance witnesses ; that the F.I.R. was ante-timed and delayed one and so was the inquest report and that the incident took place later than 5.30 p.m. on 13.3.1979 under the cover of darkness. On the other hand, the learned A.G.A. has supported the impugned judgment on the reasoning adopted by the learned trial Judge. We propose to examine the worth of the arguments advanced at the Bar in the following discussion.

12. Taking up the question of motive first, it should be stated that the factum of enmity between the prosecution side and the accused-Appellants was an admitted fact. The surviving accused-Appellant Awadh Bihari is the son of the deceased accused-Appellant Bharat Singh. Bharat Singh had three other brothers- Mukut Singh, Nawab Singh and Pratap Singh. Nawab Singh was the father of Ghanshyam Singh and Pratap Singh was the father of Babbu Singh. The deceased accused-Appellant Ram Pal Singh was the real brother-in-law of Ghanshyam Singh son of Nawab Singh. All these facts have come in the testimony of eye-witness Vishwanath Singh P.W. 2 who also stated that the deceased accused-Appellant Harnam Singh and Bharat Singh belonged to the same khandan and formed one party. It is also an admitted fact that Mukut Singh, his wife and daughter were murdered wherefor Bharat Singh, Nawab Singh, Awadh Bihari, Ghanshyam and Babbu Singh were prosecuted. Out of them, Ghanshyam Singh and Babbu Singh were sentenced to death by the Court of Sessions on 8.3.1979 whereas, the rest were acquitted. It is also there in the testimony of Vishwanath Singh P.W. 2 that his uncle Jagdeo Singh (victim of the present felony) was a prosecution witness and pairokar from the side of the prosecution in that triple murder case. This was one of the grounds of enmity between the accused-Appellants and others on the one hand and the deceased victim Jagdeo Singh on the other. Further, Vishwanath Singh P.W. 2 stated that Bharat Singh had made false report u/s 325, I.P.C. against his uncle Jagdeo Singh in 1978 but a final report was submitted in that case. Jagdeo Singh got a case u/s 302, I.P.C. registered against Harnam Singh about 5-6 years before which was pending when the statement of Vishwanath Singh P.W. 2 was recorded in the present case. A suggestion was made to Vishwanath Singh P.W. 2 in his cross-examination that Jagdeo Singh was a witness of conspiracy only in the triple murder case.

13. There was yet another cause of enmity. Vishwanath Singh P.W. 2 stated that one Durga Singh had two daughters from his first wife. His first daughter Km. Vidya Kumari died while the second daughter Bimla Kumari was married to Chandra Bhushan Singh of village Newari. After the death of his first wife, Durga Singh performed second marriage with Smt. Sunder Kunwar. Durga Singh also died sometime afterwards leaving behind his wife Smt. Sunder Kunwar and daughter Smt. Bimla Kumari from his first wife. A litigation started between Sunder Kunwar and Bimla Kumari in consolidation court. Sunder Kunwar developed illicit relation with Harnam Singh. The victim deceased Jagdeo Singh was doing pairvi from the side of Bimla Kumari.

14. The defence filed certified copy of the charge-sheet dated 26.12.1974 in a case u/s 147/148/149/307, I.P.C. of police station Derapur showing that Jagdeo Singh was one of the 8 accused in that case and Bharat Singh and Harnam Singh were the prosecution witnesses. This document also established some common bond between Harnam Singh and Bharat Singh on one hand and their ardent enmity with the deceased victim Jagdeo Singh on the other.

15. So, having regard to the background narrated above, the enmity between the deceased and the accused was an admitted fact. When two parties are at daggers drawn and there have been various incidents between them, it is not possible to reach any conclusion on the basis of enmity. As is well known, motive is a double edged weapon. If due to ill-will and hostility, one is impelled to perpetrate a crime on his opponent, another-seized of suitable opportunity, may be prompted to falsely implicate the opponent to wreak vengeance. In view of the persisting hostility between the two sides, the accused could be motivated to commit the murder of Jagdeo Singh but, as we observed, the motive alone is not sufficient to reach any definite conclusion. The determining factor would be the conclusion drawn from the close scrutiny of the evidence adduced on record. We need not dilate more on the aspect of motive in the present case.

