

(1991) 09 AHC CK 0027
In the Allahabad High Court
Case No : Criminal Appeal No. 3367 of 1978

Panna and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 18-09-1991

Acts Referred:

Evidence Act, 1872 — Section 134
Penal Code, 1860 (IPC) — Section 100, 147, 148, 149, 201
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Penal Code, 1860 (IPC) — Section 100, 147, 148, 149, 201

Citation : (1992) CriLJ 1747

Hon'ble Judges : Palok Basu, J;B.P. Singh, J

Bench : Division Bench

Advocate : Keshav Sahai and S.P. Tewari, for the Appellant; Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, J.—This is an appeal against the judgment and order dated 27-11-1978 passed by Sri C. L. Anand, II Additional Sessions Judge, Mainpuri in S.T. No. 27 of 1978 (State v. Jhanku and 9 Ors.) Under Sections 147, 302/149 and 201, IPC, P. S. Bhongaon and ST No. 254 of 1978 (State y. Panna and 3 others) under Sections 302, 148 and 201, IPC, P.S. Bhongaon, District Mainpuri.

2. Pooran Singh P.W. 1, the first informant, and his brother Prithviraj were resident of Village Jaswantpur, P. S. Bhongaon, District Mainpuri. On 4-8-1977 Prithviraj had gone to Mainpuri in connection with a case which was pending in the courts. He returned back to Jaswantpur at about 4 p.m.

3. At about 5-30 p.m. Pooran Singh P.W. 1, Bhawani Singh Collector Singh, Vishwanath Singh P.W. 3, Bharat Singh, Kamty Prasad PW 5, and Dushashan PW 2 were sitting outside the door of Pooran Singh's house. They were talking

amongst themselves when they heard shouts of Prithviraj coming from the direction of the field of Panchhi. All these persons rushed towards the field of Panchhi. Pooran Singh PW 1 saw that Chandrapal, Laxman and appellant Panna armed with guns appellants Patiram Jhanku, Ugrasen, Rameshwar, Kashi Ram Jor Singh, Brindaban, Shiv Singh, Ganga Din, Anar Singh and Bir Bhan and 5-6 others armed with lathis had surrounded Prithviraj. Laxman and Chandrapal then gave out that Prithviraj was responsible for keeping the wife of Jhanku in the house of his own brother-in-law, Kunwar Sen, in village Sahori and as such he was to be taught a lesson. All the three persons, who were armed with guns i.e. Chandrapal, Laxman and Panna fired upon Prithviraj. Prithviraj was hit by the bullets. He fell down and succumbed to his injuries then and there. Panna and his colleagues took away the dead body of Prithviraj.

4. A report of the occurrence (Ex.Ka. 3) was lodged by Pooran Singh P.W. 1 in P. S. Bhongaon on the same day at 6-30 P.M.A. case under Sections 147, 148, 302/149, 201, 34, 100, IPC was registered as Crime No. 275 of 1977.

5. S. I. Mahesh Kumar Sengar P.W. 7, who was posted in P. S. Bhongaon during the years 1977-78, was present at the police station when this case was registered. He had started investigation immediately after the registration of the case Routine investigation had followed. S.I. Tejpal Singh had recovered the dead body of Prithviraj and after carrying out inquest proceedings, had sent the dead body to the mortuary for post-mortem examination. Dr. B. K. Misra P.W. 8 had conducted autopsy upon the dead body of Prithviraj on 6-8-1977 at 4-30 p.m. The result of the autopsy was as follows :

The deceased was about 28 years old and had died two days earlier. He was of average built. The body had decomposed and rigor mortis was absent. The doctor found the following ante-mortem injuries:

1. Fire arm wound of entrance 1.2 cm x 1 cm x neck deep on the neck right side 6 cm below right ear. Margin inverted. Blackening seen but scorching and tattooing not seen around the wound. Corresponds to wound of exit (2). Shape slightly oval.
2. Firearm wound of exit 1.5 cm x 2 cm x neck face deep of the face left side 5 cm front of left ear. Margin everted. No blackening, tattooing or scorching seen.
3. Lacerated wound 2 cm x 1 / 2 cm x scalp deep on the forehead 4 cm above left eye brow oblique.
4. Lacerated wound 3 cm x 1 cm x bone deep on the face right side 3 cm below and behind right angle of mouth. Oblique.
5. Fire arm wound of entrance (5 in number) on chest in an area of 4 cm x 3 cm on chest right side of lower part 8 cm below nipple at about 6 O'clock position, Each measuring 1 cm x 1 cm chest deep. Size nearly equal, shape almost circular. No blackening tattooing or scorching seen. No corresponding wound of exit. Pellets (4) big recovered and sealed.

