
(2007) 07 AHC CK 0189
In the Allahabad High Court

Bhurey Singh and Shiv Nath Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 302, 396

Citation : (2007) 07 AHC CK 0189

Hon'ble Judges : S.K. Jain, J;K.S. Rakhra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.S. Rakhra, J.—This is an appeal against the judgment and order dated 25.1.1982 passed by the VIth Additional Sessions Judge Mainpuri in Sessions Trial No. 376 of 1981 by which he convicted two appellants Bhurey Singh & Shiv Nath Singh under Sections 302 I.P.C. and sentenced them to life imprisonment. Out of the two appellants, the appeal of appellant No. 1 Bhurey Singh stands abated as he has died during the pendency of the appeal.

2. Admittedly both the appellants were cousin brothers and they are named as accused in the first information report lodged by Chokhey Lal on 21.5.1981 at 8.15 p.m. at police out post Kusmara District Mainpuri. It was alleged that he along with his father Soney Lal, father in law Salik Ram and co-villager Anokhey Lal who were returning from Kusmara Bazar and when they reached near village Kamalner they were encountered by Bhurey Singh and Shiv Nath Singh who were armed with their licensed guns. Both the accused opened fire on Soney Lal killing him on the spot. This incident took place at about 6.30 p.m. On hearing the sound of firing, Ram Autar and Devi Deen also reached there. The culprits on seeing the witnesses and on being challenged ran away.

3. S.I. Dhaniram Sharma commenced investigation who after collecting necessary documents from police out post Kusmara went to the place of occurrence and found dead body of Soncy Lal on the spot. After making a

cursory examination of the dead body, he recorded the statement of informant Chokhey Lal and the witness Anokhey Lal P.W. 2. Thereafter he left in search of culprits leaving dead body on the spot in the care of constables who had accompanied him. He took search of the house of two named accused but could not get them. Next day on 22.5.1981 at 7.00 a.m. He held inquest which was concluded by 9.00 a.m. The dead body was sealed and sent for autopsy along with relevant papers prepared by the investigating officer. From the place of occurrence he collected blood stained and plain earth and had also taken into his possession two "Khokhas" of the cartridges fired by the culprits. Thereafter he made a spot inspection and prepared site plan. He then again set out in search of the accused persons and on the basis of confidential information received, apprehended both the accused persons namely Bhurey Singh and Shiv Nath Singh on 22.5.1981 itself and recovered from their possession their licensed guns. Ex. Ka 12 and Ex. Ka 13 are the memos of their arrest and recovery from them. He also found blood stains on the clothes of the arrested accused persons and took them into his possession. Finding sufficient evidence against them, he filed charge sheet against both Bhurey Singh and Shiv Nath Singh.

4. Motive for commission of this crime as indicated in the first information report without further elaboration was old enmity. The evidence adduced by the prosecution in this regard however was that about twenty years ago in a property partition dispute between appellant Shiv Nath Singh and his uncle Bhikham, deceased Soncy Lal had helped Bhikham to get the property. Another motive for the commission of this crime was an incident which took place a day before in which the deceased had admonished two accused persons who were pressurising one Riyasat to give them money for buying "tari" (country liquor). No other enmity has been suggested by the witnesses.

5. In the trial court prosecution examined only four witnesses to prove their stand. Two of them namely Chokhey Lal P.W. 1 and Anokhey Lal P.W. 2 are the eye witnesses whereas remaining two are investigating officer and the doctor who conducted post mortem examination.

