

(2003) 07 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : Cr.A. No. 6 of 2000

Prem Singh and Another	Vs	APPELLANT
State of Jammu & Kashmir		RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2003) 3 JKJ 506

Hon'ble Judges : R.C. Gandhi, J;B.L. Bhat, J

Bench : Division Bench

Advocate : O.P. Thakur, for the Appellant; Ajit Dogra, Dy. AG., for the Respondent

Judgement

R.C. Gandhi, J.—This Criminal appeal has been preferred against the judgement and order dated 16.3.2000 whereby learned Additional

Sessions Judge, Ramban has convicted and sentenced the accused to undergo life imprisonment and fine of Rupees 3000/- in such default whereof

each accused was to suffer six months imprisonment in addition to substantive sentence imposed.

2. The prosecution story in brief is that on December 25, 1996, Sakhi Mohd. son of Ghulam Mohi-ud-din Naik R/o Paristhan lodged a verbal

report with Police Post Ramsu to the effect that during the intervening night of 24th and 25th December 1996, some unidentified persons have

killed one Mathura Singh son of Mussadi Ram Thakur R/o Charhalan with gun bullet. The Rifle of the deceased is lying beside the body of the

deceased Murder has been committed by unidentified persons because of some enmity or with some purpose. He has been asked by the

Chowkidar Ghulam Nabi of the area to lodge the report. Report No. 6 was

entered in Roznamacha and copy submitted to Police Station Banihal which came to be registered as FIR No. 164/96 for offence u/s 302 RPC.

3. The Investigating Agency during investigation collected the evidence and produced the chatlan. The accused pleaded not guilty and were tried.

The trial court on appreciation of evidence has convicted and sentenced the accused.

4. The appeal has been preferred on the grounds that the trial court has neither rightly appreciated the evidence nor applied the law to the facts of the case and on the basis evidence as led by the prosecution, the appellants accused deserve acquittal as the prosecution has failed to connect the accused with the commission of alleged offence.

5. We have heard the learned counsel for tile parties, perused the judgement under appeal and also appreciated the evidence.

6. On perusal of file, it is seen that the charge framed against the accused on 6.5.1997 reads as under:

That on 24/25 December 1996 at Charhalan Tehsil Banihal, you alongwith accused -- Prem Singh with criminal intention to murder the deceased

Mathura Singh caught him and the Prem Singh fired at the deceased and murdered him. Thereafter in connivance with Prem Singh you took out

empty shell from the rifle of Prem Singh, Kept the shell of the bullet in the rifle of the deceased which was allotted to him so that it may give a

colour of suicide.

In the like manner, other accused has also been charge-sheet with the same as indicated in the aforesaid charge-sheet.

7. The prosecution during the course of investigation recorded the statements of the witnesses u/s 161 Cr.P.C, and set up the story that the

deceased Mathura Singh is the Commander of Village Defence Committee and Prem Singh and Charan Dass are members of VDC. Prem Singh

and Charan Dass came to the house of Bhuri Devi, mother of the deceased, and told her that Mathura Singh has developed illicit relation with

Parvati wife of Prem Singh, so may be asked to desist from such action and in the evening of the same day, Prem Singh and Charan, Dass came to

her house and had conversation with Mathura Singh for some time. Mathura Singh also lives in the same house, Prem Singh sought leave and told

to Mathura Singh that he will discharge duty for the night at the house of Charan

Dass and thereafter both of them left to their houses. Mathura

Singh who was in the house of Mst. Bhuri Devi gave medicine to his mother and she served him with food. Mathura Singh and Udham Singh,

another son of Bhuri Devi, had the meal together and Udham Singh thereafter left Mathura Singh also left alongwith his rifle. After an hour, Udham

Singh and Madan Singh both brothers came to their mother Bhuri Devi and enquired about Mathura Singh. They told her that gun Sound is heard

somewhere in the deodar trees and thereafter both went for search of Mathura Singh. After sometime Udham Singh and Madan Singh came back

and told Bhuri Devi that they enquired from Prem Singh and Charan Dass and they have told that Mathura Singh might have been killed and you

go otherwise you will also be killed VDC have been given Rifles by the Government being the area as militancy affected. Next day it came to the

notice that Mathura Singh has been shot dead.

