

(1999) 03 AHC CK 0022
In the Allahabad High Court
Case No : Criminal Appeal No. 2445 of 1981

Brijendra Singh and Others (In Jail)	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Arms Act, 1959 — Section 25
Penal Code, 1860 (IPC) — Section 148, 149, 302, 392, 399

Citation : (1999) 1 ACR 895

Hon'ble Judges : G.P. Mathur, J; B.K. Rathi, J

Bench : Division Bench

Advocate : D.S. Tewari, S.P.S. Raghaua, R.C. Upadhyaya and G.S. Chaturvedi, for the Appellant; D.G.A., for the Respondent

Judgement

B.K. Rathi, J.—All the four Appellants have been convicted for the offences punishable Under Sections 148, 302/149, I.P.C. and have been sentenced to undergo 2 years R.I. u/s 148, I.P.C. and imprisonment for life u/s 302/149, I.P.C. vide judgment and Order dated 21.10.1981 by Addl. Sessions Judge, Aligarh.

2. The case of the prosecution as is unfolded by the documentary and oral evidence on record is that Raksha Pal Singh complainant examined as P.W. 1 resident of Sikandarpur, police station Akraabad, District Aligarh on 05.11.1980 at about 4 p.m. along with Sajjan Singh P.W. 2 and victim of this case Mahipal Singh (deceased! we're going to the house of Vijai Pal Singh, younger brother of the deceased Mahipal Singh in town Aligarh from the side of Chharra bus station. Raksha Pal Singh complainant is owner of the buses which run on the route of Aligarh to Shankara from Chharra bus station, Aligarh. As they reached near the sewer well, they saw Yash Pal P.W. 5 and Vedpal coming from the opposite side. As they reached near the northeast corner of the sewer well, the Appellants Narendra Singh and Ranveer fired three rounds of shots from their revolvers at Mahipal Singh, all of which caused injuries on the left arm of Mahipal Singh. After receiving injuries, Mahipal Singh tried to run. In the meantime, the Appellants

Ninnami and Brijendra Singh fired three rounds of shots at Mahipal Singh which caused injuries on the left side of chest, head and left eye. Mahipal Singh fell down at a distance of about 1-2 steps and died. Ninnami Singh Appellant escaped by Motor Cycle No. D.H.Y. 2394 and the other three Appellants Vijendra, Narendra Singh and Ranveer Singh by Fiat Car No. R.S.A. 147, on the driving seat of which Jagdish a hardened criminal was sitting and waiting for them.

3. Shankar Pal Singh arrived little after the incident and first information report Ext. Ka-1 of this incident was got scribed by Raksha Pal Singh P.W. 1 from Shankar Pal Singh and he went to police station Civil Lines, Aligarh and gave it there. On the basis of this written report Ext. Ka-1, the chik F.I.R. was prepared by H.C. Raj Pal Singh on 05.11.1980 at 7.15 P.M. He also registered a case in the G.D. Ext. Ka-8.

4. The investigation of the case was shouldered by Sri Prem Pal Singh, Sub-Inspector P.W. 6, he immediately went to the place of incident, prepared inquest report of the dead body of Mahipal Singh and other necessary papers and sealed the dead body and sent it for post-mortem examination along with papers which was carried by Kishan Chand Constable P.W. 4. The I.O. also found blood at the spot and took sample and blood stained earth and put the same in the sealed cover then prepared a memo. He also took clothes of the victim, his ring, plastic shoes, Rs. 1,77.25p. cash, knife and Biris and gave the same in the superego of Ravi Kumar. He also took the banian and kurta of the victim and then inspected the place of incident and prepared site-plan Ext. Ka-3. After completing the investigation, he submitted charge-sheet against all the four Appellants.