6. Fire arm wound of entrance 2 cm. x 8 cm. x bone deep on left upper arm back aspect about 8 cm below posterior maxillary fold. No blackening, tattooing or scorching. Bullet recovered and sealed Fracture of bone at same place.

7. Abrasion five 2 cm right leg front aspect 4 cm below the ankle joint.

6. According to Dr. B. K. Misra PW 8, Prithviraj's death was due to shock and haemorrhage resulting from the ante mortem injuries which were caused by more than one fire arm.

7. After routine investigation a charge sheet against Chapdrupal, Laxman and the 12 appellants was submitted.

8. At the trial all the appellants pleaded not guilty and claimed to be tried.

9. In all the prosecution examined 8 witnesses i.e. Pooran Singh PW 1, Dushashan P.W. 2, Vishwanath Singh P.W. 3, Constable Prem Chand Dubey PW 4, Kamta Prasad PW 5, constable Raghuraj Singh PW 6, S.I. Mahesh Kumar Sengar PW 7 and Dr. B. K. Misra PW 8 in the case. The accused did not lead any evidence in their defence.

10. Learned Sessions Judge held that accused Panna was guilty of the offence u/s 302, IPC and consequently he was sentenced to life imprisonment. He was also sentenced to four years R.I. for the offence u/s 201, IPC sentences were to run concurrently.

11. Accused Jhanku, Ugrasen, Shiv Singh, Rameshwar, Virbhan, Gangadin, Jor Singh, Kashi Ram, Bindaban, Anar Singh and Pati Ram were acquitted of the charge u/s 302/149, IPC but each one of them was sentenced to four years R.I. for the offence u/s 201, IPC.

12. We have heard learned counsel for the appellants and the learned Government Advocate and we have examined the evidence on the record in the light of the arguments advanced at the Bar.

13. The evidence of constable Prem Chand Dubey PW 4, Constable Raghuraj Singh PW 6, S.I. Mahesh Kumar Sengar PW 7 and Dr. B. K. Misra PW 8 has not been challenged before us for the simple reason that the fact that Prithviraj was done to death in a violent incident on 4-8-1977 at about 5-30 p.m. in the field of Panchhi was not disputed.

14. The prosecution examined four witnesses of fact i.e. Pooran Singh PW 1, Dushashan PW 2, Vishwanath Singh PW3 and Kamta Prasad PW 5, Dushashan PW 2, Vishwanath Singh PW 3 and Kamta Prasad PW 5 have not supported the case of the prosecution regarding the involvement of these 12 appellants in the Crime in question. They have admitted to have witnessed the violent incident in which Prithviraj was done to death but they insisted that only Chandrapal and Laxman accompanied by two or three unknown persons had launched the murderous assault upon Prithviraj. Thus so far as involvement of these 12 appellants in the crime in question is concerned, we are left with the solitary

testimony of Pooran Singh P.W. 1. As to pure legal proposition it cannot be disputed that whatever may be the gravity of the offence, a conviction can be maintained upon the solitary testimony of a witness. The Supreme Court in the case of Maqsoodan and Others Vs. State of Uttar Pradesh, has observed that it is not the number of witnesses examined nor the quantity of evidence adduced by the prosecution that counts. It is the quality that counts. In the case of Ramji Surjya Padvi and Another Vs. State of Maharashtra, the Supreme Court has observed as follows (para 8 of 1983 Cri LJ 1105):

There is no doubt that even where there is only a sole eye witnesses of a crime, a conviction may be recorded against the accused concerned provided the court which hears such witness regards him as honest and truthful. But prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness particularly where such witness also happens to be closely related to the deceased and the accused are those against whom some motive or ill will is suggested.