8. The story set up before the trial court by the prosecution witnesses is that the FIR was written by PW Ghulam Nabi who handed over it to PW

Shakhi Mohd son of Ghulam Mohi-ud-Din PW, for presenting it before Police post, Ramsu Whereas the case of the prosecution is that the oral

report has been lodged.

9. Another contention is that the prosecution witnesses before the trial court have stated that on the day of occurrence, accused came to the house

of Bhuri Devi and left the house of Mathura Singh who was their commander. Accused had told that they will kill Mathura Singh because he had

developed illicit relation with Parvati wife of Prem Singh. After going, from their house sound of gun shot was heard and thereafter search of the

deceased was started, whereas the statements recorded by the police do not support it.

10. There are two versions projected by the prosecution witnesses, one by virtue of statements recorded u/s 161 Cr.P.C. as narrated above and

the other, before the trial court, which are quite contradictory to each other. Where contradictory versions are projected by the prosecution, the

conviction cannot be recorded as held by the Supreme Court in case titled State of Haryana Vs. Gurdial Singh and Another, holding that:

20. The present is a case wherein the prosecution witnesses have come out with two inconsistent versions of the occurrence. One version of the

occurrence is contained in the evidence of the witnesses in Court, while the other version is contained in their statements made before the police.

According to the version given in court, it was Pargat Singh who shot dead the deceased, while according to the other version it was Gurdial Singh

of Ramana who was responsible for the crime. Again, according to the version given in the court, the occurrence was by Avtar Kaur. As, against

that, the version contained in the police statement was that Avtar Kaur had not witnessed the occurrence. In view of these contradictory versions,

the High Courts in our opinion, rightly came to the conclusion that the conviction of the accused could not be sustained. We see no ground to

interfere with the judgement of the High Court. The appeals fail and are dismissed.

11. Another damaging circumstance to the case of the prosecution is that the statement of PW Ghulam Mohi-ud-Din was recorded on 13.12.1997

after a period of one month and 20 days of the occurrence. This witness was available but the statement could not be recorded and reason

therefore has also not been explained. According to this witness, he sent his son Shakhi Mohd to lodge a report written by PW Ghulam Nabi,

Chowkidar who is his brother. He has further stated that he saw the accused taking the deceased from Walnut trees to the place of occurrence.

One accused had caught hold the deceased from the arms and the other from legs. This incident was narrated by him to Ghulam Nabi, Chowkidar

In police statement he has stated quite differently. There is no written complaint on record. His statement has been recorded after a period of one

month and 20 days and from the evidence, it is manifest that he has remained tight lipped for the said period and did not disclose this fact to the

police till his statement was recorded u/s 161 Cr.P.C. PW Ghulam Nabi has not corroborated him, as a result of which his evidence cannot be

relied upon for recording conviction. It is settled principle of law that if a statement is recorded after a long delay, it loses its legal significance and

credibility. Learned counsel for the appellants in support of this plea has relied upon judgements delivered in cases titled Balakrushna Swain Vs.

State of Orissa, Ganesh Bhavan Patel and Anr. v. State of Maharashtra AIR 1971 SC 135 and Satnam Singh Vs. State of Rajasthan, . Defence

counsel has also relied on judgment delivered in case titled Chanchal Kumari and Others Vs. Union Territory, Chandigarh, .

12. Ghulam Mohi-ud-Din is the only eye witness to prove the charge of murder. Testimony of solitary witness is very important from the point of

accused and prosecution both. This witness remained tight lipped for over one and half month and assuming that he disclosed it to Ghulam Nabi

Chowkidar, his version has not been supported by the said prosecution witness. Therefore, this witness cannot be said to be reliable witness and

no conviction can be recorded on his solitary testimony.

13. A vital defect in the prosecution case is that the prosecution has projected that appellant-accused Prem Singh fired from his gun No. 50510-K

which has been seized from him whereas according to FSL report the round has been shot from gun No. 32886 which has been allotted to

deceased Mathura Singh, which means that the fire taken place from gun of deceased and not of accused. This changes the complexion of whole

story of the prosecution. We have no reason to disbelieve the expert opinion with regard to firing from the gun. This smashes whole case of the

prosecution,

14. For the aforesaid reasons, we are of the considered view that the learned trial court has not looked to these aspects of the case, as a result of

which has come to erroneous conclusion in holding the accused guilty of commission of offence. The judgement of trial of the trial court, therefore,

cannot be maintained and is set aside and the accused-appellants are acquitted of the charge. Bail bonds are discharged.