

**(2012) 08 AHC CK 0002**  
**In the Allahabad High Court**  
**Case No : Criminal A. No. 1989 of 1983**

Deo Singh and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision :** 01-08-2012

**Acts Referred:**

Arms Act, 1959 — Section 3(2)(i)  
Criminal Procedure Code, 1973 (CrPC) — Section 313  
Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

**Citation :** (2012) 3 ACR 3085

**Hon'ble Judges :** Vinod Prasad, J; Surendra Kumar, J

**Bench :** Division Bench

**Advocate :** Mohan Chandra, Jai Narain, Ajaya Vasistha and Tarun Agarwal, for the Appellant;

**Final Decision :** Allowed

## Judgement

Vinod Prasad, J.—Four appellants, including two sibling brothers Deo Singh (A-1), and Megh Singh (A-2) and two others. Chheda Lal (A-3) and Chob Singh (A-4) were convicted u/s 302/34, I.P.C. by VIIIth Additional Sessions Judge, Etah, in S.T. No. 281 of 1982, State v. Deo Singh and others, relating to P.S. Sahawar, District Etah. vide impugned judgment and order dated 22.8.1983 and hence convicted accused have preferred instant appeal challenging their aforesaid conviction and sentences. Prosecution allegations, as narrated by the informant Lala Ram (P.W. 1) in his written F.I.R. Ext. Ka-1, and later on deposed in the Sessions Trial, were that prosecution side as well as accused-appellants, both were residents of the village Nagla Ishwari, P.S. Sahawar, District Etah. To make the prosecution allegation clear, a pedigree, as was testified by Lala Ram P.W. 1, is sketched herein under.

One "X" had two sons Buddha and Chet Ram. Buddha had five sons, namely, Prem Singh (father of informant Lala Ram, P.W. 1), Deen Dayal, Panna Lal (father of eye-witness Mohan Lal), Pokh Pal and Ganga Ram (father of eye-witness Ram

Singh). Chet Ram had two sons Bhojraj and Veer Sahai (prosecution witness). Bhagwan Singh is the son of Bhojraj.

2. Two days prior to the present incident, marriage procession of Bhagwan Singh had gone to the village Veerpur at a distance of 6-7 kos (12-14 miles) from appellant's village. In that marriage procession, informant Mohan Lal. Ram Autar (deceased), Veer Sahai, Ram Singh and Prem Singh had gone. Following day of the marriage procession, Panna Lal (father of witness Mohan Lal) expired, which message was conveyed to the informant and others in Veerpur at 5 p.m. divulged by Lekh Pal son of Girvar and, therefore, informant, Mohan Lal, Ram Singh, Om Prakash and Ramveer returned back to their village at 9 p.m., same day, whereas rest of the persons gone with the marriage procession stayed over at Veerpur. Last rites of Panna Lal was performed next day morning at 7 a.m.

3. According to the further prosecution allegations. Ram Autar (deceased), who had also gone in the marriage was a servant at the thrasher of one Ram Swaroop, which was adjacent to informant's house. Ram Autar had already returned back to his native village from marriage procession at 12 in the noon, as Ram Swaroop seldom gave him permission to go out of village. Ram Autar lived at Ram Swaroop's house and used to dine there itself. After his return informant went to inform the deceased regarding demise of Panna Lal, elder brother of his father (Tau) and to request him to shut down the thrasher. Deceased, however did not shut down the thrasher and continued thrashing the crops of appellant Megh Singh. Deceased asked the informant to stay over with him at the thrasher. When informant was present with the deceased at the thrasher that, in his presence, two of the accused Megh Singh and Deo Singh, took away the deceased from the thrasher. Informant thereafter returned back near the dead body of Panna Lal at 11.30 p.m. Thereafter, informant spotted the deceased and two accused Megh Singh and Deo Singh, sitting at the roof of the house of Megh Singh. Subsequent thereto accused Chheda Lal and Chob Singh, took away all the three of them to the house of Chheda Lal. Sometimes thereafter, all the four appellants raised hue and cry that a burglar had trespassed into the house of Chheda Lal. Said aired hue and cry attracted informant Lala Ram, Deen Dayal, Veer Sahai, Ram Singh and Mohan Lal towards the house of Chheda Lal and they all inquired about the burglar, but were told that burglar shall be produced next day morning. At that time the room, in which burglar was detained, was bolted and locked from outside. In spite of insistence by the witnesses to see the burglar, they were refused.

4. Following day morning, wife of accused Chheda Lal informed the informant that his brother, Ram Autar, had been murdered and was bolted in the room. A similar news was also flashed in the village.

