

(1988) 11 AHC CK 0035
In the Allahabad High Court
Case No : Cril. Appeal No. 2415 of 1978

Daleep Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-11-1988

Acts Referred:

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

Citation : (1988) 11 AHC CK 0035

Hon'ble Judges : V.P.Mathur, J and M.M.Lal, J

Final Decision : Dismissed

Judgement

V.P. Mathur, J.—This appeal is directed against the judgment and order passed on 28.11.1988 by the then Vth Addl. Sessions Judge Moradabad of Mr. V. P. Kalra, in Sessions Trial No. 93 of 1978. The learned Judge found the appellant Daleep Singh guilty of the offence under Section 302 I.P.C. for having committed the murder of Ram Pal Singh son of Harpal Singh, convicted him accordingly and sentenced him to imprisonment for life.

2. The occurrence is said to have taken place at about 2.30 p.m. on 11.5.1977 at the Bus Stand of village Umri Kalan six miles away from the police station Chajlait of District Moradabad. The first information report was lodged the same evening at 3.30 p.m. by Ashok Kumar son of Udai Raj.

In this case, which was connected with Sessions Trial No. 412 of 1977, in all eight persons were committed to stand their trial at the Sessions.

Out of them one namely Jagir Singh alias Jahangir Singh died during the course of the trial and his case abated. The others who faced the trial in addition to the present appellant Daleep Singh were :

(1) Ajit Singh, (2) Tahal Singh and (3) Balwant Singh all sons of Natha Singh and brother of Daleep Singh ; (4) Channa Singh s/o Nishan Singh, (5) Dalbir Singh s/o Santa Singh and (6) Ajit Singh son of Saudagar Singh.

The role assigned to these persons was multifarious. Balwant Singh and the deceased Jagir Singh alias Jahangir Singh were said to have been armed with guns and it is said that they fired, when Ashok Kumar, Veer Singh and Shish Raj witnesses (P. Ws. 1, 2 and 4) ran out from the Bus and wanted to take shelter and caused injuries to Veer Singh. About the others, it was contended that Ajit Singh son of Natha Singh Tahil Singh, son of Natha Singh and Dalbir Singh were armed with swords and Channa Singh, Ajit Singh son of Saudagar Singh were armed with Kirpans and they used these weapons without bringing them out of their sheaths in striking Rampal Singh after he had been hit by Dalip Singh's firing. The learned Sessions Judge, however, after analysing the evidence on the record, came to the conclusion that the case against these six persons and Jagir Singh was not made out and he acquitted them.

4. The undoubted and uncontroverted evidence on the record shows that murder of Udai Raj Singh father of Ashok Kumar first informant took place and a case under Section 302 of the Indian Penal Code proceeded against Daleep Singh and his two brothers Ajit Singh and Balwant Singh and also against Sher Singh, Faquir Singh and Mahendra Singh. All of them were convicted and sentenced to imprisonment for life. An appeal against that judgment is pending in the High Court and in the meanwhile these persons are on bail. It is also admitted that Sher Singh is the uncle of Channa Singh. Dalbir Singh is the brother of Mahendra Singh and Jahangir Singh deceased was brother of Faquir Singh. In this manner all the eight persons including Jahangir Singh alias Jagir Singh deceased were undoubtedly inimically disposed against Ashok Kumar and his family members. There is uncontroverted testimony of Ashok Kumar that Rampal Singh deceased was his maternal uncle and Shishraj is his cousin brother, as well as Veer Singh was his friend. Undoubtedly again because of this long standing enmity between the parties, it appears that one party was always supporting the enemies of the other party. With reference to some allotment of land, there was some litigation between Tekka on the one hand and Dalip Singh on the other. This allotment of land had been made by Shish Raj in his capacity as Gram Pradhan and therefore he was supporting Tekka along with Ashok Kumar, Veer Singh and Shish Raj and every time when that Tikha's case came up for hearing in the Courts at Amroha, these persons were regularly attending the proceedings.