5. All the Appellants of this case pleaded not guilty and alleged that the witnesses have enmity with them and therefore, have falsely implicated them. The Appellants examined two witnesses in defence who are Ekbal Ahmad and Udai Singh D. Ws. 1 and 2. They have not stated anything regarding the facts. They have proved the information received on telephone at the control room, Aligarh on 5.11.1980 at 5.05 p.m. which is Ext. Kha-19. The information received was, that somebody informed on telephone from Surendranagar that Mahipal has been shot dead by some body. It has been proved to show that till 5.05 p.m. the names of the assailants were not known.

6. The prosecution in support of its case examined as many as six witnesses. Raksha Pal Singh P.W. 1 is the complainant of this case who has unfolded the entire prosecution story as narrated above. The reason given by him for going to Chharra bus station is that his buses run from that bus station. In his cross-examination, he stated that he had a house in Mohalla Janakpuri in town Aligarh which is at a distance of about 4-5 furlongs from the place of incident.

7. The second witness of the incident is Sajjan Singh P.W. 2 who has stated that he was also accompanying Raksha Pal Singh P.W. 1 from Chharra bus station to the house of Vijai Pal Singh, who is an engineer and had his "Kothi" in Mohalla Surendra Nagar, Aligarh. That Mahipal Singh victim brother of Vijai Pal Singh was

also with them. He has fully corroborated the version given by Raksha Pal Singh P.W. 1.

8. The other witness regarding the incident is Yash Pal P.W. 5 who is resident of Nagla Ausaph Ali, police station Harduaganj, district Aligarh. He has stated that he came to Courts on the day and was returning to Chharra bus station from the Courts via Mohalla Vishnupuri. That Ved Pal also met him and accompanied him. That as they reached on the road of sewer well, they saw Mahipal Singh victim and Raksha Pal Singh, Sajjan Singh P. Ws. 1 and 2 coming from the other side. As soon as Mahipal Singh reached at north-east corner of the sewer well, Narendra Singh and Ranveer Singh fired shots at him by their revolvers causing injuries in the left hand of Mahipal Singh. That Mahipal Singh took turn and in the mean time, the other two Appellants Ninnami Singh and Brijendra Singh fired shots by their revolvers at Mahipal Singh. He has further stated that Mahipal Singh fell down and died immediately and the accused escaped on Motor cycle and fiat car which was driven by Jagdish.

9. The formal evidence consists of the statement of Dr. V.K. Agrawal P.W. 3 who conducted the postmortem examination of the victim Mahipal Singh on 06.11.1980 at 2 p.m. and prepared post-mortem report Ext. Ka-2. According to this report, the victim Mahipal Singh was aged about 60 years and died about one day before. The following anti-mortem injuries were found on his body ;

(1) Gunshot wound of entry 1/2" x 1/2" x chest deep on the front of chest, left side 3/4" below left nipple at 5 O'clock position. The margins are inverted, ecchymosed. No blackening or tattooing or charring around.

(2) Gunshot wound of entry 1 /2" x 1/2" x chest deep on the front of chest left side 1" in front of left anterior exillary fold. Margins, inverted and ecchymosed. No blackening,, tattooing or charring around.

(3) Gunshot wound of entry 1/2" x 1/2" x muscle deep on the upper outer part of left upper arm margins are inverted ecchymosed, no blackening, tattooing or charring around.

(4) Gunshot wound of entry 1 /2" x 1/2" x muscle deep on the outer and middle of left upper arm 2" below injury No. 3. Margins are inverted ecchymosed, no blackening, tattooing or charring around. 2" below the injury No. 3, one metallic shot recovered underneath.

(5) Gunshot wound of entry 1 /2" x 1/2" x muscle deep on the outer and lower part of upper arm 1" below injury No. 4 margins are inverted, ecchymosed and no blackening, tattooing or charring around, one shot recovered underneath.

(6) Gunshot wound of entry 1/2" x 1/2" x brain deep on the inner of left eye just by the side of bridge of the nose left side. Margins inverted and ecchymosed. No blackening, tattooing or charring around.

(7) Gunshot wound of exit 3/4" x 3/4" x muscle deep on probing communicating

with injury No. 3. There is fracture (communicated) of the shaft of left humerus bone underneath.