5. Informant Lala Ram, thereafter, got F.I.R. Ext. Ka-1, scribed through Mahesh and went to the Police Station Sahawar, at a distance of seven miles and lodged his F.I.R. as crime No. 56/82. u/s 302, I.P.C. against the appellants on the following morning 6.5.1982 at 10.05 a.m.

Constable clerk Khan Singh (P.W. 7) had recorded Ext. Ka-1 by preparing chik F.I.R. Ext. Ka-12 and relevant G.D. entry Ext. Ka-13.

6. S.O. Sahawar Brij Raj Singh (P.W. 6) commenced investigation into the crime and interrogated the informant (P.W. 1) at the police station itself and, thereafter, arriving at the murder scene in village Ishwari Nagala, he got the latch of bolted locked room broke open. Corpse of Ram Autar was found hanging from a tie rod by a tahmad (wrapper), which was wrapped around the neck. The corpse of the deceased was got untied and alighted and put on the floor supinely. Recovery memo of the lock was prepared by the Investigating Officer as Ext. Ka-2. Thereafter, Investigating Officer conducted inquest on the cadaver of the deceased and prepared inquest report Ext. Ka-4. Other relevant papers Ext. Ka-5 to Ka-7 were also prepared simultaneously by the Investigating Officer, P.W. 6. Concluding inquest, the dead body was sealed and was handed over to constables Devi Prasad and Palan Singh to be carried to the mortuary for post-mortem examination. Investigating Officer thereafter, conducted spot inspection and prepared site plan map Ext. Ka-11. Thereafter, witnesses were interrogated and concluding investigation, P.W. 6 laid charge-sheet Ext. Ka-11 against accused-appellants on 26.7.1982.

7. Postmortem examination on the body of the deceased was conducted by Dr. R.P. Dixit, M.O. District Hospital, Etah (P.W. 5) on 7.5.1982 at 2 p.m. According to the doctor's estimation, deceased was 26 years of age, having an average built body and rigor mortis had already passed off from his cadaver and putrescencing of the dead body had set in. His eyes were bulging out and tongue was protruding out of the mouth. Blood was coming out from the nostrils. Deceased had a single ante-mortem injury on his body, which was on the neck between the chin and cordial cartilage. According to the doctor, larynx and trachea were deeply congested and cause of deceased's death was strangulation, as a result of ante-mortem injury.

8. Charge sheeting of the accused resulted in their summoning by the Judicial Magistrate-Ist class, Etah who had committed their case to the Sessions Court on 9.7.1982, After receipt of the record before the Sessions Court. S.T. No. 281 of 82, State v. Deo Singh and others, was registered in the Sessions Court against the appellants.

9. All the accused-appellants were charged under Sections 302/34 and 201, I.P.C. by VIIIth Additional Sessions Judge, Etah on 5.1.1983, which charges were abjured by them and, therefore, to establish their guilt, Sessions Trial procedure was resorted to.

10. Prosecution examined seven witnesses during the trial to prove it's case, which included informant Lala Ram (P.W. 1), fact witnesses Deen Dayal (P.W. 2), Bhagwan Singh (P.W. 3), Devi Prasad (P.W. 4), Dr. R.P. Dixit (P.W. 5). Brij Raj Singh (P.W. 6) and Khan Singh (P.W. 7). First three witnesses were that of facts and rest were formal witnesses.

In their statements u/s 313, Cr.P.C. all the accused denied incriminating circumstances appearing against them and pleaded their false implication.

11. Learned trial court vide impugned judgment and order dated 22.8.1983 held accused-appellants Deo Singh and Megh Singh guilty for both the offences, under Sections 364 and 302/34, I.P.C. and therefore, convicted both of them to 10 years R.I. on the first count and with life imprisonment on the second count and directed that both the sentences shall run concurrently. It further convicted rest of the two accused, Chob Singh and Chheda Lal u/s 302/34, I.P.C. and sentenced them to life imprisonment. Hence, this appeal by all the convicted accused.

12. We have heard Sri Ajay Vasistha for the appellants and Sri Sangam Lal Kesharwani, learned A.G.A. for the State.

13. It was pointed out, at the outset, by the appellant's counsel that two of the appellants Megh Singh and Chob Singh had expired and their appeals have already been abated on 12.7.2012. It was, therefore, contended that now the appeals of rest of the two appellants Deo Singh A-1 and Chheda Lal A-2 have to be considered.