5. This occurrence took place on 11/5/1977. There is evidence on the record to show that in the Court of the SubDivisional Magistrate of Amroha a case No. 11/11 under Section 145, Cr. P. C. between Dalip Singh on the one side and Tekka on the other, was fixed up for hearing. In this case a copy of the application dated 6/5/1977 made by Tekka had also been filed and proceedings under Section 145, Cr. P. C. were started on police report dated 8/12/1977. The two parties were Daleep Singh and Tekka. The documents Exts. Ka20 to Ka26 will prove this fact. Obviously it is contended that in order to prosecute the case, which was fixed up for evidence, Ashok Kumar, Veer Singh, Shish Raj and Rampal Singh, all went to Amroha in a private Car of Ram Kumar. The order sheet will show that the case could not be taken up, because the Magistrate had gone

to Moradabad and another date was given. The uncontroverted testimony of the witnesses is that they learnt about the change of the date late in the day and then proceeded back for their village on the same Car. Tekka who had also gone with them, however, did not return with them, because he had to go to see his ailing sister. For purposes of safety, the first informant Ashok Kumar and Shish Raj had their Double Barrel Guns and their cartridge belts also with them. When this party reached near the Bus stand of village Umri, one of the tyres of their Car got punctured. They all came out and in order to push the car to a side of the road, Ashok Kumar and Shish Raj handed over their guns and belts to Rampal Singh who was their maternal uncle. Then they pushed the Car. In the meantime private Bus No. UPN 3265 came from Amroha side and it was going towards Kaanth. It is contended that Rampal Singh with the two guns and the two cartridge belts. Veer Singh (P.W. 2) injured and the first informant Ashok Kumar (P.W. 1) boarded this Bus from the front door, the Bus was driven by Baburam and Mahendra Singh (P. W. 7) was its Conductor. This all happened at about 2.30 p.m. All the eight accused persons including Daleep Singh were sitting in the Bus. Three of them namely Daleep Singh, Balwant Singh and Jahangir Singh alias Jagir Singh were armed with guns and the others were armed with swords and Kirpans. Rampal Singh had taken his seat on the left side of the engine. Veer Singh was standing near him and behind him, the first informant was standing. Shish Raj was however on the foot board. It appears that when the Driver got ready to drive the Bus, Rampal Singh told him to wait a little, as one of their men was coming behind. The reference was of course for Ramkumar, because the evidence is that he had gone to the village Umri to find out if he could get any help in getting the tyre of his car repaired or replaced. On hearing what Rampal Singh had said to the Driver of the Bus, Daleep Singh appellant immediately took offence and told the driver to drive the bus at once. Upon this, Rampal Singh quite vehemently said that the Bus was not to move. All the accused persons then got up from their seats threatening and abusing Rampal Singh. Simultaneously Daleep Singh fired at Rampal Singh with his gun. He was sitting behind the seat of the Driver and from there he had fired the shot. Rampal Singh fell down on the seat. Then it is said that the other accused persons used their Kirpans and swords without removing the sheaths in trying to inflict injuries upon Rampal Singh. Apprehensive of their own safety, Shish Raj, Ashok Kumar and Veer Singh jumped out of the Bus and tried to run away but when Balwant Singh and Jahangir Singh alias Jagir Singh are said to have fired at them causing injuries to Veer Singh in his thigh. He ran across the road towards the East and fell down in the grove. It is then contended that Tehai Singh and Ajit Singh took up the guns and the cartridge bolts that were lying near Rampal Singh and all the accused ran away. The first informant then prepared the first information report in writing, took it to police station Chajlait and lodged it there. He has taken another Bus along with Shish Raj and Veer Singh to reach the Thana. Mr. Anil Kumar the second Officer of Police Station Chajlait started investigation at once. He arranged to send Veer Singh to the District Hospital Moradabad for the medical examination and treatment, where Dr. M. Rastogi

examined his injuries at 7.30 p. m. along with the first informant and Shish Raj. The Investigating Officer reached the place of occurrence, found the dead body still lying on the seat of the Bus, took it into custody and held inquest. Blood was found on the seat. He arranged to send the dead body for post mortem examination, which was conducted by Dr. Dinesh Mohan (PW 11) on 1251977 at 1.30 p.m. Ultimately after investigation he submitted the chargesheet.

