

(2005) 10 AHC CK 0184
In the Allahabad High Court
Case No : Criminal Appeal No. 940 of 1981

Mahendra Singh (In Jail)

APPELLANT

Vs

The State of Uttar Pradesh

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 117
Penal Code, 1860 (IPC) — Section 109, 114, 302, 394, 397

Citation : (2005) 10 AHC CK 0184

Hon'ble Judges : Mukteshwar Prasad, J

Bench : Single Bench

Advocate : D.N. Wali and S.S. Rathor and Jadunandan Singh, Amicus Curiae, for the Appellant; A.G.A. and Ajai Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Mukteshwar Prasad, J.—This criminal appeal by accused Mahendra Singh has been filed against the judgment and order-dated 17.3.1981 passed by Sri Daya Shankar, the then Additional Sessions Judge, Shahjahanpur whereby he convicted him u/s 394 read with Section 397 of the Penal Code and sentenced him to undergo rigorous imprisonment for a period of ten years.

2. In brief, the prosecution case was as under.

3. P.W.1 Jag Pal Singh, son of late Chheda Singh, a resident of village Raghuala, P.S. Nigohi, is informant. Late Chheda Singh did business of sale and purchase of food grains and his son Jag Pal Singh used to assist him in the business. Both father and son used to visit nearby villages, including Suheli in connection with purchase of food-grains. They visited village Inta Rora also where the appellant resided in connection with the business and as such, the accused was well known to Jag Pal Singh for the last several years.

4. On 19.9.1979, Chheda Singh left his house for purchasing food grains and was going to Suheli Bazar. He was having Rs. 3000/- cash. The informant

accompanied by his co-villagers Somendra Singh, Raja Singh and Shree Pal Singh were also going to Suheli for marketing. Chheda Singh was ahead of his son and others at a distance of about 50 yards. At about 3-30 P.M., Chheda Singh arrived near the plot owned by Vishram Singh. All of a sudden, three miscreants came out of the bushes and appeared there. In the scuffle, Chheda Singh fell down on the ground and one of the miscreants attacked on him with a knife. He gave knife blow on the neck of Chheda Singh and snatched away his bag. Accused Mahendra Singh was having a single barrel gun and was standing there. When the informant and others rushed with a view to save Chheda Singh and to apprehend the robbers, raising alarm, Mahendra Singh took position and threatened to kill them. Chheda Singh was killed on the spot and the robbers took away the bag. Mahendra Singh was identified correctly by the informant and other witnesses but the remaining two miscreants were not identified.

5. Jag Pal Singh got a report, prepared by Somendra Singh and reached police station along with village Chowkidar and handed over his report. The local police registered a case on the same day at 6-30 P.M. at crime no. 255.

6. The case was investigated by P.W.6 S.I. Sri Niwas Visht, who was S.O. He started investigation immediately, interrogated the complainant and left police station for place of incident. He prepared inquest report and other papers and sent the dead body to District Hospital for autopsy.

7. P.W. 5 Dr. Satya pal, Medical Officer of the District Hospital, conducted post-mortem examination. Dr. Satya Pal found the following ante-mortem injuries:-

1- Incised wound 7 cm. x 2 cm. x esophagus, transverse just below...aspect front...neck. Larynx, esophagus and right column carotid vessels found divided.

2- Incised wound 2 cm. x 1 cm. oblique x muscle pulp right thumb.

3- Incised wound 2 cm. x 0.6 cm. x muscle pulp left index finger.

8. In the opinion of doctor, death was caused on account of shock and haemorrhage resulting from ante-mortem injuries.

9. The I.O. recovered a lathi and bag of the deceased, which were identified by the complainant. The accused was arrested by the police on 21.9.1979. The I.O. completed investigation and submitted charge sheet against the accused (Mahendra Singh).

10. Accused Mahendra Singh was charged u/s 394 read with Sections 397 and 302 read with Section 109/114 of the Penal Code. He pleaded not guilty and claimed to be tried.