14. Assailing and castigating the impugned judgment, appellant's counsel submitted that entire prosecution version is incredible and cooked up. F.I.R. was lodged after due consultation and deliberation and informant was not a witness of the incident. There was no evidence on record for sustaining conviction u/s 364, I.P.C. Deceased had trespassed into Chheda Lal's house with illegal design and since he was apprehended and was locked in a room, therefore, he committed suicide because of temerity, therefore, a false case was cooked up. Learned counsel pointed out paragraphs 13 and 15 of the deposition of P.W. 1 in support of the said contention. It was further submitted that the prosecution has not established conclusively that the deceased was strangled to death and therefore, it was contended that benefit of uncertainty should be conferred on the appellants. In this respect, appellants counsel relied upon para 7 of cross-examination of the autopsy doctor P.W. 5. It was further submitted that, in fact, it is a case of suicide by the deceased because he was apprehended when he had entered into the house of accused Chheda Lal for committing theft, and subsequent thereto prosecution story was feigned. Appeal of appellants be allowed and they be set at liberty submitted learned counsel as prosecution has failed to establish their guilt beyond all reasonable doubt.

15. Learned A.G.A. argued to the contrary and submitted that in the autopsy report cause of death is mentioned as strangulation and therefore, it is established that the deceased was murdered and since his body was found inside the house of accused Chheda Lal, therefore, guilt of the appellants is established beyond all reasonable doubt, as for the last time the deceased was seen alive in the company of the appellants and thereafter only his dead body was found. It was also pointed out that toe of the deceased was touching the ground and therefore, he could not have committed suicide.

16. We have considered the rival submissions and have perused the entire trial court record in the light of the submissions raised before us. We have also gone through the relevant portion of the testimonies of witnesses and have vetted them.

17. There are some uncontroverted features of the case. Firstly, that the informant, the deceased, the witnesses and the appellants all were residents of the same village. It is also not disputed that the deceased was a servant at the thrasher of Ram Swaroop and used to live there, It is also not in dispute that the body of the deceased was found in the house of Chheda Lal accused.

18. However, when we embark upon a roving inquiry and critical analyse the facts, attending circumstances and evidences, to separate the grain from the chaff, some very disturbing features of the entire prosecution story are revealed, which, to us, seem to be very bizarre. First of all if the appellants had an intention to commit murder, why they will take the deceased with them and will sit in an open place on the roof to be spotted by all and sundry? Moreover, why appellant Chheda Lal will strangle the deceased in his own house and thereafter raise hue and cry of a burglar intruding in his house to attract and get collected entire village? Why appellants will bolt the deceased inside a room of their own house from outside, if they had already murdered him, so as to facilitate discovery of dead body from the house of one of the appellants? All these aspects remain unexplained. Moreover, why deceased did not accompany informant after hearing the news about the demise of his uncle and why he accompanied the accused, instead of going to his house? Conduct of the informant of staying at the thrasher, when he had gone to call the deceased is also very surreal. But for a ligature mark there was no other external physical injury detected on deceased corpse. Wrapper (Tahmad), by which cadaver of the deceased was hanging belonged to the deceased, as it could not be connected with any of the appellants. Attires found on the deceased's dead body were only a half sleeve under garment (banyan) and an underwear. There was no sign that any force was applied on the deceased to annihilate him. All these undisputed features are so dicey and unsatisfactory that they compel us to opine that the prosecution allegations are un-natural, embellished and fabricated. It is for above reasons that we find it unacceptable. Site plan map indicates that there were other houses in the vicinity and if, prosecution allegations are true, why deceased did not raise any hue and cry so as to seek help? And moreover uncertain medical opinion further adds a repelling unreality to the prosecution version. Prosecution was also not sure about it's case and that is why it abjured re-examining the doctor to establish it's case. There is no eyewitness of the incident, which hinges mainly on circumstantial evidence only of last seen. Defence story cannot be negated altogether as, on preponderance of probabilities, it could be quite possible and, with certainty, it cannot be impeached as a complete hokum or prevarication. All these aspects have been extracted at length by us as it was imperative for us to unearth the truth as dynamics of false implication are sometimes nuanced in a manner so as to cover

up the actual happening. Attaur, we will show later on in this judgment that there is paucity of evidences for sustaining charge u/s 364, I.P.C. also for very legitimate reasons.

19. Another significant aspect is that u/s 313 no questions were put to the accused regarding deceased being strangled to death or that he was kidnapped. Unless accused is afforded an opportunity to explain incriminating circumstances appearing against him in the prosecution evidences, the said circumstance cannot be considered against him to hold him guilty. No question regarding strangulating the deceased or regarding doctor's evidence were put to the accused. Apex Court had crystallized the law on this aspect in plethora of it's decisions and just to draw support we refer a few of them as under-

20. In Sanatan Naskar and Another Vs. State of West Bengal, , it has been held by the Apex Court as under:

10. The answers by an accused u/s 313 of the Cr.P.C. are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.P.C. is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.P.C. As already noticed, the object of recording the statement of the accused u/s 313 of the Cr.P.C. is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain.