6. Dr. S.C. Agarwal P.W. 4 had conducted autopsy on 22.5.1981 at 1.30 p.m. And had found following ante-mortem injuries on the body of the deceased Soney Lal.

i) Oval G.S.W. 3 cm x 3 cm x through & through on the anterior part of trays of left ear. Blackening, charring present around the wound. Margins inverted wound of entry.

ii) G.S.W. 6 cm x 3 cm x through & through in relation to injury No. 1 at the back of right ear. No blackening, charring, margins everted wound of exit.

iii) G.S.W. 4 cm x 4 cm x through & through on the anterior aspect of upper part of right arm. Blackening charring present margin inverted wound of entry. Fracture of underlying bone.

iv) G.S.W. 5 cm x 5 cm x through & through on the outer side of middle of right

arm is related to injury No. 3 margin everted, wound of exit.

v) Seven G.S.W. on the front of chest involving right side chest just below the collar bone, front of middle of chest and lower half of left side of chest 1 cm inside the left nipple. Direction from right to left and above downwards, Sizes of 2 wounds just below the right collar bone is ? cm x ? cm x cavity. 3 wound on the middle of left chest. Sizes 1 cm x 1 cm x cavity. 2 wounds on the lower part of left side of chest sizes 1"1/2 cm x 1"1/2 cm x superficial skin deep. No blackening charring or tattooing ,margins inverted wound of entry.

vi) One oval G.S.W. 1 cm x 1 cm x cavity deep on the right side of back just inside the middle of scapula. No blackening charring, wound of exit Margin everted.

7. In his opinion cause of death was shock and haemorrhage and brain injury as a result of ante-mortem injuries. Both the occipital bones were found fractured and brain was badly lacerated. Stomach contained 4 ounces of semi-digested food and in the large intestine faecal matter was present. In the opinion of this witness, death had occurred in the ? day ago. Both Chokhey Lal and Anokhey Lal P.W. 1 & 2 have tried to fully support the prosecution story and stated that they were returning from Kusmara Bajar and when they reached near village Kamalner the accused persons fired at Soney Lal at about 6.30 p.m. killing him on the spot.

8. Since Soney Lal, Saliq Ram, Chokhey Lal, Anokhey Lal were coming together and none of the remaining persons received any injury, the witnesses explained by saying that shortly before the place of occurrence, Chokhey Lal sat down to urinate, Salik Ram and Anokhey Lal also halted there whereas Soney Lal kept on walking and moved ahead. Thus according to these witnesses when firing took place, Soney Lal was separately walking and therefore, his three companions did not receive any injury. Chokhey Lal P.W.I stated that Devi Din and Ram Autar also reached there on hearing sound of firing and tried to apprehend the accused persons. Culprits then fired two more shots on Soney Lal and ran away. Chokhey Lal prepared a written report of the incident on the spot itself and lodged it at police out post Kusmara at 8.15 p.m. According to him, police from outpost came to the place of occurrence along with investigating officer and interrogated him at about 10.45 p.m. In the same night spot inspection was made but inquest was held next day morning between 7.00 a.m. & 9.00 a.m. Site plan was also prepared on the next day.

9. Similarly Anokhey Lal P.W. 2 who was aged about 70 years supported the prosecution story. According to him after Soney Lal was fired at by the accused persons and fell down, witnesses Ram Autar and Devi Deen reached the place of occurrence and when they tried to chase culprits, they shot two more fires but these fires did not cause injury to anyone and were made only to scare witness. Subsequently on the adjourned date this witness improved his statement by saying that four shots were fired on Soney Lal.

10. The defence version was that Soney Lal had enmity with several persons. He was done to death by unknown persons in dark hours and the first information report was prepared subsequently ante-timed naming the accused persons falsely.

11. With regard to enmity of deceased with other persons P.W. 1 Chokey Lal was cross-examined but he gave evasive replies avoiding any definite statement. He stated that he does not remember whether Soney Lal along with Tukbhan Singh faced trial for the murder of Uma Shanker. Similarly he does not remember that Soney Lal was an accused and faced trial in a case u/s 396 I.P.C. concerning dacoity in the house of a Pandit of village Kamalpur.

12. The first informant admitted that according to village relationship Anokhey Lal was uncle of deceased Soney Lal and belonged to his "Biradari". The witness Ram Autar named in the first information report but not produced by the prosecution, is real "Sala" of brother of the first informant. Devi Deen another witness named in the first information report is also of the "Biradari" of Ram Autar and belonged to his village although informant denied the suggestion that Devi Deen is brother of Ram Autar.

