

(1999) 09 AHC CK 0110
In the Allahabad High Court

Case No : Criminal Appeal No. 652 of 1979 connected with Criminal Appeal No. 159 of 1981

Sokha Singh and Anr.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1999) 09 AHC CK 0110

Hon'ble Judges : R.D.Shukla, J and Khem Karan, J

Final Decision : Allowed

Judgement

Khem Karan, J.—Criminal Appeal No. 652 of 1979 by Sokha Singh and Sanokha Singh is against the judgment and order dated 3081979 delivered by the II Addl Sessions Judge, Barabanki in S.T No. 208A of 1975, by which he convicted both these appellants under Section 302/34 of I.P.C. and sentenced both of them to imprisonment for life; and Criminal Appeal No. 159/81 by the State is directed against the same judgment and order, by which he acquitted the respondents of that appeal, of the charges framed against them.

2. We would like to mention at the very outset that though State appeal was filed against as many as 23 persons, but this Court admitted the appeal only against the respondents, named above, and refused to grant the leave to appeal against rest of the 9 accused shown in the memo of appeal. It transpires from the perusal of the ordersheet and the information available on the record of Crl. Appeal No. 158/81 that respondent No. 6 Brijraj Singh, No. 11 Bhabhuti, No. 15, Abhilakh Singh, No. 17, Ram Nath Singh have died during pendency of this appeal, hence the appeal as against them stands abated.

3. Since both these appeals arise out of the same judgment and order, so we have thought it proper to dispose of them by this common judgment.

4. The prosecution case, in nutshell, is that on 16101975 there was a meeting in

a grove in village Jigni, in connection with the election of the Pradhan of the consolidation committee in which Assistant Consolidation Officer and other officials of his department, certain police officials and so many villagers of few villages participated. This meeting ended inconclusive at about 5 p.m. People started dispersing. It was at that time that Abhilakh Singh, Sonakha Singh and Mehraj Singh taunted, whereupon the informant Puttu Singh and his brother, Yadunath Singh (deceased) objected to the same and thereafter on the exhortation of Mahraj Singh and Abhilakh Singh that Yadunath Singh be killed, the accused named in the F.I.R. about 25 in number, started assaulting Yadunath Singh with their respective lathis. It was also said that Puttu Singh (the informant), his brothers Bishambher Singh and Ganga Singh ran to his rescue, but the assailants assaulted them as well.

5. It was also alleged that when Yadunath Singh fell down, as a result of lathi blows, the accused Sokha Singh and Sonakha Singh started giving sword blows to him as a result of which Yadunath Singh became seriously injured. It was also said that police personnel opened fire with a view to meet the situation and the witnesses Ram Lautan, Ram Gulam, Sadhu, Hari Karan, Hari Ahir, Parsadi, Balgar and others challenged the assailants and the informant Puttu Singh, his brother Bishambhar Singh and Ganga Singh snatched lathis from some of the culprits and wielded the same in defence, as a result of which some of the accused also received injuries. Amongst the injured, there was one Ram Chander also, who was mentally ill. While Yadunath Singh was being taken to Suratganj hospital, he succumbed to his injuries on way. His dead body was brought back to the house. Puttu Singh, Bishambhar Singh and Ganga Singh also received injuries at the hands of the accused.

6. Puttu Singh lodged a written F.I.R. with P.S. Mohammadpur on the same day at 7 p.m. against as many as 25 persons including the appellants of Crl. Appeal No. 652/79 and the respondents of Crl. Appeal No. 159/81:

"S.H.O. Mohd. Idris Khan (PW. 11) was in village Belahra and so the papers were handed over to him in that village through constable Shobha Ram lewari. He rushed to the place of occurrence and reached there at about 8.15 p.m. It is claimed that he recorded the statement of the witnesses, prepared the inquest report of the dead body of Yadunath Singh, sent the same for postmortem examination, recovered blood stained and simple earth from the place of occurrence and also recovered shoes of the According to him, the trial Judge was not justified in doubting the genuineness of the F.I.R. On the time of its lodging. Learned counsel submits that a few discrepancies or variations in the evidence of the witnesses of fact on the point of time of the F.I.R. were not sufficient enough to doubt the time of the F.I.R. or to say that it was the result of deliberation and consultation.

