

(2005) 05 AHC CK 0029

In the Allahabad High Court

Case No : Government Appeal No. 2016 of 1998

State of U.P.

APPELLANT

Vs

Om Prakash and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2005) 2 ACR 2171

Hon'ble Judges : M.C. Jain, J; M. Chaudhary, J

Bench : Division Bench

Advocate : Arun Kumar Mishra, A.G.A. and A.G.A, for the Appellant; D.N. Wali, for the Respondent

Judgement

M. Choudhary, J.—This appeal has been filed by the State from judgment and order dated 24th of December, 1997, passed by II Ird Additional District and Sessions Judge, Agra in Session Trial No. 413 of 1996, State v. Om Prakash and Ors. Trial No. 413 of 1996, acquitting accused Om Prakash u/s 302, I.P.C. and accused Hari Chand and Goley alias Manohar Singh u/s 302 read with Section 34, I.P.C.

2. Brief facts giving rise to this appeal are that Vijendra Singh alias Vedariya along with his family used to reside at village Garhi Mohan Lal hamlet of Dherai within the limits of police station Shamshad district Agra. There was a public hand pump in the locality which was not in working order and due to summer season Vedariya and some Ors. were facing problem due to non-availability of drinking water. In the noon of 7th of July, 1995 Ranjit Singh son of Vedariya made efforts for getting, hand pump repaired but Om Prakash, Hari Chand and Goley alias Manohar Singh took exception thereto on the pretext that since it was public hand pump it should be got repaired by the authorities concerned at State expense otherwise Vedariya and his family members would start claiming authority thereover. In the evening Mahendra and his brother Ranjit Singh along

with some of the co-villagers namely Munna Lal, Mohan Singh and few Ors. were sitting in the sahan in front of the door of their house and talking together. At about 9 p.m. Om Prakash along with Hari Chand and Goley alias Manohar Singh reached there and started abusing Ranjit Singh using filthy language. Immediately Ranjit Singh asked them not to abuse him and then Goley and Hari Chand caught hold of Ranjit Singh each holding him by his upper arms and Om Prakash fired at Ranjit Singh hitting him at his chest. Sustaining the fatal injury Ranjit Singh fell down and succumbed to the injury sustained by him instantaneously. Then Mahendra Singh, brother of the deceased got report of the incident scribed by his "behnoi" Dharmendra Singh and went to police station Shamshad situate at a distance of 9 kms. from the place of occurrence and handed over written report of the occurrence to the police there at 10.30 p.m. the same night (Ext. Ka-1). S.I. Omwir Singh who took up investigation of the case in his hands went along with police force to the scene of occurrence. S.I. Raghunath Singh drew inquest proceedings on the dead body of Ranjit Singh under his supervision and prepared inquest report (Ext. Ka-7) and other necessary papers (Ext. Ka-8 to Ka-10) and entrusted the dead body in a sealed cover along with necessary papers to constables Ram Pal Singh and Bhikam for being taken for its post-mortem. Then he inspected the scene of occurrence and prepared its site plan map (Ext. Ka-11).

3. Autopsy conducted on the dead body of Ranjit Singh by Dr. A. G. Agarwal, Medical Officer District Hospital, Agra on 8.7.1995 at 3 p.m. revealed an ante-mortem gunshot wound 1 cm. x 1 cm. x chest cavity deep on left side chest 12 cms. below the medial end at clavicle 5 cm. medial to neck, inverted margins and blackening and tattooing present around the wound. The doctor removed one metallic bullet from the back of chest right side from scapular region. On internal examination both the lungs, left side pleura and ventricle on right side were found lacerated. Pericardium was also found lacerated. Chest cavity contained 2 1/2 litres of clotted blood. Stomach and small intestine contained watery fluid and large intestine faecal matter and gases. The doctor opined that death was caused due to shock and haemorrhage as a result of ante-mortem injury about eighteen hours ago.