13. On the above evidence, the trial court has found prosecution case proved and has accordingly convicted both the accused

14. We have heard Sri I.K. Chaturvedi, learned Counsel for the appellant Sri S.K. Agarwal, learned AGA assisted by Sri Akhilesh Singh learned Counsel for the complainant and have carefully perused the record.

15. Learned Counsel for the appellant argued that the appellant has been falsely implicated. The deceased was done to death by unknown persons in dark hours. The first information report is ante-timed and was in fact prepared after the arrest of the accused persons. He also submitted that ocular version is highly improbable and the witnesses made improvement in their statements to bring it in conformity with the medical evidence. It was also highly improbable that the accused persons could be found moving in the same vicinity wearing blood stained clothes and carrying their guns which they had used in the crime. On the top of all this, it has been argued that the prosecution has withheld the best evidence which they could have produced against accused persons. It was argued that licensed guns which were used and fired cartridges were found by the investigating officer. The investigating agency could have sent these articles for ballistic expert opinion to confirm that cartridges were fired from the guns of the accused persons. Similarly it has been argued that blood stained clothes of the accused persons should have been sent for chemical examination to get a positive report that they carried stains of the blood of the deceased. Neither the investigating officer has done this nor did the prosecution, during trial, tried to produce any such evidence.

16. After considering the submission of learned Counsel and examining the evidence led by the prosecution we are of the opinion that the trial court has

wrongly believed the testimony of the witnesses and has come to wrong conclusion holding the accused guilty. We agree with the argument of learned Counsel that when guns of the accused persons were recovered by the investigating officer and the crime cartridges were also recovered, it was necessary, to come to a right conclusion, that they should have been sent to ballistic expert for report. In Sukhwant Singh Vs. State of Punjab, , the Apex Court has held that "in cases where injuries are caused by fire arms, the opinion of the ballistic expert is of a considerable importance where both the fire arm and the crime cartridges are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent."

17. It is significant to note that according to the prosecution both the accused persons were apprehended by the police on the very next day of the crime i.e. On 22.5.1981. S.I. Dhaniram Sharma the investigating officer has stated that while he was in search of the accused persons he got a confidential information that the two accused persons have gone towards canal bridge in village Danaus. On this information at about 1 "O" clock in the noon, he went towards the said bridge and apprehended both the accused. He had collected blood stained clothes of the accused persons. Although it was a case of firing by accused and nobody claimed that the accused had also received any injury in the incident the prosecution claimed that stain of blood on the clothes of accused persons were that of the blood of deceased. The investigating agency has not obtained any report from the chemical examination confirming the deceased's blood on the clothes of the accused persons.

18. In the circumstances of the case on the principles as was laid down by Apex Court in Sukhwant Singh's case with regard to ballistic expert opinion about fire arm and cartridges we are of the view that failure to get chemical examiner's report further shakes creditworthiness of the prosecution case.

19. The record of the lower court shows that when the two accused were remanded to judicial custody and were lodged in jail, they had several injuries on their person. Under the order of the remand magistrate the jail doctor examined them on 28.5.1981. Following injuries were noted by the doctor on Bhurey Singh.

- i) Lacerated wound 3 x 1 cm on outer aspect of left elbow.
- ii) Traumatic swelling 15 x 13 cm on the dorsum of right foot.
- iii) Traumatic swelling 26 cm x 6 cm around right ankle joint. The injuries in the opinion of doctor were six days old.

20. Similarly Shiv Nath was examined on 25.5.01 and following injuries were found on him.

- i) Contusion 5 cm x 5 cm on lower part of left forearm.

ii) Traumatic swelling 26 cm x 14 cm extending from lower part of right leg to dorsum of foot. There was fracture of right leg.

iii) Contusions on 6 cm x 4 cm on left ankle joint.