15. Learned counsel for the State has said that all the three injured witnesses and Ram Lautan have clearly stated in the Court that accused Mahraj Singh, Tribhuwan Singh, Bhabhuti and Abhilakh Singh gave lathi blows to Yadunath

Singh. He says that according to the evidence of Puttu Singh PW 1, Bhabhuti, Ramnath and Hawaldar Singh assaulted him with lathis and witness Bishambhar Singh PW2 has stated that Jagdish Singh, Brij Raj Singh, Jai Bahadur Singh and Chani assaulted him with lathis and the witness Ganga Bux Singh PW 5 has also deposed that the accused Ram Piyare Singh, Dan Badadur Singh, Nam Karan Singh and Ganga Pd. assaulted him with lathis. So the argument is that according to the evidence of these witnesses, all the 14 respondents in the State Appeal assaulted one or the other victims of the occurrence, so there was no justification for not convicting them. He also submits that the finding of the Trial Judge that there was no unlawful assembly, is also not wellfounded.

16. On the other hand, learned counsel for the respondents in the State Appeal, has submitted that in appeal against acquittal, this Court will not interfere unless the reasons given by the trial Court are perverse or are based on misreading of the evidence. He submits that if the view taken by trial Judge is also, one of the possible view, this Court will not disturb the verdict of a acquittal as recorded by the trial Judge. According to him, the grounds of acquittal have correctly been recorded and there is nothing to show as to how the same were unjustified or unreasonable.

17. Before we pass on to the evidence on record and the respective arguments of the learned counsel for the parties, we would like to give summary of the conclusions recorded by the Trial Judge. He has recorded a categorical finding to the effect that a meeting was held on 16101975 in the grove of village Jigni in between 3 to 5 p.m., in which several persons numbering 8090 including the deceased Yadunath Singh, Puttu Singh, Bishambhar Singh participated. He has also given a finding that the Assistant Consolidation Officer and other police officials were also present throughout the meeting. He has also accepted the prosecution version on the point that Marpeet took place at about 5 p.m. and in that Marpeet Yadunath Singh (deceased), Puttu Singh, Bishambhar Singh and Ganga Bux Singh received injuries.

18. The learned Sessions Judge says in para 35 of his judgment that Puttu Singh, Bishambhar Singh, Ganga Bux Singh and Ram Lautan PWs. 1,2, 5 and 6 respectively are interested witnesses. He says in the same para that the evidence of Inder Singh PW 3 is infirm as regards participation of the accused, for want of previous test identification as he did not know them from before. He also concluded in para 36, after evaluating the evidence on the point that it is doubtful whether F.I.R. Ext. Ka 1 was lodged on 16101975 at 7 p.m. as claimed. Again he says in para 51 of his judgment that the prosecution case that the accused extended "Lalkar" is not free from doubt. He has accepted the defence plea that the police was aggrieved with Mahraj Singh.

19. One of the main grounds for acquittal was that while in F.I.R. and in statement under Section 161 these P.Ws. 1,2,5 and 6 named all the 23 accused (excluding Sokha Singh and Sonakha Singh) and said that all of them assaulted Yadunath and others, but in Court they changed that stand and tried to assign

the role to a few in assaulting the victims. He was of the view that this change was brought in with a view to meet the lesser number of lathi injuries, found on the person of the deceased and other victims. He also said that there was no evidence to establish that all the accused were members of an unlawful assembly.

20. There appears to be a clearcut evidence on the point that the meeting of 16/10/1975 in a grove of village Jigni, was attended by 80 or 90 persons of several villages. Many of them were having lathis.