(8) Multiple abrasion in an area of 6"x3" on the forehead and upper part of front of skull.

(9) Abrasions 3/4" x 3/4" on the outer and above part of left eye.

(10) Abrasion 1 1/2" x 1 1/2" on the left temporal bone.

(11) Abrasion 3/4" x 1/4" on the bridge of the nose.

Note.-No blackening, tattooing or charring around the wounds from 1 to 6 were found.

The death was due to shock and hemorrhage as a result of the anti-mortem injuries.

10. Sri Kishan Chand P.W. 4 transported the dead body in sealed cover along with papers for postmortem after the inquest report was prepared. Sri Prem Pal Singh, Sub-Inspector P.W. 6 investigated this case, prepared inquest report and submitted charge-sheet. The learned Additional Sessions Judge relied on the evidence and convicted the Appellants as above. Aggrieved by it, the present appeal has been preferred.

11. We have heard the arguments of the learned Counsel for the Appellants and learned A.G.A. and have carefully gone through the entire evidence on record.

12. The main stress of the learned Counsel for the Appellants in long painstaking arguments is that the Appellants have been implicated in this case by their enemies under a conspiracy and they were not present at the time of the incident nor the incident has been witnessed by any person. It is contended that the close scrutiny of the evidence shows that all the witnesses belong to one gang who are highly inimical to the Appellants and they could not have seen the incident. We, therefore, scrutinise the evidence of three eyewitnesses to examine whether they were correctly relied on by the learned Sessions Judge. However, before scrutinising the evidence, it is proper to mention certain circumstance which can never belie, though the witnesses may tell lies.

13. It may be mentioned that it is admitted position that at the time of the incident, there were large scale communal riots in the city of Aligarh where the incident has taken place. The report was called regarding this fact for which affidavit has been filed by Sri Mohd. Tahir, Additional City Magistrate, Aligarh. According to affidavit though, there was no curfew at the time of the incident, but at that time there was curfew from dusk to dawn. Sri Prem Pal Singh, S.I. who has investigated the case has also stated about this fact and he stated that due to the curfew B.S.F., C.R.P., P.A.C. and police was continuously patrolling the city. He also admitted that when he reached at the place of the incident, CO. City, Inspector, Civil Lines and other officers were already present there. The witnesses also admitted that within minutes of the incident the personnel's of

B.S.F., C.R.P. and P.A.C. arrived at the place of the incident. However, all the witnesses of the fact, namely, Rakshapal, Sajjan and Yashpal have admitted that they did not tell the names of the assailants to the personnels of the Armed Forces who reached there nor they tell as to from which vehicle they escaped from the place of the incident and to which side they had gone. This information would have resulted in the immediate arrest of the assailants as the information could have been sent by the wire-less regarding their movements. This fact, therefore, clearly show that the assailants were not seen by any of the witness.

14. The other circumstance regarding it is that Prem Pal I.O. P.W. 6 also stated that information regarding murders at that time was being given to the police control room immediately and information regarding this murder was also given to police control room at 5.05 p.m. which have been proved by the document Ext. Kha-19. In this information, it has been mentioned that unknown persons have committed the murder of Mahipal. Had the assailants were seen; their names would also have been mentioned. In any case, at least it should have been mentioned that the assailants escaped by Motor Cycle No. D.H.Y. 2394 and Fiat Car No. R.S.A. 417 as mentioned in the F.I.R. and these vehicles were seen at the spot. The witnesses may tell lie, but circumstances can never tell a lie and this is important circumstance against the prosecution case.

15. Before scrutinising the evidence of the three witnesses of the fact, reference is also required to be made to the post-mortem report. According to the prosecution case, all the four Appellants fired with the revolvers at the victim. This version is corroborated by medical evidence as far as injuries No. 1 to 7 found on the person of the victim in post-mortem examination. However, there are three other injuries No. 8 to 11 which are abrasions. Injury No. 8 is an abrasion of 6" x 3" size on the fore-head and upper part of front of skull. None of these injuries could be caused by firing shot by revolvers. Dr. V.K. Agrawal P.W. 3 who conducted the post-mortem in his examination-in-chief has stated that these injuries could have been caused by the fall after being injured. No doubt there is no cross-examination on this point, but, in our opinion, explanation is not acceptable. Looking to the size of the injury No. 8, it appears that it could not be caused by fall. As there is no explanation of these injuries, it also gives rise to reasonable doubt regarding the correctness of the prosecution case.

