

(2004) 12 AHC CK 0216
In the Allahabad High Court
Case No : Criminal Appeal No. 1711 of 1981

Udai Pal Singh and Others (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-12-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 144, 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2004) 12 AHC CK 0216

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

Bench : Division Bench

Advocate : P.K. Jain, R.C. Yadav, I.N. Mulla, R.S. Yadav, M.S. Yadav, Prem Prakash and P.C. Sharma, for the Appellant; Tej Pal and Sudhir Kumar Agrawal and A.G.A., for the Respondent

Judgement

K.K. Misra, J.—This criminal appeal has been filed against the judgment and order dated 31.7.1981 passed by Shri N.C. Jain, the then VI Additional Sessions Judge, Bareilly in Sessions Trial No. 427/79 whereby he has convicted the appellants Udaipal Singh, Nihal Singh, Sitaram @ Sitey and Bharat under Sections 148 IPC and Section 302 read with Section 149 IPC and sentenced them to undergo three years" R.I. for the former offence and life imprisonment for the latter. Accused appellants Sunder Singh and Kashiram were convicted under Sections 147 IPC and Section 302 read with Section 149 IPC and sentenced to undergo two years R.I. and life imprisonment respectively. Both the sentences of all the accused were ordered to run concurrently.

2. The relevant facts were these: on 4.6.1979 at 9 a.m. in village Ram Nagar, P.S. Aonla, Jaipal Singh deceased along with Mukut Singh and Vikram Singh, went to wheat purchasing centre situate in that village to sell wheat. The wheat could not be weighed because weighing of wheat was closed at that time at the centre. The aforesaid persons left their wheat at the centre and proceeded towards the Jain temple situate in that village. It was just then that the accused Udaipal Singh armed with a single barrel gun, Nihal Singh and Sitaram alias Sitey

armed with single barrel gun and Tamancha respectively, Kashi Ram armed with a Lathi, Bharat accused armed with a half gun and Sundar Singh came towards them from the side of the village, shouting and abusing. The accused Sundar Singh exhorted the other accused accompanying him to kill the complainant Vikram Singh and his party consisting of Jai Pal Singh and Mukut Singh. The accused Kashi Ram asked his son Udaipal Singh to kill all these persons and not to spare anybody, if he was born from him. The accused Udaipal Singh, Nihal Singh, Sitaram and Bharat with their firearms fired shots on the complainant and his companions. The shots of the firearms struck only Jaipal Singh deceased and he fell down on the ground dead. The other persons who were accompanying the deceased Jaipal Singh, namely, Vikram and Mukut Singh fled away towards the wheat purchasing center to save their lives. P.W.1 Vikram Singh sent the F.I.R. at Police Station Aonla, District Bareilly situate at a distance of 15 kms. from the place of occurrence through Gyan Singh on the same day at 11.15 A.M.

3. The prosecution came with a motive of this murder. This motive was disclosed in the F.I.R. Ex.Ka-1, lodged by the complainant Vikram Singh P.W.1. In this F.I.R., it was mentioned that four years prior to this occurrence a village Bazar used to be held in village Ram Nagar in the name of Kashi Ram accused in which Vikram Singh P.W.1 along with Jaipal Singh, Saudan Singh and Shri Ram were also partners. Out of the aforesaid persons, Saudan Singh and Shri Ram were also co- sharers in the Khata along with Kashi Ram in the plots where the Bazar was held. The accused Kashi Ram in order to avoid payment of share of the income of the Bazar to the co-sharers, shifted the market to his other plots. Jaipal Singh deceased and Vikram Singh complainant started their separate Bazar in partnership in their joint grove. According to the F.I.R., this action of the parties sowed the seed of discord and a riot took place leading to the registration of a case under Sections 147, 148, 452 and 307 IPC against Udaipal Singh and others at the instance of the complainant and his party. Subsequently proceedings u/s 107/116 Cr.P.C. were also initiated and the S.D.M., Aonla on 1.5.1979 prohibited the holding of any Bazar by promulgating an order u/s 144 Cr.P.C. in the Village Ram Nagar. This order was stayed by the High Court at the instance of Udaipal Singh accused and he again started his Bazar. This was said to be a reason due to which Udaipal Singh and others entertained enmity against the complainant and his family members as well as Jaipal Singh deceased.