4. After completing investigation the police submitted charge-sheet against the accused accordingly.

5. After framing of the charge against the accused the prosecution examined Mahendra Singh (P.W. 1), Vedariya (P.W. 2) as eye-witnesses of the occurrence. P.W. 1 Mahendra Singh, brother of the deceased and the first informant narrated all the facts of the said incident from the beginning to the end as stated above. P.W. 2 Vedariya, father of the deceased also corroborated him deposing likewise. He stated that his son Ranjit Singh used to run a shop of cloth at Shamshad and since the market remained closed on each Friday he used to come to the village on Fridays in the morning and that on the fateful day he had also reached his house in the morning. Testimony of rest of the witnesses is more or less of

formal nature. P.W. 3 constable Ram Pal Singh is one of the two constables to whom dead body of Ranjit Singh in a sealed cover along with necessary papers was handed over for being taken for its post-mortem. P.W. 4 Dr. A. G. Agarwal who conducted autopsy on the dead body has proved the post-mortem report. P.W. 5 constable Netra Pal Singh who registered the crime and prepared check report on the basis of the written report of the occurrence handed over by Mahendra Singh to him at the police station and made entry regarding registration of the crime in the G. D. has proved these papers (Exts. Ka-3 and Ka-4). S.I. Omwir Singh who investigated the crime proved the police papers.

6. The accused pleaded not guilty denying the alleged occurrence altogether and stated that they were got implicated in the case falsely due to village party factions. They also stated that the hand pump was in perfect working condition.

7. On appraisal of the evidence on record after hearing the parties' counsel the learned trial Judge disbelieving the prosecution evidence found favour with the accused. Resultantly the accused were acquitted of the charge levelled against them.

8. Feeling aggrieved by the impugned judgment and order of acquittal of the accused the State preferred this appeal for redress.

9. We have heard learned A.G.A. for the Appellant and learned Counsel for the accused Respondents and gone through the record.

10. Since the impugned judgment is clearly unreasonable as relevant and convincing materials have been unjustifiably eliminated evidence has to be reappraised for the purposes of ascertaining as to whether any of the accused really committed any offence or not. Learned A.G.A. for the State Appellant has advanced the following arguments assailing the judgment of the court below and now we would see if any of them has got any force.

11. First, learned A.G.A. for the State Appellant argued that the finding of the trial court that the F.I.R. was ante-timed is based on erroneous reading of the evidence. P.W. 1 Mahendra, brother of the deceased and the first informant narrated all the facts of the occurrence from the beginning to the end stating that the alleged evening after closing the work of repairing of the hand pump he and his brother Ranjit Singh after taking bath along with their family members and few Ors. were sitting in front of their house ; that accused Hari Chand, Om Prakash and Goley reached there and started hurling abuses to Ranjit Singh ; that thereon Ranjit Singh stood up and asked them not to abuse him ; that immediately Hari Chand and Goley caught hold of him by his upper arms and Om Prakash fired at his chest with pistol from close range and all the three fled away ; that then Ranjit Singh tried to chase them running few paces and fell down in front of the house of Sunehari and died instantaneously and that then he went to the police station on his scooter. He further stated that while going to the police station he first went to the house of his "behnoi" situate near the police station, got the report of the occurrence scribed by him and then went to the