16. Now coming to the statements of prosecution witnesses, Jirstiy, it may be mentioned that all of them are chance witnesses, whose presence at the time of the incident is not probable. Sri Raksha Pal complainant is resident of village Sikandarpur. P.S. Akraabad of district Aligarh. However, he also had a house in Mohalla Jankpuri, in city Aligarh and it may be expected that he may be living in Aligarh. However, he has stated that his house is at a distance of 4-5 furlongs from the place of the incident. He stated that he along with the victim and Sajjan P.W. 2 were going from Chharra bus station to the house of Vijai Pal Singh Engineer who is brother of the victim. The explanation given by him for going to Chharra bus station is not plausible. He has simply said that his buses run from

Chharra bus station to Shankara. That can be no reason for going to Chharra bus station on the day of the incident when there were riots in the city. He did not had any work at the bus station on that day.

17. The second witness is Sajjan Singh who was also accompanying him. The house of Sajjan Singh is situated in mohalla Surendra Nagar, Aligarh and is at a distance of 2 furlongs from the place of the incident. He has stated that he was going to the house of Vijai Pal Singh, engineer along with the victim. The house of Vijai Pal Singh, engineer as well as the house of Sajjan Singh both are situated in Mohalla Surendra Nagar. He has not given any reason as to why he went to Chharra bus station and was going from there along with the victim to the house of Vijay Pal Singh, the brother of victim nor he stated where he found the victim.

18. The third and last witness of the fact is Yashpal P.W. 5 whose presence at the time of the incident is also not probable. He is a resident of village Ausafali, P.S. Harduaganj which is at a distance of 12 miles from the place of the incident. He had no house in the town of Aligarh. The explanation given by him for his presence at the time of the incident does not appeal to a reason. He has stated that he came to Court and reached at the Courts at 1 or 1.30 p.m. and waited there for his counsel for 1½ to 2 hours but the counsel was not available, therefore, he was returning back. He clearly stated that on the day, he had no case in the Court. He further stated that he did not bring any paper and only came to the Court to consult the counsel. He did not tell the name of the Advocate to whom he wanted to consult. He admitted that he did not file any case thereafter. From his cross-examination, it appears that he had absolutely no work on the day of the incident in the Court, therefore, there was no question of coming to the Court from his village situated at a distance of 11-12 miles. It is more so because the condition in the city was disturbed and riots were going on.

19. The further scrutiny of the evidence of witness's shows that they belong to one group and were highly inimical to the Appellants and were interested in falsely implicating them. Sri Prem Pal Singh I.O. P.W. 6 in his cross-examination stated that on 18.11.1980, he found all the four witnesses of the fact (three examined and one Ved Pal) at the house of Shankar Pal Singh (scribe of the F.I.R.). There is no reason as to why all of them were there on 18.11.1980 and it appears that they are close with each other and are supporting the case for this reason.

20. It may also be mentioned that the complainant Raksha Pal Singh has stated that immediately after the incident. Shankar Pal Singh, brother of the victim arrived and F.I.R. was got written from him. That, there is no reason as to why they waited for Shankar Pal Singh though the eye-witness Sajjan Singh P.W. 2 is graduate. The conduct of Raksha Pal Singh P.W. 1 is also found doubtful in this matter for the reason that he has tried to suppress the facts. A first information report for the offence punishable u/s 392, I.P.C. was lodged on 4.7.1981 against Sarvesh, Anil Kumar and Hari Shankar by him. He stated that F.I.R. was written (scribed) by him and not by Shankar Pal Singh which statement was found to be

false on the basis of other evidence, and that first information report was also scribed by Shankar Pal Singh. The previous F.I.R. was lodged by the complainant as well as the present F.I.R. both were scribed by Shankar Pal Singh and the complainant has given false statement on this point.

