
(2017) 05 AHC CK 0149
In the Allahabad High Court
Case No : 5623 of 2004

Brijesh alias Guddu

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 107](#), [Section 117](#) - Power to examine the accused - Security for keeping the peace in other cases — Order to give security
[Indian Penal Code, 1860](#), [Section 302](#), [Section 34](#) - Punishment for murder - Acts done by several persons in furtherance of common intention

Citation : (2017) 05 AHC CK 0149

Hon'ble Judges : V.K. Shukla, Mahesh Chandra Tripathi

Bench : Division Bench

Advocate : Manish Tiwary, Anvir Singh, Arun Kumar Shukla, Ashwini Kumar Awasthi, Chandan Singh, G.S.Hajela, Harish Tiwari, Vishwa Ratan Dwivedi, Nagendra Kr Yadav

Final Decision : Dismissed

Judgement

1. Heard Sri V.P. Srivastava, Senior Advocate assisted by Shri Arun Kumar Shukla, learned counsel for the appellants and Shri Nagendra Kumar Singh Yadav, learned A.G.A. for the State.

2. Both Criminal Appeals have been directed against the sustainability of the judgment and order of conviction dated 3.9.2004 passed by the Additional Sessions Judge/Fast Track Court, Auraiya in Sessions Trial No.248 of 2002 (Crime No.132/2001) convicting and sentencing the accused Brijesh @ Guddu (appellant in Criminal Appeal No. 5623 of 2004) under Section 302 I.P.C. and the co-accused Harbhan Singh, Nawab Singh and Ratan Singh (appellants in Criminal Appeal No. 4677 of 2004) under Section 302 read with Section 34 of IPC to imprisonment for life alongwith fine of Rs.10,000/- each and in default of

payment of fine, 1 month additional sentence has been awarded.

3. The prosecution case is that on the date of occurrence i.e. 10.11.2001 about 4 pm the informant Hakim Singh (PW-1) alongwith his father Tej Singh @ Deputy son of Ram Sewak came from his house situated on Diviyapur road to Tirva road for market purpose and they were sitting on the bench lying on the chabutara beneath Tinshed in front of shop of Arjun son of Raj Bahadur. Meanwhile the accused persons Brijesh Kumar alias Guddu alongwith Harbhan Singh, Nawab Singh both sons of Ram Singh and Ratan Singh son of Jal Singh resident of Manuapurva, Police Station Bela, District Auraiya possessing "tamancha" (country-made pistol) & gun, came there and the accused Brijesh alias Guddu caught the collar of the deceased and fired on his chest by the country-made pistol. Nawab and Ratan had also fired by their guns and Harbhan had also fired by his licensed weapon, due to which Tej Singh @ Deputy fell down and died on the spot. In the said incident the informant escaped unhurt. On hearing the sound of gun fire, Bharat Singh son of Rameshwar and Harnam Singh @ Master son of Raghunath Singh resident of Manuapurva and Suresh son of Ram Chandra resident of Diviyapur, Road Vela and many other persons reached at the spot and witnessed the incident and they defied all the accused persons. While fleeing away the assailants also threatened the informant of dire consequences. The informant came to the police station for lodging the first information report and taking proper action. This written report is Exhibit Ka-1.

4. Contents of the first information report were taken in the concerned chick F.I.R. as Case Crime No.132 of 2001 under Section 302 read with Section 34 of the Indian Penal Code at Police Station Bela, District Auraiya. Copy of chick F.I.R. is Exhibit Ka-2. The investigating officer prepared the map of the site as Exhibit Ka-7. After completing investigation, the investigation officer filed charge-sheet dated 29.12.2001 in the Court of Chief Judicial Magistrate, Auraiya which charge sheet is Exhibit Ka-4. The Chief Judicial Magistrate took the cognizance and thereafter committed the case on 21.11.2002 to the Court of Sessions. Finally the charges were framed by the Sessions Judge on 23.4.2003. The charges were read over and explained to the accused persons, who abjured charges and opted for trial.