11. At the trial, the prosecution examined six witnesses in all, including P.W.1 Jag Pal Singh who is son of the deceased and complainant. He is said to be an eyewitness also. P.W.2 Raja Singh, P.W.3 Sri Pal Singh and P.W.4 Somendra Singh who is brother-in-law of the complainant (Sala) were examined as eye witnesses and they were accompanying the deceased and were also going to Suheli Bazar

on the impugned date. P.W. 5 Dr. Satya Pal was examined to prove post-mortem report and P.W.6 S.I. Sri Niwas Visht is the I.O. of the case.

12. Accused Mahendra Singh in his statement admitted that complainant's father Chheda Singh did business of sale and purchase of food grains and he used to purchase food grains from the adjoining villages, including his village Inta Rora. He further admitted that rural Bazar was held on every Wednesday and Saturday in village Suheli and Chheda Singh used to go there for purchasing food grains. He, however, totally denied other accusation and pleaded his false implication. The defence version is that complainant was related to Rajendra Singh (Pradhan) of the village of accused. The proceedings u/s 107/117 Cr.P.C. had taken place between Rajendra Singh and father of the accused. Rajendra Singh was annoyed with him and as such, he was falsely implicated at his instance.

13. Accused examined his father Drig Pal Singh in his defence.

14. Taking into consideration the entire evidence on record adduced by the parties and the submissions made on their behalf, learned Judge found the accused guilty for committing robbery and convicted and sentenced him as mentioned above. The trial Judge found that Mahendra Singh did not share common intention of his companions to commit murder of Chheda Singh on the date in question. He had no knowledge that one of his associates would kill Chheda Singh with his knife. The accused was, therefore, acquitted of the charge u/s 302 read with Section 109/114 I.P.C.

15. I have heard learned Amicus Curiae Sri Ajay Srivastava, learned A.G.A. and perused the record carefully.

16. Learned Amicus Curiae has urged that delay took place in reporting the robbery to the police, which has not been explained. According to him, the complainant could not identify any of the miscreants and was not accompanying his father at the relevant time. The complicity of the appellant in alleged crime has not been proved beyond all shadow of doubt and in fact unknown criminals robbed Chheda Singh and committed his murder. Therefore, the appellant deserves acquittal. It was also urged that no independent witness supported the prosecution version and the court below committed error in placing reliance on the testimony of P.W.4 Somendra Singh who is admittedly brother-in-law of the complainant. No independent public witness came forward to support the prosecution story.

17. On the other hand, learned A.G.A. has supported the impugned judgment and has contended that the appeal is liable to be dismissed and conviction must be affirmed.

18. I have given my anxious consideration to the submissions made on behalf of the parties. I have also scrutinized the entire oral and documentary evidence on record led by them. In my considered opinion, the prosecution succeeded in establishing that the appellant armed with a gun was one of the miscreants who

robbed complainant's father Chheda Singh on the impugned date and looted Rs. 3000/- cash from his bag. As mentioned above, the prosecution examined four witnesses of fact to prove complicity of the appellant in the crime. Out of six witnesses examined on behalf of the prosecution, two are formal. Out of four witnesses of fact, P.W.2 Raja Singh and P.W.3 Shree pal did not support the prosecution version on the point that they did not identify any of the three persons who committed robbery. However, it is noteworthy that both corroborated the prosecution version to this extent that Chheda Singh was killed in the month of September, 1979 (Kwar) and they alongwith Jag Pal Singh and Somendra Singh and the deceased were going to Suheli Bazar. P.W.2 Raja Singh further admitted that Chheda Singh was ahead of them about 50 steps. Raja Singh saw three miscreants who had surrounded Chheda Singh and one of them was having a gun and two were having knives. The gunman was standing there and the other miscreants took away the bag and killed Chheda Singh. Thus, Raja Singh and Shree pal also corroborated the prosecution story that incident of robbery took place in which Chheda Singh was the victim and he was killed in the same incident.