Inder Singh P.W. 3, who was on duty as a police subinspector at the relevant time, has stated in his cross-examination that all these 80/90 persons including the accused were so mixed up at the relevant time that it was not possible to decipher as to who was with whom and this was the reason for not opening fire at the time of Marpeet as that might have resulted in death of some innocent persons also.

21. P.W. 3 Inder Singh has named only , Mahraj Singh in Court and has not named any of the other accused respondents. Yogendra Sharma P.W. 4, another official, has named none of the assailants or the victims and has said that the moment Marpeet started, he shut his eyes and opened the same only it was over. In other words, Yogendra Sharma P.W. 4 does not say that the respondents in the State appeal, participated in the Marpeet. Inder Singh P.W. 3 does not name the accused other than Mahraj Singh. It has to be seen whether the evidence of Inder Singh can be accepted in respect of the participation of the accused Mahraj Singh.

22. Ext. Ka14 is the copy of application dated 25/1/1975 given by Mahraj Singh to the S.P. Barabanki. It has been complained in it that local police is favouring Yadunath Singh and is harassing him and the police was totally under the influence of Yadunath Singh, so much so Thana Incharge Hari Bahadur Singh and constable Bhannu Singh tried to extract illegal money from him and threatened if the same was not paid to him, he would be falsely implicated. There were allegations of bribery against the S.H.O. It appears to us that there is force in the contention of Sri Nagendra Mohan, that local police was indisposed against Mahraj Singh, for he had dared to level in writing, allegations of bribery. P.W. 3 himself concedes that he was new to the area and had never visited the same, prior to the date of occurrence. The Trial Judge rightly doubted the veracity of his version, for want of prior test identification.

23. Learned counsel for the State has not been able to point out, as to how the finding of the Trial Judge on the point that Puttu Singh, Bishambhar Singh, Ganga Box Singh and Ram Lautan are interested witnesses, witnesses is faulty. We have carefully gone through their evidence and we are of the view that they are not only interested but also appear to be associated with the deceased Yadunath Singh. Their evidence is to be carefully scrutinized with great care and caution. They are not the witnesses, who can be said to be independent or disinterested.

24. The reasoning given by the Trial Judge for coming to the conclusion that it is doubtful whether F.I.R. Ext. Ka1 was lodged on the same day at 7 p.m. also appears to be well justified and it is not possible to disturb the same. The Trial Judge has given cogent reasons for reaching that conclusion and the learned counsel for the State has not been able to show as to how that conclusion is illfounded or unjustified.

25. The fact that F.I.R. Ext. Ka1 was lodged after due deliberations and consultations, is amply established by the evidence of Bishambhar P.W. 2. He deposed in para 8 that it was on way to the village after the incident, that he and other companions discussed as to who should be named in the F.I.R. and it was after this that the F.I.R. was prepared. He clearly states that at that time all the 5 persons (who were present in the meeting) were present. Learned counsel for the State has not been able to reconcile this part of the statement of Bishambhar. If his testimony on this point stands, then the conclusion of the learned Sessions Judge that F.I.R. is the result of deliberations and consultations, will hold the field and will lose its evidentiary value.

26. Learned counsel for the respondents has argued that once the genuineness of the F.I.R. Ext. Ka1 and its time, is doubted and once it is found that it does not contain the true version of the incident of Marpeet, there is no option but to reject the entire prosecution case. There is no doubt that in a murder case, F.I.R. is the backbone of the prosecution case and if this backbone is found shaky, the superstructure built upon it, may not stand.

27. According to the medical evidence of the two doctors; Yadunath Singh had five contusions, Puttu Singh, Bishambhar Singh and Ganga Bux Singh had 4 injuries each, which could be caused by a blunt object like lathi. In this way there were 17 such injuries on the persons of the deceased and the victims, which could have been caused by la this.