4. The investigation of the case was conducted by P.W. 7, R.K. Sharma. He recorded the statement of Gyan Singh at the police station itself and proceeded for the place of occurrence. There he recorded the statement of the first informant P.W.1 Vikram Singh, prepared the Panchyatnama and other necessary papers. He also took in possession bloodstained and plain earth from the place of occurrence and prepared the site plan. The dead body was sealed and sent for post mortem. The statements of other witnesses were also recorded by him. Then the investigation was transferred to S.O. Munshi Lal who after completing the investigation submitted the charge sheet on 28.7.79.

5. P.W.6, Dr. A.K. Pandey conducted the post mortem examination on the dead body of the deceased on 5.6.1979 at 2-15 P.M. He was aged about 36 years and about 1-1/4 days had passed since he died. He found the following ante mortem injuries on the dead body of Jaipal Singh:

1. A gunshot wound of entry 2 cm X 2 cm X chest-abdominal cavity deep on the left side chest, 6 cm from left nipple at 8 O'clock position. Blackening & charring present.

2 A gunshot wound of entry 1.1 cm X 1.0 cm X chest cavity deep on. the Rt. Side of chest, 8 cm from Rt. Nipple at 1 O'clock position. Blackening present.

3 A gunshot wound of exit 3 cm X 2 cm on the left side back, 3 cm below angle of left scapula Margins everted (exit wound of injury No. (2))

4 A gunshot wound of exit 2.5 cm X 2.5 cm X continuation of injury No. (1) on the left buttock in inner lower quadrant. Margins everted (exit wound of injury No. (1))

6. The Doctor opined that the death had occurred due to shock & haemorrhage as a result of firearm injuries.

7. The accused appellants in their statements recorded u/s 313 Cr.P.C. denied the prosecution story and further stated that they had been falsely implicated in the case. They also produced Sri R.P. Sinha as D.W.1 in defence.

8. In order to prove its case against the accused-appellants, the prosecution examined seven witnesses in all at the trial. Out of them P.W.1 complainant Vikram Singh, P.W.2 Lakhan Singh and P.W.3 Baba Ram Ratan Das were the eyewitnesses of the incident. P.W.1 Vikram Singh, real brother of the deceased was the first informant of the case. P.W.2 Lakhan Singh and P.W.3 Baba Ram Ratan Das had also witnessed the incident, reaching there from the side of the grove. P.W.4 Ram Ratan Sharma, constable took the dead body to the mortuary for post mortem examination. P.W.5 Jhandu Singh, Head Constable was the Head Moharrir posted at P.S. Aonla, District Bareilly at the relevant time, who registered the case. P.W.6 Dr. A.K. Pandey conducted the post mortem examination over the dead body of the deceased. P.W.7 R.K. Sharma, Sub-Inspector was the first Investigating Officer of the case.

9. The trial court found the case setup against the accused appellants truthful and convicted and sentenced them as above.

10. We have heard Sri P.K. Jain, counsel for the appellants and Sri Sudhir Kumar Agrawal, learned A.G.A.

11. The appellants Sunder Singh and Sita Ram alias Sitey died during the pendency of the appeal and the same abated respecting them under order-dated 16.12.03.

12. We have carefully scrutinised the evidence on record. P.W. 1 Vikram Singh

has narrated the prosecution case with previous background as detailed hereinabove. He also deposed that when the firing was started by the accused appellants, he, being without any arm, ran towards the wheat purchase centre to save his life and found his brother to be dead on reaching near him after the accused had left the scene. It came down from his cross- examination that only Nihal Singh and Udai Pal Singh had fired on the deceased. The other two did not open any fire. He also testified that none of the accused had chased him. They had only surrounded and targeted Jaipal Singh.

13. Explaining his presence, P.W.2 Lakhan Singh stated that on the fateful day at about 9-00 A.M., he was carrying his wheat on a bullock cart for sale at wheat purchasing centre and had reached near Jain Temple when he witnessed the incident from a distance of 20-25 paces. P.W. 3 Baba Ram Ratan Das had witnessed the incident from the grove. He had immediately reached near the dead body of Jai Pal after the accused had fled, committing this crime.

14. It is significant to point out that Jain temple has been depicted in the site plan also, as being in the vicinity of the place of the incident. It is also pertinent to find that P.W.2 Lakhan Singh and P.W.3 Baba Ram Ratan Das both were named in the promptly lodged FIR. The defence also could not show that they were friendly with the complainant or had any enmity against them.

15. The accused appellants examined D.W.1 Sri R.P. Sinha, Handwriting and Finger Print Expert to challenge the veracity of the F.I.R. and signature of P.W.1 Vikram Singh thereupon. After going through the judgment of the trial court, we find that it rightly rejected the evidence of D.W.1 Sri R.P. Sinha. P.W. 1 Vikram Singh owns the FIR and it was wholly baseless on the part of the accused to challenge its genuineness.