6. In support of its case, the prosecution examined in all fourteen witnesses. Out of them Ashok Kumar (PW 1), Veer Singh injured (PW 7), Shish Raj (PW 4), Mahendra conductor (PW 7) and Ram Nath alias Major (PW 9) a passenger of the Bus, were cited as eyewitnesses. The remaining witnesses were all formal.

The medical examination of Veer Singh (PW 2) revealed the following injuries:

(1) Gunshot wounds of entrance six in number scattered and each measuring 1 cm x 1 cm in an area of 20 cms x 15 cms on the outer surface of the left middle part. Margins were inverted. There was no scorching, blackening or tattooing.

(2) Gunshot wounds of exit again six in number scattered, each measuring 1.5 cm x 1.5 cm on the inner surface and lower half of the left thigh, with everted margins and no blackening, scorching or tattooing. These wounds were in an area of 1. cms x 18 cms. The patient was kept under observation and was admitted to the Hospital and X-ray of the thigh was advised. A bed head ticket has also been placed on the record.

7. Dr. Manju Rastogi (PW 8) has entered the witness box as PW 8.

8. It is obvious from a perusal of these injuries that firing at Veer Singh was made from a distance and the six pellets entered into his left thigh from the outer side, passed through the thigh and went out through the inner surface. The direction was slightly from upwards to downwards and the prosecution story that firing was made at this man and the other persons who were running away while they were on the ground and the assailants were on a higher level in the Bus, finds corroboration from the nature of these injuries. In any view of the matter, the presence of Veer Singh on the spot at the time of the occurrence cannot be disputed.

9. Ram Pal Singh's post mortem examination report is Ext. Ka 16 on the record. The doctor found one gunshot wound 3 cms x 2 cm x thoracic cavity deep over the lateral end of the right collar bone with inverted margins and the blackening and the charring around the wound. He also found the contusion 3 cms X 2 cms over the lateral side of the front of the chest 2 cms below the left nipple. Under this injury No. 2, 5th rib had fractured and under injury No. 1, the 2nd and 3rd ribs had fractured. Pleura was congested. The whole of the right lung was lacerated. Six shots were recovered. One cap and five wedding pieces were also recovered. The middle and the lower lobe of the left lung was also lacerated and four shots were recovered. The pericardium was lacerated and congested. The left ventricle of the heart was also lacerated and four shots were recovered. One

shot was present in the thoracic cavity. The death was due to shock and haemorrhage, as a result of these gun shot injuries.

10. Mahendra (PW 7) Conductor of the Bus did not support the prosecution version. From his testimony, this much is established that the Bus had come at the Bus Stand at Umri Kalan at about 2.30 p. m. His contention is that he had gone away to a nearby tea shop to refresh himself and there he heard the sound of a shot. Obviously he is not supporting the prosecution version, because people have not the courage to come with truth out of fear for the culprits. But two things are established from his testimony and they are: that the occurrence took place inside the Bus and that it took place near about 2.30 p. m. The Investigation Officer who reached the scene of occurrence with promptitude, found the Bus still standing on the spot abandoned by its passengers and it was taken into custody. He found the dead body of Rampal Singh on the front seat by the side of the Driver towards his left hand, where he had slumped after receiving the spot. He took blood from the seat also into custody. He also found some piece of wood covered with a red cloth and a piece of iron from the spot and the prosecution contends that these pieces indicate the use of sheathed swords and Kirpans. We will look into that matter shortly. For the present it should suffice to note that the occurrence undoubtedly took place inside the Bus, of which Mahendra was Conductor. The learned Sessions Judge has discarded the testimony of Ramnath alias Major (PW 9) holding that he was not a reliable witness. A number of reasons have been given by the learned Judge in this respect and while we agree with his assessment completely, we will point out two major reasons why his testimony should not be accepted. The first is that he was interrogated very late and there is no explanation for the same. The second is that the cross-examination with him reveals that he did not have any opportunity of knowing the culprits from before and no proceedings for holding of the identification of those persons in Jail were taken.