police station and handed over written report of the occurrence to the police there. Learned trial Judge doubted the conduct of Mahendra Singh (P.W. 1) observing that it was unnatural that without staying even for 10-15 minutes near the dead body of his brother he went to the police station. He further observed as to why Mahendra Singh, brother of the deceased could not scribe the report himself and that even if he went to the house of his "behnoi" and got the report scribed by him as to why his "behnoi" did not accompany him to the police station. He further observed that since crime number is not mentioned in the particulars at the top of the inquest report and special report of the case was sent to the Higher Authorities next day at 2.45 a.m. and that the Investigating Officer stayed in the village for the whole night all these facts go a long way to reveal that F.I.R. came into existence much later and it was lodged after due deliberation and confabulation. The said finding of the trial Judge is based on conjectures and surmises. P.W. 1 Mahendra Singh, brother of the deceased deposed that as Ranjit Singh fell down in front of the house of Sunehari they went there and saw that he had succumbed to the fatal injury sustained by him and then he accompanied with Om Prakash (son of Hakim Singh) and Bhikam Singh to the police station on his scooter. After scribing the report at the instance of Mahendra Singh his "behnoi" might have gone to the house of his in-laws immediately thereafter as his brother in-law was murdered. It appears from the signatures of Mahendra Singh that he was not educated and could not write well. Hence there is nothing wrong if he got the report scribed by his "behnoi". P.W. 1 Mahendra was not put any question in his cross-examination as to why he did not write the report himself or as to why his "behnoi" who scribed the report did not accompany him to the police station. And hence defence cannot take the advantage on that count without putting any question to the witness in his cross-examination on those points. Further the crime was registered at the police station at 10.30 p.m. and the special report was sent to the Higher Authorities at 2.45 a.m. the same night. A perusal of the G. D. entry goes to show that it is mentioned therein that information of the crime was sent to the authorities concerned on R.T. set at that very time (Ext. Ka-4). The inquest was drawn on the dead body of Ranjit Singh by the Investigating Officer the same night as a perusal of the inquest report goes to show that the inquest proceedings were completed at 12.35 mid night that very night. A perusal of the inquest report further goes to show that F.I.R. number and crime number are mentioned in the body of the inquest report itself. Further, no question was put to P.W. 6 S.I. Omwir Singh, the Investigating Officer in his cross-examination as for what he stayed in the village for the whole night after drawing inquest proceedings and preparing site plan map of the place of occurrence. He might have been searching for the accused in the night. But without putting any question to the Investigating Officer in his "cross-examination on the point the conclusion cannot be drawn that since he stayed in the village for the whole night the F.I.R. was a document framed after due consultation and confabulation. A perusal of the G.D. entry goes to show that crime was registered at the police station on the basis of the written report of the occurrence handed over by Mahendra (P.W. 1) to clerk

constable Netrapal there at 10.30 p.m. that very night against the accused named therein (Ext. Ka-4). Genuineness of the G.D. entry prepared by the police official in the course of his official duties cannot be doubted unless proved otherwise. P.W. 1 Mahendra, brother of the deceased and the first informant was also subjected to searching and gruelling cross-examination but nothing useful to the accused could be elicited therefrom. Thus, the findings of the court below that the F.I.R. is ante-timed and is a framed document for the reasons given therefore are not tenable.

12. Secondly, learned A.G.A. for the State Appellant vehemently argued that the learned trial Judge was not justified in doubting the presence of Vedariya alias Vijendra Singh, father of the deceased at the scene of occurrence. No doubt that presence of P.W. 2 Vijendra Singh alias Vedariya is not mentioned in the F.I.R. P.W. 1 Mahendra admitted that he did not disclose the name of his father Vedariya at the scene of occurrence in his statement recorded by the Investigating Officer. However, he stated that since his father was his family member he did not think it necessary to mention the presence of his family members in the F.I.R. He further stated that since the Investigating Officer did not ask him thereabout he could not tell the said fact in his statement given to the Investigating Officer. In our opinion much significance should not be attached to this omission which is of minor nature. It is a matter of common experience that in villages after finishing day work often all the family members sit outside their houses in summer season in the evening before going to bed. The court below also doubted the presence of Vijendra Singh at the scene of occurrence as he deposed that his statement was recorded by the Investigating Officer some 3-4 days after the occurrence. However, the Investigating Officer was not put any question in his cross-examination by the defence as to when he recorded the statement of Vedariya, father of the deceased. P.W. 2 Vedariya too was not put any question in his cross-examination by the defence if after the murder of his son he remained present in the village all the time. It may be that he might have gone with the dead body of his son Ranjit Singh and returned back after his cremation on receiving the dead body after post-mortem. In that case he might have returned back to the village at some night on 8th of July 95 and it may be that the Investigating Officer might have recorded his statement on 9th of July, 1995. Since P.W. 2 Vedariya alias Vijendra Singh was father of the deceased and head of the family in all probability he must have been present at his house as there was no occasion for him not to be present at his house at that hour. He narrated all the facts of the occurrence from the beginning to the end and his statement is so natural and spontaneous and he stood his cross-examination so firmly that his presence at the scene of occurrence cannot be doubted. Sworn testimony of both the eye-witnesses namely P.W. 1 Mahendra and P.W. 2 Vedariya stands well corroborated by the F.I.R. of the occurrence lodged promptly at the police station as occurrence took place at about 9 p.m. and F.I.R. of the occurrence was lodged at the police station at 10.30 p.m. that very night whereas police station was situate at a distance of 9 Kms. from the place of

occurrence.