16. The accused-Appellants assailed the F.I.R. to be delayed as well as ante-timed. The time of incident is also assailed with the contention that the incident took place sometime later under the cover of darkness. On scrutiny, we find all these three submissions to be barren of force. Both the eye-witnesses, namely, the informant Vishwanath Singh P.W. 2 and Jai Karan Singh P.W. 3 stated that the occurrence took place in the graveyard of Mehendi Manihar at about 5.30 p.m. The F.I.R. was lodged the same night by the eye-witness Vishwanath Singh P.W. 2 at 10 p.m. The distance of the police station from the place of occurrence was about 11 miles. Looking to the distance, lodging of the F.I.R. at 10 p.m. cannot be said as delayed. The informant Vishwanath Singh P.W. 2 had seen the ghastly murder of his own uncle by bomb blast. Naturally, such a crime leaves a close relative eye-witness aghast. It is there in the testimony of Vishwanath Singh P.W. 2 that after 10-15 minutes of the incident, he sent Chhedi to his house to pass on information of the crime. He stayed at the spot for about 1-1/2 to 1-3/4 hours and then proceeded to the police station to lodge the F.I.R. We do not think that he could be expected to run to the police station to lodge the F.I.R. immediately after the incident like a computer leaving all others behind.

17. The alternative argument of the F.I.R. being ante-timed also does not bear the test of scrutiny. Learned Counsel for the accused-Appellants tried to support this submission that the incident took place under the cover of darkness from the statement of Narottam Singh D.W. 4. This defence witness stated that he was resident of a village about 3 furlong away from the spot (graveyard of Mehendi Manihar). According to him, he had heard the blast sound at about 8-9 p.m. and then he had reached the spot where he saw Jagdeo Singh lying dead. Learned Counsel for the Appellants also referred to the statement of Dr. M. K. Awasthi

P.W. 1 who conducted autopsy on the dead body and stated that the death could have taken place at about 8 or 8.30 p.m. on 13.3.1979. The speculative probability coming forth from the statement of the Doctor cannot eclipse the confidence inspiring evidence of the prosecution that the incident actually took place at about 5.30 p.m. The attending circumstances also indicate that there was no ante-timing of the F.I.R. at all. A number of factors are lined up to support our this view. The F.I.R. was lodged on that very day at 10 p.m. and the distance of the police station was 11 miles from the place of occurrence. Had the occurrence taken place at 8 or 9 p.m., it could not be possible for the informant to report the matter to the police station at 10 p.m. The lodging of the F.I.R. at 10 p.m. goes to suggest that the occurrence took place at about the time alleged by the prosecution. Had the occurrence taken place under the cover of darkness at about 8 or 9 p.m. without any witness being around, the lodging of the F.I.R. at 10 p.m. was not possible. In that event, the report would have been lodged sometime in the next morning. That apart, at the time of the incident, the victim and the witnesses were returning from the village market Sithmara. There could be no sense in their returning from the village market in the night hours. It is common knowledge that village markets are over before sunset and people generally return to their village(s) before darkness sets in. Judged from all probable angles, the incident took place at about 5.30 p.m. as is the case of the prosecution.

18. The Investigating Officer had reached the spot in the night itself. Learned Counsel for the Appellants contended that admittedly, dog squad had been summoned on 14.3.1979, meaning thereby that it was not known by then as to who had committed the crime, as otherwise the dog squad would not have been pressed into service. On this premise, he also sought to castigate the presence of the eye-witnesses, who according to him, later on posed to be eye-witnesses of the incident. SI. Lallan Rai P.W. 6 explained that the dog squad and field unit were called for investigation. The fact that the dog squad reached the village at 9 a.m. on 14.3.1979 itself guarantees that the F.I.R. had been lodged on 13.3.1979 at 10 p.m., as otherwise it would not have been possible to summon the dog squad at the time it reached the spot. If the F.I.R. had been lodged in the morning of 14.3.1979, then the dog squad would have reached sometime in the afternoon of 14.3.1979 and not before as they had to go from Kanpur. It, therefore, appears to be correct that the F.I.R. was lodged on 13.3.1979 at 10 p.m. and thereafter information was sent to summon the dog squad with the result that it could be available on 14.3.1979 by 9 a.m. The Investigating Officer further clarified that he had summoned the dog squad, not for finding out the culprits as their names were already mentioned in the F.I.R. but with a view to find out more bombs of the like nature from the possible places of hiding of the accused. The explanation of the Investigating Officer appears to be justified and plausible. Summoning of the dog squad cannot lead to the inference that it was summoned with the object of finding out the real culprits. Ordinarily, the help of dog squad is taken in cases where the identity of culprit(s) is not known but it