11. Even after discarding the eyewitness account of Ramnath alias Major (PW 9) and Mahendra conductor, who have not supported the prosecution version, we are still left with the testimony of Ashok Kumar, Veer Singh and Shish Raj. So far as PW 6 Tekka is concerned, the learned Judge in the Court below has felt that that his presence in Amroha on that date was doubtful. In our opinion Tekka's presence is not of much importance. He simply says that the land had been allotted to him by Gram Sabha and naturally, therefore, Shish Raj as Pradhan was interested in him, also due to his sworn enmity with Dilip Singh and actually it was Shish Raj who was conducting the entire case in which 1151977 was a date for evidence before the Sub-Divisional Magistrate, Amroha. Tekka's testimony only goes to establish that in connection with that case, Dilip Singh with his associates and Shish Raj with his associates including Ashok Kumar, Veer Singh and Rampal had gone to Amroha on that date. Even if Tekka is not found to have gone there, merely because he has neither signed nor thumb marked the order sheet, it will not effect the prosecution version of the matter at all. We will however, observe that it is not always that parties are made to sign or thumb

mark the order sheet. Ext. Ka 20 shows that when the case was taken up in the court in the absence of the Magistrate, parties were represented by their counsel. Naturally there was no occasion for taking down the signatures or thumb marks of the parties. It is, however, expected that since the case was fixed up for hearing (which fact has been established from the order passed on 11577 whereby the next date was fixed for hearing) it is to be expected that the parties had reached the Court along with their witnesses. Hence in our opinion, the learned Sessions Judge's observation that Tekka's presence is doubtful, is not very appealing. But even allowing it to remain, as it is, as we have already mentioned earlier, it does not effect the prosecution case at all. It is undoubted that Ashok Kumar, Shish Raj and eer Singh as well as Ram Pal were returning from Amroha and had reached Umri Kalan, when this occurrence took place. It is no body's case that they were passengers in this Bus from Amroha. Undoubtedly the murder of Rampal was done inside the Bus. It, therefore, means that it was at Umri that he entered the Bus and took his seat in it and then something had happened as a result of which he was fired at and killed. The testimony of Ashok Kumar, Veer Singh and Shish Raj is consistent to say that because Rampal was the maternal uncle of Ashok Kumar and hence a senior Member of the Group, he was obviously not allowed to push the Car to a side of the road and this duty was taken by Ashok Kumar and Shish Raj. They, therefore, allegedly handed over their guns and cartridge belts to Rampal. Meanwhile when the Bus arrived on the spot and was bound towards the Kaanth, Rampal entered it and sat down towards the left hand seat from the Driver which was vacant. The evidence further shows that Ashok Kumar and Veer Singh had also boarded the Bus, of course behind Ram pal because they were earlier busy in removing the car from the road. The evidence further shows that Shish Raj did not enter inside the Bus. He stood on the footboard of the Bus. Then this occurrence took place.