13. Learned A.G.A. for the State Appellant laid much emphasis upon the fact that the court below erred in concluding that medical evidence was inconsistent with ocular testimony of the two eye-witnesses. No doubt that P.W. 4 Dr. A.G. Agarwal who conducted autopsy on the dead body stated that after receiving the firearm injury the victim could not have moved even a step and would have fallen down at that very place either in unconscious state or semi-conscious whereas both the eye-witnesses namely P.W. 1 Mahendra and P.W. 2 Vedariya stated that after receiving the firearm injury the deceased chased the accused by running few paces and reaching in front of the house of Sunehari he fell down and died instantaneously. P.W. 1 Mahendra stated that on receiving the firearm injury Ranjit Singh ran 7-8 steps and on reaching the house of Sunehari he fell down and succumbed to firearm injury sustained by him. P.W. 2 Vedariya also stated likewise. In our opinion it differs from man to man as it all depends upon the stamina and power of endurance of a person if he can survive for 2-3 minutes even after receiving the fatal injury. On receiving the injury there was nothing strange if the victim who was a young man of the height of five feet eight inches aged about 28 years having robust body would have chased the assailants running 7-8 paces because it would have taken hardly few seconds. Thus, in fact, there is no real inconsistency in the medical evidence and ocular evidence. In view of the ocular evidence of the eye-witnesses, medical evidence loses all its significance if the ocular testimony is reliable and trustworthy. No doubt that P.W. 6 S.I. Omwir Singh, the Investigating Officer depicted the distance between these two points in the site plan as 20 paces. Again we are of the opinion that size of paces depends upon the structure of a person. 8-10 paces of a young person of high structure may be equal to 20 paces of an aged person of average structure. Thus, the said finding of the trial court is also not supported by cogent and convincing reasons. The learned trial court also committed error in making hypothetical calculations regarding time as to how the Investigating Officer could reach the spot at 11 p.m. if the F.I.R. was recorded at the police station at 10.30 p.m. He also doubted as to how P.W. 1 Mahendra could be able to return back to his house at 11 p.m. if the F.I.R. was lodged at 10.30 p.m. It may be noted here that Mahendra had gone from his village to the police station on his scooter and must have returned back on the scooter. The Investigating Officer stated in his deposition that he went from the police station to the scene of occurrence in his jeep. To cover a distance of 9 Kms. by jeep it would have taken hardly 8-10 minutes in reaching from the police station to the scene of occurrence. Likewise P.W. 1 Mahendra would have taken hardly 10-12 minutes in returning back on the scooter from the police station to the scene of occurrence. Further what the witnesses had stated was approximate time not given after calculation with exactitude. Thus, judging from any angle the judgment of the trial court is indefensible.

14. However learned Counsel for the accused Respondents contended that the F.I.R. mentions the names of independent eye-witnesses of the occurrence