5. As per the version of PW-1 Hakim Singh the investigating officer had collected sample of blood-stained clay from the spot and the investigating officer had also recorded statements of various persons including prosecution witness nos.1 and 2 and prepared site plan of the place of occurrence at the instance of the informant PW-1, the same is Exhibit Ka-6. After completing investigation the investigating officer filed charge sheet against accused persons, which charge sheet is Exhibit Ka-4. In the process, the prosecution was required to adduce its testimony for proving the charge. Consequently the prosecution produced in all 7 witnesses. PW-1 Hakim Singh is the eye-witness of the occurrence and has also proved the written report, Exhibit Ka-1. PW-2 Bharat Singh reached at the site of incident after hearing the gun shot. PW-3 H.C. Ram Autar, P.W.-4 S.I. Mahendra

Pal Sharma, P.W.-5 Dr. Pulak Raj, P.W.-6 S.I. Pramod Kumar Khare and P.W.-7 Ajab Singh were produced by the prosecution and except above, no other testimony was adduced by the prosecution, therefore, the evidence by the prosecution was closed and the statement of accused person was recorded under Section 313 Cr.P.C. wherein they claimed themselves innocent and submitted that they have been falsely implicated in the present case on account of enmity. Learned trial court after hearing both the sides on the merit of the case and after considering the evidence and facts on record recorded the finding of conviction, as aforesaid, and sentenced them accordingly.

6. Shri V.P. Srivastava, Senior Advocate appearing on behalf of the appellants submitted that post-mortem examination report completely belies the prosecution story and in the first information report it has been mentioned that all the four accused persons had fired at the deceased but in the post-mortem examination report only one fire arm injury was found. When the prosecution had felt the difficulty that the post-mortem examination report is totally contradictory with the prosecution case then the prosecution had changed its case and part of firing at the deceased had been assigned to the appellants. He argued that the prosecution story is belied by the medical evidence.

7. It has been next submitted that the entire facts and circumstances of the case clearly indicate that the said incident was caused by some unknown persons. The testimony of the PW-1 Hakim Singh cannot be relied upon as his presence could not be corroborated after scrutinizing the events and as such, he was not independent witness of the said incident. His testimony on the whole gives contradictory description of the manner and style of the occurrence of the incident. How the deceased Tej Singh @ Deputy was killed, remains a mystery. In order to generate false presence of the eye-witnesses, the police in collusion with the informant had concocted its own story. Even by bare perusal of the testimony of PW-1 it clearly reveals that there is a lot of contradictions in his statement. He has vehemently contended that at the time of recording of oral statement on 28.4.2003 PW-1 Hakim Singh was about 30 years" old but very conveniently he had made a statement on oath that he was totally unaware about the murder of father of Brijesh alias Guddu (main accused) and also made false statement that Rama Shankar, Jawahar Singh, Lawyer Singh and Ram Narain were implicated in the murder of the father of Brijesh @ Guddu. Rama Shanker is the real uncle of PW-1 Hakim Singh and his father had three brothers namely Tej Singh @ Deputy, Badshah and Rama Shanker, whereas Ajab Singh @ Lawyer Singh is cousin brother of PW-1. The testimony of PW-1 is also not reliable on the ground that he had declined to have any knowledge whether in the year 1997 the first information report was lodged by Rustam Singh regarding dacoity against his uncle Rama Shanker and father Tej Singh. Most of the relevant questions had been replied by PW-1 in negative and as such, his statement cannot be relied upon. The entire circumstance and the testimony on the record do not inspire confidence and create wide hollowness. The prosecution had tried to plug various loopholes emerging in its story taking false and prudence excuse. The conviction

of the appellants is based on the sole testimony of PW-1 Hakim Singh, who is son of the deceased, and as such he is highly partisan and inimical witness. No independent witness of the locality had been produced by the prosecution. The trial court while appreciating the evidence adduced by the PW1 and the fact on record failed utterly to take correct position and had recorded finding of conviction. The PW-2 is also closely related to the PW-1 and as per his own statement at the time of occurrence of incident, he was very much present at the shop of Shivnath situated in the Bela market. When he heard the sound of gun fire, he reached the shop of Arjun and found that Tez Singh was lying on the earth and the accused persons Harbhan, Nawab Singh, Ratan Singh and Guddu @ Brijesh were fleeing away on the Tirva road. He had also made a statement that at that time Harbhan was carrying the gun and remaining three persons were possessing country-made pistols. When he reached at the site of incident he found that Hakim Singh, PW-1 was already present. In his cross-examination he had accepted that Ram Swarup is his uncle and his uncle had earlier lodged the first information report against the accused Brijesh's father Ram Singh, Jal Singh and Lakhan Singh with regard to arson. He had also accepted that a case under Section 107/117 Cr.P.C. is going on between him and the accused.