does not necessarily follow that the dog squad is employed for no other purpose than for tracing the real culprits. Dog squads help in other aspects of the investigation also.

19. The next submission of the learned Counsel for the Appellants is that the inquest report was belatedly prepared on 14.3.1979 and that it does not contain the names of the culprits. We note from the inquest report that its preparation was started on 14.3.1979 at 9.05 a.m. and completed at 11 a.m. The inquest report was not prepared by the Investigating Officer Lallan Rai, S.O., P.W. 6 through S.I. Chhavi Raj and it contains his signature also. The report itself having been lodged at the police station on 13.3.1979 at 10 p.m., the argument does not hold water that its preparation commenced around 9 a.m. the next day can be treated to be delayed by any standard. Non-mention of the names of the culprits herein is also of no consequence. The crime number is found noted herein as also the time of the lodging of the F.I.R. including the name of the informant. The object of holding the inquest is simply to make an investigation and draw up a report of the apparent cause of death, describing such wounds, fractures and other marks of injury as may be found on the body of the deceased and stating in what manner or by what weapon or instrument, if any, such marks appear to have been inflicted. That means, it is not necessary that the names of the assailants or the names of the witnesses should be contained in the inquest report. There is no column either in the inquest report for recording the name(s) of the culprits. The argument built up by the learned Counsel for the Appellant relating to the inquest report does not gain any point in his favour.

20. Another submission of the learned Counsel for the Appellants is that the statement of Jai Karan Singh P.W. 3, an eye-witness was recorded by the Investigating Officer on 15.3.1979. He meant to suggest that it was recorded with delay. The argument does not impress us. The Investigating Officer had reached the spot on 13.3.1979 at about 11.30 p.m. and had then recorded the statement of the informant. The remaining part of the investigation was postponed for the next day and there was nothing unusual or unnatural in it. The name of Jai Karan Singh P.W. 3 was there in the F.I.R. as an eye-witness. On 14.3.1979 the Investigating Officer remained busy in other activities related to the investigation including the preparation of inquest report and other documents, also making efforts for laying hands on the accused etc. He was not supposed to record the statement of eye-witness Jai Karan Singh P.W. 3 on top priority, leaving all other important aspects. As stated, his name being there in the F.I.R. as eye-witness, recording of his statement could be postponed to the following day and he did record his statement on 15.3.1979. It does not cast any cloud as to the presence of Jai Karan Singh P.W. 3 at the spot or the authenticity of his statement.

21. On bestowing our careful consideration, we find that the criticism against the testimony of eye-witnesses Vishwanath Singh P.W. 2 and Jai Karan Singh P.W. 3 is also without foundation and is unsustainable. No doubt, Vishwanath Singh P.W.

2 is the nephew of the deceased Jagdeo Singh, but if the witness is related to the deceased, he would naturally be interested in ensuring that the real culprits are punished and not screened. Evidence of close relative of the victim of the crime cannot be doubted on the ground that his deposition is partisan. The Supreme Court has held in the case of Angnoo and Others Vs. State of Uttar Pradesh, , that if a witness is brother of the deceased, fact of his relationship would add to value of his evidence because he would be interested in getting the real culprit, rather than innocent persons punished. In the case of Piara Singh and Others Vs. State of Punjab, , the Supreme Court ruled that the evidence of the interested or inimical witnesses has to be scrutinized with care but cannot be rejected merely on the ground of being a partisan evidence. If on perusal of the evidence the Court is satisfied that the evidence is creditworthy, there is no bar to the Court relying on the said evidence. Yet in another case of State of Uttar Pradesh Vs. Suresh alias Chhavan and Others, the observation of the Supreme Court is that the statement of a family member of the deceased cannot be rejected on the ground that he is related to the victim. What is required is that the statement is to be scrutinized with care.