namely Munna Lal and Mohan Singh and few Ors. who were also present at the time of occurrence but no independent witness has been examined by the prosecution in their support. He also contended that there is no mention of any light at the time of the alleged occurrence at the scene of occurrence. Regarding independent witnesses it is a matter of common experience that even persons of the locality who witness the occurrence remain reluctant to appear in Courts and depose against the miscreants unless it is inevitable as they do not want to invite trouble for themselves. However sworn testimony of the two eye-witnesses namely P.W. 1 Mahendra and P.W. 2 Vedariya who were closely related to the deceased could not be thrown overboard merely because they were closely related to the deceased if their testimony is found to be cogent, convincing and trustworthy. Both these witnesses have given a truthful and honest account of the occurrence in main witnessed by them and once the testimony of these two witnesses is believed, non-examination of independent witnesses would not go to demolish or introduce an element of doubt in the prosecution case. As far as light is concerned P.W. 1 Mahendra, brother of the deceased and the first informant deposed that at the time of occurrence there was electric light and the night was also moonlit and that they recognized the assailants well in the electric light and the moon light as well. Further all the three accused used to reside in neighbourhood in the same village and hence they were well known to the witnesses since before. Moreover P.W. 1 Mahendra deposed in his examination-in-chief that when he along with his brother Ranjit Singh and family members and few Ors. were sitting in front of their house Om Prakash, Hari Chand and Goley alias Manohar Singh reached there and started hurling abuses to Ranjit Singh. Thus, they could also be recognized by their voice. Further inquest proceedings were drawn by the Investigating Officer in the night which itself goes to show that electric light must be there. Because ordinarily in the light of lantern or lamp inquest proceedings are not drawn at night hour. The said arguments advanced by the learned Counsel for the accused Respondents have got no substance and are therefore repelled.

15. It has also been argued by learned Counsel for the accused Respondents that no blood was found by the Investigating Officer at the scene of occurrence which creates doubt if the incident occurred at that place. The said argument advanced by learned Counsel for the accused Respondents has got no substance. Looking to the size and seat of firearm injury we are of the view that so much blood would not have oozed so as to have fallen down on the ground as the vest and shirt put on by the victim would have soaked the blood oozed from the firearm wound. A perusal of the post-mortem report goes to show that chest cavity contained two and a half litres of clotted blood. The said argument has therefore got no life.

16. Learned Counsel for the accused Respondents further argued that the accused had no motive to commit the alleged crime. It is well-settled that in cases of direct evidence motive pales into insignificance. However, P.W. 1 Mahendra stated that at about 11-12 noon the fateful day his brother Ranjit

Singh with the help of two labourers got the repairing work of the hand pump started ; that in the noon Om Prakash along with Hari Chand and Goley alias Manohar reached there and asked him that since the hand pump was not his personal property as it was public hand pump he should not get the same repaired and went away and that in the evening they closed the repairing work as the entire repairing work required 2-3 days. But the accused stated in their statements recorded u/s 313 of the Code of Criminal Procedure that that hand pump was in perfect working order. But it appears that they have told a lie on the point because P.W. 6 S.I. Omwir Singh, the Investigating Officer who inspected the place of occurrence and prepared its site plan map showed therein that the hand pump was lying dismantled. He was not put any question in his cross-examination by the defence on the point. Since the accused have told a lie on a fact which was in their knowledge it goes against them.

17. For the foregoing reasons, the impugned judgment regarding acquittal of the accused Respondent Om Prakash by the trial court cannot be maintained in law and is set aside. However, accused Hari Chand and Goley alias Manohar Singh are given benefit of doubt as it appears to be doubtful that at the time of firing both these accused would have caught hold of the victim by his upper arms because had the victim succeeded in pushing any of them in order to save himself, any of them might have received firearm injury. Thus, in all probability co-accused Hari Chand and Goley alias Manohar Singh would not have taken the risk of getting themselves inextricable. The possibility cannot be ruled out that accused Hari Chand and Goley alias Manohar Singh accompanied Om Prakash just to give way to their wrath without any knowledge that Om Prakash intended to murder Ranjit Singh by firing at him. Hence both these accused namely Hari Chand and Goley alias Manohar Singh are given benefit of doubt and they are entitled to acquittal.

18. Hence the appeal is allowed to the extent that accused Respondent Om Prakash is held guilty of the charge levelled against him u/s 302, I.P.C. and sentenced to imprisonment for life thereunder. He is on bail. C.J.M., Agra, is directed to get him arrested and sent to jail to serve out the sentence imposed upon him. The Government appeal against accused Respondents Hari Chand and Goley alias Manohar Singh is hereby dismissed.

19. Office is directed to send certified copy of the judgment along with the record of the case to the Court concerned immediately to ensure compliance under intimation to this Court within two months from today.