8. It has been submitted that the incident was allegedly took place near the shop of Arjun but Arjun has not been examined as a witness. Another witness Bharat Singh reached the place of occurrence after hearing the sound of gun fires and saw that all the four accused were fleeing away. He could not have seen that the appellants were firing on the deceased and as such, he cannot be said to be the eye witness of the incident. The presence of PW-1 and PW-2 at the alleged date, time and place of occurrence is highly doubtful and according to the prosecution case, shots were also fired at the first informant PW-1 but he had not sustained any injury in the said incident. The presence of PW-2 is also doubtful and he is also partisan witness. There was strong enmity between the appellants i.e. accused, co-accused and first informant but the first informant escaped unhurt which creates doubt about his presence on the spot. No blood and empty cartridges were recovered around the dead-body. The FIR was anti-timed, crime number, Sections of the crime were not mentioned in inquest papers and the motive was very remote in time. The place of incident was at a distance of one k.m. from the village and it was not possible to lodge the first information report at 4.30 p.m. The appellants had no motive to commit murder of the deceased, whereas the first informant had reason to falsely implicate the appellants. The conviction has been recorded on the solitary statement of the informant, who is the son of the deceased. The conviction of the appellants is against the weight of evidence on record and learned Sessions Judge while convicting the appellants has not considered and evaluated the evidence in the right perspective. In support of his submission, he has placed reliance on the judgments in Ram Ji Surjya vs. State of Maharashtra 1983 SCC (CRI) 748; Panna & ors vs. State of UP 1991 A. Cr. R (15) 663; Anil Phukhan vs. State of Assam AIR (SC) 1993-1462 and State of UP vs. Satveer & ors 2015 (9) SCC 44.

9. Per contra, Shri Nagendra Kumar Singh Yadav, learned AGA appearing for the State argued that the appellants are named in the first information report. The incident took place in front of the shop of Arjun where the deceased Tej Singh was sitting along with PW-1 Hakim Singh. The accused Harbhan Singh, Nawab Singh and Ratan Singh caught hold of the deceased and appellant Brijesh @ Guddu fired with a tamancha at his chest. The other accused also fired from their weapons, but the first informant escaped unhurt. On hearing the sound of gun fire, Bharat Singh, P.W.2 reached at the spot and witnessed the incident. Earlier Badshah (brother of the father of first informant) was also shot dead by the accused persons in respect of which a criminal trial was held. There was old enmity between the parties and non-mention of crime number and Section of the Penal Code on the inquest papers is inconsequential. It is fully proved from the evidence of PW1 and PW2 that the deceased had been shot dead by the accused Brijesh @ Guddu, who fired with a tamancha at his chest and other accused persons caught hold of the deceased. The recorded conviction of the appellants is based upon cogent and reliable evidence and the sentence of imprisonment for life awarded to the accused-appellants is supported by relevant considerations. The impugned judgment and order warrants no interference by this Court. The appeals lack merit and are liable to be dismissed. He has placed reliance on the judgements in Radha Mohan Singh @ Lal Saheb & ors vs. State of UP AIR 2006 SC 951 and Brahm Swaroop and another vs. State of Uttar Pradesh (2011) 6 SCC 288 in support of his submission.

10. We have heard the learned counsel for the parties and scrutinized the lower Court record. The appellants have been convicted for having committed the murder of Tej Singh @ Deputy father of PW1 Hakim Singh at about 4:00 pm on 10.11.2001 in a busy market area. The FIR of the incident was lodged by PW1 Hakim Singh promptly on the same day at P.S. Bela, District Auraiya. All the accused are named in the FIR and their respective roles have been clearly defined. The role of causing fatal firearm injury to the deceased has been attributed to accused Brijesh alias Guddu (appellant in Criminal Appeal No.5623 of 2004) while the other accused (appellants in connected Criminal Appeal No.4677 of 2004) have been assigned the role of catching hold of the deceased and firing from their weapons.