22. In the present case, both the eye-witnesses gave cogent reason for their presence at the spot at the time of the incident. The consistent case of the prosecution is that the deceased was returning from the village market of Sithmara. Vishwanath Singh P.W. 2 was also returning from the market on another cycle with Surya Pal. Jagdeo Singh was about 20 paces ahead of him. Since there were two persons on the cycle of this witness, naturally its speed was a bit slow than that of Jagdeo Singh. Jai Karan Singh P.W. 3 was also returning from Sithmara market on foot with Chhedi. Near the graveyard of Mehendi Manihar, Jagdeo Singh deceased (on cycle) had crossed him and then Vishwanath Singh and Surya Pal Singh on another cycle had crossed him. Naming all the accused persons the two witnesses stated that they emerged from Arhar field of Ram Adhar which was adjacent to the graveyard of Mehendi Manihar and hurled hand grenades on Jagdeo Singh at the exhortation of one of them Harnam Singh. A look at the site plan shows that Arhar field of Ram Adhar Pradhan was in the north of the graveyard of Mehendi Manihar. The defence could not suggest that there was no market on that day in village Sithmara. There is no reason to disbelieve the prosecution version that it was a market day in village Sithmara. On the market day, a number of persons of the adjoining villages go there as is the common practice. The purpose may be to make purchases or even to meet friends and acquaintances. It is common practice in village folk to move in groups after the close of market or from fair, exhibition etc. Indeed, a man is a social animal who prefers to move in group, rather than going alone unless the same is not practicable. In the instant case, the time was for the people to return to their respective villages from Sithmara market. Therefore, it was no wonder that the persons of the village of the deceased or of that side were also journeying at the fateful time in that direction. It was not at all unnatural or unusual that Vishwanath Singh P.W. 2 (nephew of the deceased) and Jai Karan

Singh (P.W. 3) whose way also lay in the same direction, were returning at about the same time and happened to be at the spot almost together. Thus, there was every possibility for these two witnesses to witness the incident. Jai Karan Singh P.W. 3 was an independent witness also with no animus against any of the accused. There was no reason whatsoever to disbelieve his testimony. The testimony of the two eye-witnesses is consistent on all material points as to the manner of the incident and about the culprits (accused) who committed this crime.

23. We should also put it here that J. B. Singh P.W. 5 Deputy Controller of Explosive North Circle, Agra had examined the particles or remnants of alleged hand grenades picked from the spot by the Investigating Officer Lallan Rai P.W. 6. He stated that the contents were found to be explosive mixture of Chlorate of Potassium and Sulphide of Arsenic. The round objects (marked B1 and B2) were of a home made bomb of throw down type capable of endangering life on explosion. The defence also does not challenge that the deceased was killed by some other arm. Therefore, it is firmly established that the deceased was killed by home made bombs.

24. Taking stock of various aspects of the matter, the prosecution successfully established its case through the testimony of the two eye-witnesses that the incident took place on the given date and time and culprits were the four accused including the surviving Appellant Awadh Bihari Singh. They threw hand grenades on the unfortunate and unarmed victim Jagdeo Singh who was returning from Sithmara market on a cycle. The ocular version is consistent with medical evidence and that of the explosive expert. The crime was committed with premeditation and preparation in a most inhuman and cruel manner by throwing of hand grenades. The surviving accused-Appellant played potent and active role, by himself also throwing the bomb on the deceased, killing him at the spot. The offence was committed by him and the remaining three accused (now dead) in furtherance of their common intention. None of the arguments of the learned Counsel for the accused-Appellants is capable of being accepted. The appeal is wholly devoid of substance and merit. We are inclined to dismiss it.

25. The appeal is hereby dismissed. One of the accused-Appellants, namely, Harnam Singh was murdered after the incident. The appeal has abated in respect of the accused-Appellants Bharat Singh and Ram Pal Singh. The surviving accused-Appellant Awadh Bihari Singh shall undergo the sentence of life imprisonment awarded to him by the learned trial court u/s 302 read with Section 34, I.P.C.