12. Our attention is however drawn by the learned Counsel for the appellant to Ext. Kha 6 which they claim to be a very important document in this case. This is the statement of Veer Singh recorded as a Dying Declaration at 9.50 a.m, on 125 1977 in the District Hospital at Moradabad by an Executive Magistrate. Since Veer Singh has survived his injuries, it ceases to be Dying Declaration, but, is still his previous statement under Section 164 Cr. P. C. This statement is relevant in view of Section 145 of the Evidence Act and also is admissible under Section 157 of the Indian Evidence Act. The learned counsel for the defence has very vehemently argued that this statement of the injured witness Veer Singh will completely demolish the prosecution story, as it is now brought forth and the present statement of Veer Singh recorded on oath in Court will be completely irreconcilable with Ext. Kha 6. A perusal of Ext. Kha6 will show that Veer Singh started by saying that he received his shot at 2 p.m and this shot was fired by Daleep Singh. He also said that they were coming by that Bus from Amroha and going to Kaanth. So far as this statement is concerned, it is obviously wrong. It is no body's case that Veer Singh and others were travelling by the same Bus from Amroha to Kaanth. On the contrary it appears that these people had

boarded the Bus at Uttnri Kalan. Subsequently in the same statement Veer Singh says that Daleep Singh's party was in the Bus and he and his party were travelling by a Private Ambassador Car, of which a tyre punctured near Umri. Some people went to get a second tyre from the village, while Rampal, Veer Singh and two persons boarded the Bus. Then firing was made, Rampal died on the spot. Veer Singh ran away. He was also fired at and fell down. Emphasis is placed upon the statement, where in Ext. Kha 6 it is said that two persons namely Veer Singh and Rampal boarded the Bus and with reference to this statement it is contended that the prosecution story about the presence of Ashok Kumar and Shish Raj on the Bus is an after thought and is not borne out from this statement. And even the statement of Veer Singh now made on oath contrary to this earlier statement (Ext. Kha 6) is to be ignored. We have given very anxious consideration to Ext. Kha 6 and its import and we are of the view that it does not contradict the sworn testimony of the witnesses recorded in Court. It appears that Rampal was the first to go inside the Bus, Veer Singh followed him and stood by his side when he had taken his seat. The prosecution evidence further shows that Ashok Kumar also boarded the Bus, stood close to Veer Singh, while Shish Raj did not go inside the Bus, but remained standing on the footboard. Under these circumstances, when this statement is not a detailed and complete statement of the facts and when the Magistrate has not taken care to probe into the details of the matter, it will be wrong to think that this is a complete statement. This statement only shows in a rather haphazard and brief manner, how the occurrence took place. It appears that firing was resorted to by Daleep Singh. The impression of Veer Singh is that it was Daleep Singh who fired at him and had caused him injuries. It is undoubted even from Ext. Kha 6 that Veer Singh was running away from the Bus, when he was fired at and received injuries. Since the initial firing was made by Daleep Singh, hence he remained under impression that the firing at him was also made by Daleep Singh actually. As the learned Sessions Judge has very rightly observed that Veer Singh was running away to save his life, it will not be reasonable to think that he would be turning back and seeing that was happening inside the Bus. Therefore, who fired at him, can not be a matter of knowledge with him. His contention that he was fired at by Daleep Singh is, therefore, a matter of impression and not a matter of fact. Of course now in his statement on oath, he has tried to the line of the remaining prosecution witnesses by saying that he was fired at and injured by Balwant Singh and Jagir Singh alias Jahangir Singh. The learned Sessions Judge has not accepted that story and has already given the benefit thereof to the accused persons. Nothing more than this could be done. In every case, it is the duty of the Judge to sift grain from chaff and this is precisely what has been done in the present case by the learned Sessions Judge. He has analysed the statements of all the three witnesses Ashok Kumar, Veer Singh and Shish Raj. He has looked at them in the light of Ext. Kha 6 the earlier statement of Veer Singh and he has come to the conclusion that since there is no mention of firing by Jagir Singh alias Jahangir Singh and Balwant Singh in Ext. Kha 6 and since the running away people could not have known as to who were firing towards them

from inside the Bus, hence the role assigned to Balwant Singh and Jahangir Singh alias Jagir Singh was not satisfactorily made out. In our opinion Ext. Kha6 does not contradict the testimony of Jagir Singh on oath or of Ashok Kumar and Shish Raj as recorded in Court. The two are not irreconcilable.