11. In the instant case, the crux of prosecution allegation is that at about 4.00 p.m. on 10.11.2001 Hakim Singh-PW1 was sitting alongwith his father Tej Singh @ Deputy on the bench in front of shop of Arjun. The accused Harbhan Singh, Nawab Singh and Ratan Singh caught hold of the deceased and the accused Brijesh alias Guddu fired with a tamancha at his chest and he died on the spot. The other accused had also fired from their weapons but Hakim Singh PW-1 escaped unhurt. Hearing the noise of the gun fires, many persons arrived there and witnessed the incident. The FIR of the incident was lodged by PW1 Hakim Singh promptly on the same day at Police Station Bela, District Auraiya. All the accused are named in the FIR. The accused-appellants have been convicted for having committed the murder of Tej Singh @ Deputy father of PW1 Hakim Singh

at about 4 pm on 10.11.2001 in a busy market area. The prosecution in order to prove its case had examined two witnesses of fact namely PW1 (complainant) Hakim Singh son of the deceased and Bharat Singh PW-2. Although Hakim Singh is the son of deceased, but his testimony cannot be discarded merely on this ground. He has supported the prosecution version in his testimony in the trial court and proved the first information report promptly lodged by him. Nothing has been admitted by the PW-1 in his oral testimony which may go to the root of the FIR version and may assail its credibility.

12. Admittedly, the incident had occurred during the day time in front of the shop of Arjun where the deceased Taj Singh was sitting along with Hakim Singh PW-1. At the time of incident Bharat Singh-PW-2 was sitting at the shop of Shivnath in Bela Bazar where the incident had taken place. On hearing the sound of gun fire, Bharat Singh (P.W.2) reached at the spot and witnessed the incident. Chik FIR and relevant G.D. entry were prepared by PW3 Head Constable Ram Autar Nagar on the same day at 04.30 pm. The Sub Inspector Mahendra Pal Sharma (PW4), had stated that on 16.11.2001 he was posted as Station House Officer, Police Station Bela and PW2 Bharat Singh informed him that there was old enmity between the parties. Earlier the family members of the deceased had murder the father of accused Brijesh alias Guddu. The post-mortem on the cadaver of the deceased was conducted by PW5 Dr. Pulak Raj, who had also prepared his post mortem report on 11.11.2001 Ex. Ka-5. The PW-6 investigating officer namely SI Promod Kumar Khare made a statement that he had inspected the site of occurrence. He had prepared the panchayatnama and after preparing the panchayatnama, he had written the opinion of members. The incident took place at the varamdah of shop of Arjun situated in Bela Bazar and when he visited in the varamdah, he found a wooden bench and no bloodstained clay was found on the bench or on the floor of the varandah.

13. In the facts and circumstances of the case and nature of evidence, testimony of Hakim Singh PW-1 cannot be thrown away just on the ground of testimony of single witness. The settled law on this point is that natural and creditworthy testimony of any eyewitness cannot be disbelieved on the ground of the testimony of solitary witness. The testimony of single witness is to be tested from all angles giving due consideration to the facts and circumstances of the case and nature of the evidence. The evidence of a witness naming the accused persons in the murder case cannot be brushed aside solely on the ground that they have been falsely implicated in the present case on account of enmity.

14. In the case of Anil Phukan Vs. State of Assam [AIR 1993 Supreme Court 1462], the Apex Court summarized the manner and circumstances under which a solitary witness related to the deceased could form the basis of conviction. Para-3 of the judgment is reproduced below:

"3.This case primarily hinges on the testimony of a single eye-witness Ajoy P.W.3. Indeed, conviction can be based on the testimony of a single eye-witness and there is no rule of law or evidence which says to the contrary provided the

sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye-witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye-witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect. It is in the light of these settled principles that we shall examine the testimony of P.W.3 Ajoy."

15. In *Ramnaresh v. State of Chhattisgarh*, reported in (2012) 4 SCC 257 the Apex Court has held that all that is needed is that the statement of the sole eyewitness should be reliable, should not leave any doubt in the mind of the court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime.