19. P.W.1 Jag Pal Singh, who is son of deceased, fully supported the prosecution story and disclosed that he too helped his father in the business of sale and purchase of food grains and they used to visit Suheli Bazar on every Wednesday and Saturday. According to him, the distance between his village and village of the appellant is about three kilometers only and he knew and identified the appellant for the last six years. The informant further disclosed that the appellant was having a gun and his associates were carrying open knives. The associates of the appellant caught hold of Chheda Singh and snatched his bag after killing him. When he and others tried to apprehend the criminals, the appellant took his position and threatened to kill them. In cross-examination, Jag Pal Singh claimed to have purchased food grains from the house of appellant. He further testified that the appellant had not muffled his face at the time of robbery.

20. P.W.4 Somendra Singh, who is admittedly brother-in-law (Sala) of Jag Pal Singh, corroborated the testimony of Jag Pal Singh and disclosed that he alongwith others were going to Suheli Bazar for purchasing vegetables, etc. It will not be out of place to mention that villagers go to weekly rural bazars for purchasing vegetables, etc. and as such, there is no valid reason to doubt that why Somendra Singh was also going to Suheli Bazar on the fateful day. Somendra Singh also gave out that the appellant was having a gun and his companions were having knives. He further disclosed that Mahendra Singh took his position and threatened to kill them in case they proceeded further. Both Jag Pal Singh and Somendra Singh were cross-examined extensively on behalf of the appellant but I find that nothing material could be elicited to discard or disbelieve their testimony.

21. It was urged with vehemence that P.W.1 Jag Pal Singh and P.W.4 Somendra Singh are related to each other and as such, the trial Judge committed illegality

in placing reliance on testimony of Somendra Singh. In my opinion, this contention of the appellant's learned counsel is not well founded and cannot be accepted. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield the actual culprit and falsely implicate the accused. No evidence has been led in this regard. This was held in Harbans Kaur and Anr. v. State of Haryana 2005 SCC 1213. The law is well settled on the point that testimony of interested or related witnesses shall not be discarded out right. No doubt the testimony of such witnesses has to be scrutinized with caution. In the instant case, I do not find any good ground to reject the testimony of Somendra Singh merely because he happens to be brother-in-law of the complainant who not only lost cash in the robbery but lost his father also.

22. I further see no valid reason to falsely implicate the appellant in the alleged incident. The complainant who claimed himself to be an eyewitness, saw the miscreants committing murder of his father in broad day light and taking away cash at the gun/knife point. It is true that the appellant was not found guilty for committing murder by the court below. He was however found guilty for committing robbery alongwith others. Therefore, there was no reason for the complainant to falsely implicate the appellant instead of real culprits. The incident of robbery took place at about 3-30 P.M. and F.I.R. was lodged on the same day at 6-30 P.M. The distance between the place of occurrence and the police station is about ten kilometers (six miles). In view of the facts that complainant's father was killed in the course of incident and the distance of police station is about ten kilometers (six miles), I am unable to accept this contention that delay took place in lodging the F.I.R.

23. So far the defence version is concerned that the appellant was falsely implicated at the instance of Rajendra Singh, the then Pradhan of appellant's village, was rightly rejected by the trial court.

24. In view of the aforesaid discussion and scrutiny of the evidence on record led by the prosecution, I fully agree with the conclusions of the trial Judge that the appellant was also one of the persons responsible for committing robbery and at that time he was armed with a gun and used the same in terrorizing the complainant and other witnesses who could not dare to apprehend any criminal. I therefore hold that the conviction and sentence recorded against the appellant u/s 394 read with Section 397 I.P.C. are sustainable and the appeal is liable to be dismissed.

25. In the result, the appeal fails and is hereby dismissed. The conviction of the appellant u/s 394 read with Section 397 of the Penal Code and sentence to rigorous imprisonment for a period often years are upheld.

26. The appellant is in District Jail, Shahjahanpur. A copy of this judgment shall be sent to Chief Judicial Magistrate, Shahjahanpur for compliance of the order

within a week. The Chief Judicial Magistrate shall send the compliance report to this Court within six weeks from the date of receipt of a copy of this judgment.

27. A copy of this judgment alongwith lower court record shall be sent to the court concerned immediately for compliance with an intimation to this Court within six weeks from the date of receipt.