13. This being the situation, after going through the evidence of the witnesses, it becomes abundantly clear to us that so far as Daleep Singh is concerned, his role is completely exposed and known. It was Daleep Singh who entered into an altercation with the deceased Rampal Singh and then fired the fatal shot at Rampal Singh which ultimately ended in his death. Daleep Singh was armed with a gun, according to the testimony of all the witnesses and even Ext. Kha6. Of course it is not established satisfactorily and beyond doubt that any swords or kirpans were used on the spot: much less that they were used while they were still in sheaths. The finding of a piece of clothcovered wood and of some iron part does not conclusively prove anything. When such an occurrence takes place in broad day light inside a Bus, which is occupied by people, there is always a sort of stampede, because every body tries to run away for safety as soon as possible. In that melee, if some piece of sword or kirpan breaks and falls, it does not mean that swords and kirpans were used. The injury that was sustained on the chest by Rampal Singh, could have been caused by a fall which necessarily took place after he received the shot.

14. We are not convinced from the arguments of the learned counsel for the defence that there was any delay in the lodging of the first information report in this case. The occurrence undoubtedly took place in broad day light at 2.30 p.m. in the month of May, 1977. The presence of Ashok Kumar. Veer Singh and Shish Raj is established beyond doubt, one of them being injured and all the three having reached the Thana together at the time of the lodging of the report within one hour of the occurrence covering a distance of six miles on another Bus. The documents prepared by the Investigating Officer on his arrival at the scene of occurrence including the inquest memo etc. clearly mention the date and time of the first information report and the name of the Lodger thereof. The crime number is also mentioned on the papers which were sent along with dead body for post mortem examination. When an occurrence takes place in broad day light inside a Bus, as is the present case, it is highly improbable that the real culprits will be serened and only enemies shall be implicated. The possibility of implicating of some of the enemies along with the real culprits"may be there.

15. The witnesses in this case are obviously partisan and inimical. There is Direct enmity between Daleep Singh on the one hand and ashok Kumar and Shish Raj on the other. Daleep Singh was involved in murder case of Ashok Kumar's father received a sentence of imprisonment for life from the Sessions Court. Of course an appeal before the High Court is pending. The first information in that case was Shish Raj who had lodged the report. Veer Singh is a friend of Ashok Kumar and, therefore, we can accept defence contention that the witnesses are all partisan and inimical. The only independent witness Mahendra who was undoubtedly the

Conductor of the Bus has not supported the prosecution version and has taken shelter behind the plea that he was at the teashop when he heard the firing. This was an easy way for him to wriggle out of his earlier statement made under Section 161, Cr. P. C. Obviously because he did not want to incur the enmity of Daleep Singh and his associates. But in a case in which the evidence consists of only partisan and inimical witnesses, the law is not that they should be disbelieved outright and the case be dismissed. The law only is that their testimony should be taken with greater care and caution and should be analysed and tested and then accepted. This is what has been done in this case. We are convinced that the three witnesses Ashok Kumar, Veer Singh and Sbisb Raj are telling the truth, as regards the rob of Daleep Singh concerning the murder of Rampal Singh. Therefore, Daleep Singh's guilt was satisfactorily proved beyond doubt and we are in agreement with the learned Additional Sessions Judge that Daleep Singh was to be convicted under Section 302, I.P.C. and sentenced for the same.

16. In the result, we do not find any force in this appeal, which is hereby dismissed.

17. The conviction of appellant Daleep Singh under Section 302, IPC and the sentence of imprisonment for life awarded to him by the Vth Addl. Sessions Judge of Moradabad are both upheld. He is on bail. He shall surrender and shall be taken into custody forthwith to serve out his sentence and his sureties and bail bonds shall be cancelled.