16. The Apex Court has consistently held that as a general rule, the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act. But if there are doubts about the testimony, the Court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. In view of above, the judgments cited by learned counsel for the appellants does not help the appellants. In the aforesaid circumstances, we do not find any inherent inconsistency in the evidence of sole eye-witness i.e. PW1.

17. In his argument Shri V.P. Srivastava, Senior Advocate has submitted that at the time of filling of inquest report the first information report was not in existence and as such, the FIR was lodged afterthought. The said argument cannot be accepted in view of law laid down by the Apex Court in *Mangali and ors vs. State of UP Criminal Appeal No.249, 250 of 1981* reported in 1981 ACC 321 (para-14). Relevant portion of the judgment is reproduced herein below:-

"A little carelessness on the part of Investigating Officer in scribing the crime number and sections of the offence in fards Ext. Ka-14 to Ka-16 with a different ink or his deliberate attempt to help the accused in doing so would not affect the merits of the case. Sterling evidence of the eye-witnesses cannot be ignored in cursory and cavalier manner on the ground that the Investigating Officer was

negligent or purposely attempted to help the accused during investigation. The prosecution would not fail on account of laches on the part of the Investigating Officer pointed out by the learned counsel for the appellants."

18. The same view has also been taken by the Apex Court in *Amar Singh vs. Balbinder Singh and ors* reported in 2003 (46) ACC 619 wherein it was held that the circumstances relied upon by the High Court in holding that the investigation was tainted are not of any substance on which such an inference could be drawn and in a case like the present one where the prosecution case is fully established by the direct testimony of the eye-witnesses, which is corroborated by the medical evidence, any failure or omission of the investigating officer cannot render the prosecution case doubtful or unworthy of belief... Any failure or non-explanation of investigating officer cannot lead to an inference that prosecution case was wrong.

19. In *Dr. Krishnapal and ors vs. State of UP* 1996 ACC (Cri) 249, the Apex Court had proceeded to observe that even in the inquest report omission to mention crime number is merely because the Investigating Officer had not been diligent enough but for that reason it would not be proper to discard the reliable and clinching evidences adduced by the eye witnesses.

20. In *Karnel Singh Vs. State of M.P.* (Judgment Today 1995 (6) SC 437) it was held by the Apex Court that in a case of defective investigation, it would not be proper to acquit the accused if the case is otherwise established conclusively because in that event it would tantamount to be falling in the hands of an erring Investigating Officer.

21. The submission of Shri V.P. Srivastava, that PW1 in his statement accepted that blood-stained clay was collected by the police on the occurrence, whereas PW6 stated that when he reached at the occurrence, he found a wooden bench and no bloodstained clay was found on the bench or on the floor of the Varandah, as such there were contradictions in their statements, cannot be accepted as this does not falsify the prosecution case. At the time of occurrence the deceased was wearing jacket and there was every possibility that the blood was very much absorbed by the jacket. Thus, in the case in hand, the place of incident has been established by the prosecution beyond all reasonable doubts, specially when the place of occurrence is a busy area in city.

22. Thus, we find PW1 to be a wholly reliable witness and it is fully proved from his evidence that all the accused had participated in the commission of deceased's murder. Record shows that the incident had taken place at about 4 p.m. on 10.11.2001. The accused Harbhan Singh, Nawab Singh and Ratan Singh caught hold of the deceased and the accused Brijesh @ Guddu fired with a Tamancha at the chest of the deceased. The other accused had also fired from their weapons. The deceased fell down on the ground and died on the spot. The PW1 had gone to the police station and lodged the FIR. Thus upon a wholesome analysis and a critical evaluation of the evidence on record, we find that

prosecution has fully succeeded in proving it's case against the accused-appellants beyond all reasonable doubts. We do not find that the Trial Judge committed any illegality, infirmity or perversity in convicting the appellants and sentencing them to imprisonment for life.

23. There is no merit in the appeals and consequently both the appeals are accordingly dismissed.

24. The appellants in Criminal Appeal No.4677 of 2004 are on bail. Their bail bonds are cancelled and their sureties discharged. They shall be taken into custody and sent to jail forthwith for serving out their sentence.