21. The further scrutiny of the evidence of three witnesses shows that each of them had enmity with the Appellants. Raksha Pal Singh P.W. 1 has admitted that Mahipal was convicted Under Sections 399 and 402, I.P.C. He has also admitted that Jagdish who was conductor of his bus was assaulted by the Appellants Ranveer Singh and Narendra. That in that case he was a witness against them. He also stated that Sri Krishna, brother of Mahipal victim and his wife were murdered in which Mahipal victim of this case and his brother Sughar Pal Singh were arrested and the Appellant Ninnami was a witness in that case. He has denied this relation that the mother of Yashpal witness and wife of victim Mahipal are real sisters. The Appellants have filed the copy of the statement of Yash Pal P.W. 5 recorded in Sessions Trial No. 23 of 1978. State v. Dalveer Singh, which is Ext. Kha-8. In that statement, he said that he is Sam of son of Shishu Pal (brother of the victim).

22. Now coming to the evidence of Sajjan Singh P.W. 2, it may be mentioned that he is a convict u/s 307, I.P.C. and stated that he was on bail at the time of the incident. He was also challenged in a case u/s 25 Arms Act. He is a graduate but did not himself prepare the F.I.R. nor gave any information on telephone to the police. Besides the fact that he is a chance witness, he also have a strong reason to implicate the accused. He has admitted that he, his father, brother, uncle Yash Pal P.W. 5 and Surendra son of deceased Mahipal were prosecuted for firing at Ninnami Singh Appellant on 21.3.1978. The Appellants had also filed the F.I.R. and chick report Ext. Ka-8 and Ka-9 which proved the same. He has admitted that he along with above persons were prosecuted in Sessions Trial No. 141 of 1986 u/s 307, I.P.C. in which the accused persons were convicted and sentenced to four years R.I. on 7.9.1981. He further stated that on 5.1.1980, one Mahendra Pal Singh was murdered and in that case he, victim Mahipal Singh and his brother Shishu Pal Singh were accused. In that case, Ninnami Singh Appellant was doing Pairvi and an application was moved to prove this fact to call Ninnami Singh in Court who was standing outside the Court. The copy of the application has been filed which is Ext. Kha-16 dated 15.10.1980.

23. Now coming to the statement of last witness of fact Sri Yash Pal Singh P.W. 5, he is also having enmity with the accused-Appellants. Shishupa! Singh real brother of the victim Mahipal Singh were examined in Sessions Trial No. 23 of 1978 on 24.5.1979 in which he stated that his son and Yashpal Singh are real "Sarhu" and he is closely related to the victim. He had also admitted that in the year 1978 his "TAU" Mahendra Singh was murdered. Indraveer Singh and Rakshpal Singh P.W. 1 were prosecuted in that case as it appear from the copy of the judgment dated 24.11.1975 Ext. Kha-12, F.I.R. Ext. Kha-10. Indra Veer Singh has stated in statement Ext. Kha-11 in that case that Ninnami is his uncle.

24. The above scrutiny of the evidence of the above witnesses shows that all the witnesses are highly inimical to the Appellants. The statements of such witnesses who are chance witnesses and whose presence at the time of the incident does not appear probable and cannot be accepted. In view of the inherent weakness of the prosecution case which have been pointed out above, we are of the opinion that the prosecution is not able to prove the guilt of the Appellants beyond reasonable doubt. Accordingly, the conviction and sentence of the Appellants cannot be maintained and this appeal is fit to be allowed.

25. The Appellant Ninnami Singh has already died and report regarding his death has been received, therefore, the appeal of Ninnami Singh Appellant is abated.

26. The appeal of Appellants Brijendra Singh, Narendra Singh and Ranveer Singh is allowed and their conviction and sentences are set aside and they are set free.