15. Section 134 of the Indian Evidence Act does not admit of any ambiguity when it states that no particular number of witnesses shall in any case be required for the proof of any case. This section does not make any distinction between civil and criminal cases. Furthermore no distinction is made regarding criminal cases as to the gravity of the offence.

16. Thus the law nowhere provides that there must be more witnesses than one before a conviction can be maintained for an offence in a court of law. Therefore, a court can safely convict a person on the strength of even uncorroborated testimony of a solitary witness. But in such cases the testimony of the solitary witness should stand a close scrutiny of the judicial mind as well as the test of cross-examination. Further more such testimony should not spring from the sources which can be termed as tainted and there should be no hesitation in the mind of the court to class such testimony as the testimony of wholly reliable witness.

17. In the present case Pooran Singh PW 1 has implicated all the 12 appellants in the Crime in question and has assigned the role of firing to the appellant Panna and his two colleagues Chandrapal and Laxman, Chandrapal and Laxman did not face the trial as they were reported to be dead.

18. We are not inclined to accept the uncorroborated testimony of Pooran Singh PW 1 for the reasons we shall presently state.

19. The motive in the case was not sufficient to motivate Panna and others to kill Prithviraj. It is admitted to Pooran Singh PW 1 that the appellant Jhanku's wife had eloped but the report of the said elopement was lodged against Kunwar Sen alone. It is significant to note that Kunwar Sen is brother-in-law of Prithviraj and yet Prithviraj was not made an accused in the FIR which was lodged by Jhanku against Kunwar Sen. So whatever grievance Jhanku had, was against Kunwar Sen and not against Prithviraj. Further more the medical evidence on the record

does not support the evidence of Pooran Singh PW 1. Pooran Singh PW 1 has claimed that the body of Prithviraj was dragged for about 100 yards and was finally recovered the next day at a distance about 6-7 furlongs from the place of occurrence. Yet only one abrasion was found by the medical witness when the post mortem examination was conducted by him. If Prithviraj's body was dragged for about 100 yards there must have been a number of abrasions upon his body.

20. Furthermore Pooran Singh PW 1 has not been consistent in his evidence. The case in his evidence before the trial court was that he and his colleagues had heard the shouts "Bachao-Bachao" when they were sitting outside his house and he was not in a position to place the man who was shouting. In his evidence before the trial court Pooran Singh PW 1 had nowhere stated that he heard the shouts of Prithviraj. But this statement stands contradicted by his earlier statement which was made by him in the FIR and wherein he had categorically stated that it was Prithviraj who had shouted "Bachao-Bachao". Again in his evidence before the trial court Pooran Singh PW 1 has stated that after returning from the courts on the day of the occurrence, Prithviraj had told him that the gang of Panna was sleeping upon the tubewell of Tilak Singh Lodh and the said gang was out to liquidate him. But this statement is contradicted by his earlier statement which was made by him in the FIR wherein he has specifically mentioned that the above information was given by Prithviraj in the morning of the day of occurrence.

21. Furthermore if Prithviraj is to be believed the shots were fired four or five minutes after the shouts were heard by him. Three persons are said to have fired upon Prithviraj and there were only three fire arm wounds of entrance. It would not have taken more than a few seconds to fire the three shots and in that case Pooran Singh PW 1 and his colleagues would not have been in a position to reach the field of Panchhi in time to witness the occurrence.

22. It is also significant to note that Prithviraj was carrying his gun with him at the time of occurrence yet he could not use the gun at the time of the occurrence and this fact leads to the inference that the assailants had not given any chance to Prithviraj to defend himself and had fired upon him as soon as they had seen him.

23. Under these circumstances it cannot be said that Pooran Singh PW 1 is a wholly reliable witness.

24. Considering the entire evidence on the record and the attending circumstances of the case we hold that the conviction of the appellants cannot be upheld.

Consequently, the appeal is allowed. The appellants are acquitted of the charges with which they were charged. They are on bail. They need not surrender to their bail bonds. Their bail bonds are cancelled and the sureties are discharged.