28. Before the evidence in the Court, the prosecution case was that all the acquitted 23 accused assaulted all the victims with lathis. There was no specification as to who, out of these 23, assaulted whom. It was during the course of trial that Putti Singh, Ganga Bux Singh, Bishambhar Singh and Ram Lautan, specified that accused Abhilakh Singh, Bhabhuti Singh, Mahraj Singh and Tribhuwan Singh gave lathi blows to Yadunath Singh. It was also brought in prosecution evidence that Putti Singh (P.W 1) was assaulted by Bhabhuti, Ramnath and Hawaldar Singh, whereas Bishambhar (PW 2) was given lathi blows by accused Jagdish Singh Brijraj, Jai Bahadur and Chandi. Likewise it was also specified that Ram Piyare, Dan Bahadur, Ram Karan and Gaya Prasad beat Ganga Bux Singh (P.W. 5).

29. The Trial Judge has taken a serious note of this deliberate improvement and has rightly remarked that this has been done to meet the inconsistency between the number of the accused and the number of such injuries, that might have been caused by lathis. Not that a slight improvement or a little embroidery to the

prosecution version will be sufficient enough to reject the evidence in each and every case, but as we find in this case is that these prosecution witnesses appear to have scant regard for truth and could state anything if suited to the prosecution. There were two private counsel also, to watch and ensure the success. In a case like this, where the occurrence of Marpeet has taken place, at the spur of moment without any prior meeting of mind, and where out of the crowd of 8090 a few are named in F.I.R., giving specific role of assault and where it appears from the number of injuries that participation of all of them was not probable, it is fraught with danger to accept such an improvement, restricting the role of assault to a selected few of the lot of named accused. There is no guarantee that the specification or improvement is true and honest. These witnesses were free to assign the role of actual assault to remaining 9 accused, against whom State appeal was not admitted. That means they were free to exclude any nine, out of 23. Prudence and experience, justifies the stand of the Trial Judge, in taking serious note of this deliberate and well planned improvement and embroidery. If viewed, in the light of day conclusion that witnesses are interested and partition and genuineness of F.I.R. is doubtful, this improvement makes the evidence of these witnesses highly more liable and untrustworthy.

30. The finding of the learned Judge on the point that there was no proof of the formation of unlawful assembly consisting of the accused named in the E.I.R. is also not open to interference. We are of the view that the Trial Judge has correctly evaluated the evidence on record so far as the involvement of the respondents of the State Appeal is concerned. The view taken by the Trial Judge as regards the respondents of the State Appeal is also one of the possible views and it is difficult to say that the order of acquittal is perverse. In our view, the order of acquittal recorded by the trial Court is justified and is not open to interference.

31. Coming to the appeal of Sokha Singh and Sonakha Singh, it must be stated in the very outset that it is not disputed that these two convicts are Sikhs. It has come in para 15 of the evidence of Putti Singh P.W. 1 and also in para 16 of the evidence of his brother Bishambhar Singh P.W. 2 that 10 or 12 families of Sikhs have settled down in village Jigni and are doing farming by purchasing land from local people. The learned Judge has found these two appellants guilty on the ground that right from the E.I.R. to the evidence in Court, the witnesses are consistent as regards their role and on the ground that they were known to the witnesses from before and could easily be identified even in the assembly of 5060 people. He has said that the witnesses Putti Singh, Bishambhar Singh, Ganga Bux Singh, Ram Lautan and even Inder Singh (S.I.) have consistently stated that after Yadunath Singh fell down as a result of lathi blows given by others, these two convicts Sokha Singh and Sonakha Singh injured him with their respective swords. He has further said that the medical evidence supports this version as there were stab and punctured wounds on the dead body of Yadunath Singh.

32. Sri Nagendra Mohan, appearing for these two appellants, has, however, attempted to assail the finding of guilt by saying that once genuineness of the F.I.R. and its time has been doubted and once it has been concluded that it was lodged after deliberations and consultations, the finding of guilt could not have been recorded even against these two appellants. He also argues that the witnesses are found to have made considerable improvements in Court as regards the involvement of other accused and this improvement has created a doubt, about the participation of rest of the accused in the Marpeet, the same witnesses cannot be believed in respect of the participation in Marpeet, of the present two appellants. He goes on to argue that none of these witnesses knew these two appellants from before and hence in absence of prior testidentification, their evidence in Court should not have been taken to be gospel truth on the point that these two assaulted Yadunath Singh with their respective swords.