21. The injuries were reported to be six days old. The investigating officer has concealed them and has not given any explanation. The defence case is that both accused were present near dead body when inquest was being held and they were subsequently implicated on the interference of S.I. Hari Singh and Tukbhan Singh, related to the deceased. They were then taken to Kusmara where they were beaten and their arrest was shown along with recovery of guns. In view of the conduct of the investigating officer, the defence suggestion appears to be credible.

22. In addition to above, there are further shortcomings in the prosecution case raising serious suspicion. The defence is claiming that the first information report is ante-timed. It is significant to note that although the investigating officer had reached the place of occurrence in the same night and there was light of lantern and some more light could be arranged, since the place of occurrence was very close to village Kamalner and village Sakara, there was no justification for delaying the inquest. The investigating officer however gave a lame excuse for delay in the inquest by saying that he got himself engaged in search of the accused persons and also searched their houses. It appears that the investigating officer was gaining time for the complainant to have deliberations & consultations before lodging F.I.R. Inquest report Ex. Ka. 4 bears Crime No. 105 of the Police Station Kishni whereas at the outpost it was registered as Cr. No. 13. On account of delay in preparation of the inquest report, the the investigating agency 20/- opportunity to entertain an ante-timed FIR. We are further of the view that it is highly improbable that accused persons would be wandering in the same local area even on the next day and that too with blood stained clothes on their body and guns in their hand.

23. Further Ram Autar was one of the eye witness and he is also witness of the inquest but in the opinion of the witness recorded by the investigating officer in the inquest report, there is no indication given by Ram Autar that crime was committed by the accused persons and that he had seen the occurrence.

24. The Apex Court in the case of Meharaj Singh (L/Nk.) Vs. State of U.P., was examining the evidence in the light of the argument that the first information report was ante-timed and was result of embellishment which is a creature of an after thought. In that connection the Apex Court observed that with a view to find out whether the first information was ante time or not some external checks should be applied. One of the check is receipts of the copy of the first information report, called a special report in a murder case by the local Magistrate. If report is received by the Magistrate late, it gives rise to an inference that the first information report was not lodged at the time it is alleged to have been recorded. The second check according to the apex court was sending of first information

report with the dead body and its reference in the inquest report. The court observed that even though the inquest report prepared u/s 174 Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statement recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the first information report came to be recorded later on after due deliberation and consultation and was then ante-timed to give it colour of the promptly lodged first information report.

25. In view of this no indication in the inquest report that Ram Autar an inquest witness had stated that the offence was committed by the accused persons, gives weight to the argument that the first information report was ante-timed.

26. There is yet another feature of the case. The investigating officer had used seal of another sub-inspector B.P. Singh for sealing the dead body and other articles. S.I. B.P. Singh was not associated with the investigating officer in the investigation of this crime. The investigating officer has tried to explain this by saying that his personal seal was misplaced or lost, therefore, he had used B.P. Singh's seal. However, there is no documentary evidence to give credence to this explanation.

27. Learned Counsel appearing for the appellants further argued that there was a sub-inspector of the police related to the deceased who was manipulating all these things Chokhey Lal P.W. 1 in this regard had admitted that one Hari Singh who was posted at Police Station Iqdil and who had visited them on the following day at about 1 "O" clock was the cousin brother of deceased Soney Lal. The defence suggestion was that the first information report was prepared in consultation with this Sub-inspector.

28. After considering the above material on record in the light of the arguments raised, we are of the opinion that it was not established beyond doubt that two accused Bhurey Singh and Shiv Nath Singh were involved in this case. The first information report appears to be ante-timed and prosecution has withheld the best evidence. The prosecution version and the conduct of the accused persons after crime appears to be highly improbable. We therefore, allow the appeal and set-aside conviction and sentences passed on Shiv Nath Singh. He is acquitted. He is on bail. He need not surrender. His personal security bonds are discharged.

29. Let a copy of this judgment be certified to the trial court.