In Ganesh Gogoi Vs. State of Assam, , it has been held by the Apex Court as under:

28. It does not appear that any witness has deposed that the appellant is a member of U.L.F.A. Therefore, it is a very unfair question. The Court has

allegedly convicted the appellant u/s 3 (2) (i) but the ingredients of the Section 3 (2) (i) were not been put to him. Therefore, there has not been a fair examination u/s 313 of the Cr.P.C. at all. The provisions of Section 313 are for the benefit of the accused and are there to give the accused an opportunity to explain the "circumstances appearing in the evidence against him". In *Basavaraj R. Patil and Others Vs. State of Karnataka and Others*, , this Court held that those provisions are not meant to nail the accused to his disadvantage but are meant for his benefit. These provisions are based on the salutary principles of natural justice and the maxim "audi alteram partem" has been enshrined in them. Therefore, the examination u/s 313 has to-be of utmost fairness. But that has not been done here. This is also a factor vitiating the trial.

21. Moverover motive alleged by the prosecution has not been established at all. We further find that the appellants' contention that there was no material to convict the two appellants Deo Singh A-1 and Megh Singh A-2, u/s 364, I.P.C. is well merited. Deceased was a co-villager and was very well known to the accused persons. No force was applied by these appellants to carry the deceased alongwith them. Subsequently, the deceased was spotted in the company of rest of the two accused Chheda Lal (A-2) and Chob Singh (A-4) also. There is no evidence worth in the name that all the four had kidnapped and/or abducted the deceased. At that moment none of the accused were armed with any weapon nor the prosecution had disclosed any motive for all the four appellants to kidnap/abduct the deceased. Though, It was alleged that the deceased was having an illicit relation with the wife of accused Chheda Lal. therefore, he was murdered, but in that respect, but for ipse dixit there is no other convincing evidence at all. Prior to the present incident, Chheda Lal had not taken any step against the deceased or the informant. How long the relationship was continuing is also not known. All the accused persons have emphatically denied the said prosecution allegation. But for the informant, no other witness had supported the prosecution case. P.W. 2 initially had denied that he does not know why the deceased was murdered but then he made a "U" turn and deposed that he had love relations with the wife of Chheda Lal. P.W. 3 was declared hostile by the prosecution and was cross-examined. He had not said a word regarding the aforesaid love relationship.

22. Further, we find that the informant had not taken any step to search for his brother the whole night. As already stated hereinabove medical report does not support the prosecution case of deceased being murdered by strangulation. There was no mark of any scratch on the face of the victim as well. The doctor had not ruled out possibility of deceased committing suicide. In view of such categorical depositions by the doctor, which remains uncontroverted through any re-examination, we are not satisfied that the prosecution has been able to establish conclusively and convincingly that the deceased was murdered by the appellants. It is further noted that even in examination-in-chief the doctor had only expressed the possibility that deceased was murdered by wrapping of something in his neck and thereafter was hanged but no definite opinion about

the same could be given. In view of such evidences, we doubt the prosecution story of deceased being murder by the appellants.

23. Further, what we find that the F.I.R. is delayed and does not seem to contain correct narration. It does not contain the time of the incident. Perusal of it does not indicate that informant was a witness to the entire incident. There was no reason for the informant to wait till morning and then lodge the F.I.R. Inquest report also does not indicate any other injury except a ligature mark. According to the prosecution, informant was informed about the murder by the wife of accused Chheda Lal but very curiously, during investigation, she was not interrogated by the Investigating Officer nor was examined during the trial and therefore, the aforesaid statements of the informant remains hearsay and does not inspire any confidence.

24. Perusal of the inquest report also indicates that it was a case of suicide because when the cadaver of the deceased was located for the first time then he was wearing only white half sleeves Banyan and underwear and the tahmad (wrapper) under waste was tied around his neck with which he was hanging.

25. From the entire facts and circumstances, we are not satisfied that it is a case of murder of the deceased.

26. In view of above, we find that the prosecution has not been able to substantiate it's charge and bring home appellants guilt to the hilt and therefore, are of the opinion that the appeal has to be assoilzied in favour of two surviving appellants Deo Singh (A-1) and Chheda Lal (A-3) and they deserve acquittal. In view of above, appeal is allowed. Convictions of both the surviving appellants Deo Singh (A-1) and Chheda Lal (A-3) recorded by the learned trial Judge through impugned judgment and order are hereby set aside. Both the appellants are acquitted of ail the charges. They are on bail, they need not surrender, their personal and surety bond are discharged and they are set at liberty.

Let a copy of the Judgment be certified to the trial court for it's intimation.

Surendra Kumar, J.

I agree.