33. The learned counsel for the appellants has also submitted that Ext. Kha14, a complaint against the local police, states that Sokha Singh and Sonakha Singh were the witnesses of the factum of demand of bribe and acceptance of bribe and it was probably because of this that they were designedly named in the F.I.R. at the instance of the local police. He has taken us through the oral and documentary evidence on record with a view to support his argument.

34. On the other hand, learned counsel for the State has tried to support the finding of guilt by saying that the prosecution story, as regards the giving of the sword by these appellants to Yadunath Singh, is consistent from the very beginning and since the injured witnesses had full opportunity to identify the assailants as the occurrence took place in broad day light and since the medical evidence corroborates the same, so the finding of guilt recorded by the learned Sessions Judge cannot be said to be unjustified or unreasonable. According to him, there was no need of prior testidentification because the two convicts were well known by names to the witnesses.

35. We have already come to the conclusion that the finding of the Trial Judge as regards the genuineness of the F.I.R. and time of its lodging with the police, is correct. In other words, the genuineness of the F.I.R. Ext. Ka1 is doubtful. Learned counsel for the appellants has rightly submitted that once F.I.R. is found to be suspicious or is found to have been lodged after consultations and deliberations. It is difficult to sustain the finding of guilt. In a murder case, like this, if F.I.R. is doubted and lose its evidentiary value, the whole of the prosecution story become doubtful.

36. There is no dispute that the witnesses of fact are interested and most of them are inimical. They have not been believed as regards the participation of the rest of the accused and this also affects their credibility in regard to the participation of these two appellants in Marpeet. Let us see what is the evidence, against these two appellants and whether that is reliable and acceptable so as to sustain the finding of guilt.

37. So far as Inder Singh P.W. 3, a police official is concerned, he himself concedes in para 2 of his statement that he was posted in this Thana just 2025 days before and had not visited village Jigni or the adjoining area before the date of occurrence. He further concedes in para 2 that none of the residents of village Jigni was known to him from before. He says that Sokha Singh and Sanokha Singh came to the meeting, a little later and some one of the assembly of 80 or 90 disclosed their names. He was not in a position to tell to the Court as to who told that the two Sikhs were Sokha Singh and Sanokha Singh. The Trial Judge has rightly observed that his evidence on the point of identification is infirm, for want of prior test identification. This witness has said in para 2 that there were 24 sikhs in the meeting. It is surprising that he has not given the names of the sikhs, who according to him, were present in the meeting. Had he enquired about the identify or names of all the 24 sikhs attending the meeting, the matter would have been one for consideration. How is it that he enquired about the names of these two sikhs only, when they were more than that in the meeting. We find it difficult to place reliance on his evidence on the point that the two sikhs, who assaulted Yadunath Singh, were Sokha Singh and Sanokha Singh amongst other sikhs in the assembly of 80 or 90 people.

38. Putti Singh P.W. 1 has stated in para 3 that after Yadunath Singh fell down, these two appellants gave blows with swords, but in para 15 he concedes that he was not familiar or acquainted with the sardars of village Jigni. In para 20 he says that while Yadunath Singh was being assaulted with swords, he was being assaulted by other assaulted by other accused and so he could not attack the persons giving sword blows to Yadunath Singh. He makes it clear in para 24 that generally he does not know the sikhs by names. He says that he does not know whether Sanokha Singh has any son or not. The witness is a resident of another village. We are of the view that the evidence of Putti Singh does not inspire confidence on the point that he knew the two accused by names from before. When Inder Singh states that there were more than two sikhs in the meeting, how this witness says in para 15 that there only two sikhs in the meeting. It appears to us that Putti Singh did not know these two sikhs by names as he did not know other Sikhs by names. He has no business to deal with them. The appellants belong to a different village. There is force in the contention of the learned counsel for the appellants that these two sikhs were named because they figured in the complaint of Mahraj Singh against the local police. We are persuaded to discard the evidence of Putti Singh on the point that the two sikhs, who gave sword blows to Yadunath Singh were these two appellants and not other sikhs present in the meeting. It is not safe to accept his evidence as regards participation of these two appellants in the Marpeet, especially when he has been disbelieved as regards the participation of the rest of the accused.