16. The first contention of the learned counsel for the appellants is that there was enmity between the parties and the prosecution evidence was unworthy of credence. We have considered this aspect. It has come in the evidence of P.W.1 Vikram Singh that the members of the complainant party were partners in the market, which was in the name of Kashiram. Subsequently, Kashiram started holding market at some other place and stopped payment of profit share to the complainant party. Then, the complainant party also started holding market at some nearby place. Due to this, enmity between the parties grew and culminated in the present incident, resulting in death of Jaipal Singh deceased. In the F.I.R. enmity between the parties was clearly disclosed. The fact that there was long-standing enmity between families of the accused and the complainant is not enough to reject the testimony of the prosecution unless other circumstances existed, rendering the same to be unworthy of credence. Mere circumstance that relations between accused and the complainant were strained, is not sufficient to establish false implication of the accused. Upon careful examination of the evidence of all the eyewitnesses, we find that except some minor discrepancies all the eyewitnesses gave consistent and truthful version of the incident. Of course, what has been elicited by the defence in the cross examination of the

prosecution witnesses, the benefit thereof shall go to the accused appellants.

17. Second submission of the learned counsel for the appellants is that the incident took place in the night and none had actually seen the incident. This submission of the learned counsel for the appellants is wholly imaginary and cannot be accepted in the teeth of the prosecution's ocular version finding corroboration from prompt FIR and medical evidence.

18. Learned counsel for the appellants lastly argued that only two accused appellants Udai Pal Singh and Nihal Singh have been given specific role of firing on the deceased. He submits that other accused persons cannot be held guilty in view of the evidence on record and they are entitled to get benefit of doubt. This argument has sufficient force. It has come in the evidence of P.W.1 Vikram Singh that only Udai Pal and Nihal Singh fired shots, which hit the deceased. Rest two accused appellants who were holding firearms did not fire. He further admitted that the accused appellants Kashiram and Sunder Singh did not make any assault on Jaipal Singh. P.W.2 Lakhan Singh had given a statement to the Investigating Officer that the accused Udai Pal Singh and Nihal Singh armed with guns, Sitaram alias Sitey armed with a country-made pistol and Bharat armed with half gun fired at Jaipal which hit him. But he tried to amend his statement by stating that all the shots were not fired at a time. First, two shots were fired and after half a minute two more shots were fired. P.W.3 Baba Ram Ratan Das deposed in his evidence that all the four accused appellants holding firearms fired at Mukut, Vikram and Jaipal Singh, but Mukut and Vikram saved themselves by bending and shots actually hit the deceased Jaipal Singh. Looking to the evidence of these eyewitnesses, we find force in the submission of the learned counsel for the appellants. Exhortation part can also not be safely believed. Actual shooters Udai Pal Singh and Nihal Singh hardly needed any exhortation. The involvement of the remaining four accused appellants, namely, Bharat, Kashi Ram, Sunder Singh and Sita Ram @ Sitey in the commission of the crime is not free from doubt. Out of them, Sunder Singh and Sita Ram alias Sitey have died also. Benefit of doubt should be afforded to those other than Udai Pal Singh and Nihal Singh.

19. It may also be stated that instead of convicting with the aid of Section 149 of the I.P.C, Udai Pal Singh and Nihal Singh have to be convicted u/s 302 I.P.C. read with Section 34 of the I.P.C. It is legally permissible to do so when it is doubtful that actually there was an unlawful assembly of five or more persons. The Supreme Court has held in the case of Amar Singh Vs. State of Haryana, that when the evidence would have been the same if the accused had been charged u/s 302 read with Section 34 I.P.C, it is legal to pass conviction u/s 302 read with Section 34 I.P.C, though charges with the aid of Section 149 IPC, because failure to charge the accused with the aid of Section 34 I.P.C, does not result in any prejudice.

20. In the result, we finally order as under:

The appeal is partly allowed. The conviction of the accused appellants Udai Pal Singh and Nihal Singh is modified to Section 302 read with Section 34 I.P.C. with the sentence of life imprisonment. Their conviction and sentence u/s 148 I.P.C. are set aside. The accused appellants Bharat and Kashi Ram are acquitted. The appeal has abated respecting the accused appellants Sunder Singh and Sita Ram alias Sitey who have died.

The accused appellants Udai Pal Singh and Nihal Singh are on bail. The C.J.M. Bareilly shall cause them to be arrested and sent to jail to serve out life imprisonment.

Certify the judgment to the lower court to report compliance within two months.