39. Bishambhar Singh P.W. 2 is brother of the deceased. He was also tried to say in para 1 that these two appellants gave sword blows to Yadunath Singh, but he says in para 11 that he did not know the villagers of village Jigni except 2 or 4 persons. He has categorically conceded in para 11 that he is not in a position to

tell as to who were those two or four persons of village Jigni who attended the meeting. Again in para 12 he says that he had no talks with Sokha Singh and Sanokha Singh. Although he says in para 16 that he knew these two persons by names, but adds that he heard their names and he was not on visiting terms. There is a grave doubt whether he knew these two appellants from before, by names. His position is not better than the position of Putti Singh P.W. 1 so far as the role of these two appellants is concerned. In the facts and circumstances appearing in the case, we are not inclined to place full reliance on the evidence of this witness also.

40. As stated earlier P.W. 4 has not named these two appellants or any other accused.

41. Ganga Bux Singh P.W. 5 has tried to say in para 1 that Sokha Singh and Sanokha Singh assaulted Yadunath Singh by their respective swords. He goes on to state that he had no talks with two appellants and it was during the course of the meeting that Darogaji and A.C.O. called their names in the meeting. This statement of Ganga Bux Singh gives an impression as if he came to know the names of these two sikhs, because their names were taken by Darogaji and A.C.O. In other words, he himself did not know them by names from before. He is also resident of the same village to which P.Ws. 1 and 2 belong. It is not safe to act upon his evidence so far as the participation of these two appellants in the Marpeet is concerned.

42. Ram Lautan P.W. 6, who is resident of village Jaisingpur, concedes in his crossexamination that he has no land or property in village Jigni. He further concedes that 4 or 6 persons of village Jigni who attended the meeting, were not known to him from before. He has not explained the circumstances which enabled him to know the names of these two appellants especially when he never dealt with them nor had property in their village. This witness has conceded that he was involved in few criminal cases. It appears to us that he belonged to the group of Yadunath Singh. He is not an independent witness. He had no business to be in that meeting. Taking into consideration the entire facts and circumstances appearing in the case, we find it difficult to place reliance on his evidence as regards the involvement of these two appellants in the case. It does not appear to be safe to believe such a witness, who had hardly occasion to know these two appellants by names. It cannot be ruled out that these two sikhs are being named because they belong to the group of Mahraj Singh and only because they were cited as witnesses in the complaint of Mahraj Singh, against the local police.

43. There is no other eyewitness. It has come in evidence that Yadunath Singh was a hardened criminal and was previously involved in certain criminal cases. It has also been suggested by the defence that the local police was disposed in favour of Yadunath Singh and his partymen. If more than two sikhs were in the meeting and if these witnesses had no basis to know all those sikhs by names, it was not possible to name them in F.I.R. and prior testidentification was a must.

44. We are of the view that the finding of guilt recorded by the learned Sessions Judge against these two appellants is not sustainable of facts. These two appellants are entitled to the benefit of doubt.

45. In the result, Criminal Appeal No. 652/79 filed by Sokha Singh and Sanokha Singh deserves to be allowed and their conviction and sentence to be set aside. Their appeal is allowed and the conviction and sentence recorded by the trial Court are set aside. They are acquitted of the charge under Section 302/34 of I.P.C., CrI. Appeal No. 159/81 filed by the State against acquittal is dismissed. Bail bonds are cancelled and sureties discharged.

46. Let the record of the trial Court be sent back along with a copy of this judgment.