
(2007) 03 AHC CK 0255
In the Allahabad High Court

Udaibhan Singh, Dilip Kumar Singh and Sukhnidhan Singh
(In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-03-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302, 307

Citation : (2007) 3 ACR 2559

Hon'ble Judges : Imtiyaz Murtaza, J;A.K. Roopanwal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Imtiyaz Murtaza, J.—Both these appeals have been filed against the judgment and order dated 23.8.2004 passed by Addl. Sessions Judge Court No. 7 in S.T. No. 347 of whereby the appellants have been convicted u/s 148 I.P.C. and sentenced to undergo R.I. For one year and a fine of Rs. 2000/- each and in default of payment of fine further imprisonment for six months, under Sections 307/149 I.P.C. and sentenced to R.I. for 10 years and fine of Rs. 5,000 each If and in default of payment of line further imprisonment for one year. The appelants are further convicted u/s 302/149 I.P.C. and sentenced to imprisonment for life and a fine of Rs. 20,000/- each and in default of payment of fine further imprisonment for two years. All the sentences were directed to run concurrently.

2. The brief facts, which gave rise to these appeals, are that on 27.2.2003 there was a Tilak ceremony in the house of the informant Krishna Chand Pandey. At about 9 P.M. on account of previous enmity regarding election of Pradhan, Shyam Behari, Manoj Kumar, Gaya Prasad, Anand Singh, Sukhnidhan Singh, Sunil Kumar, Vinod Kumar, Dilip Singh, Udai Bhan Singh, on the exhortation of Gaya Prasad in a pre planned manner, Gaya Prasad, Manoj Singh, Shyam Behari and Sunil Kumar Singh from the roof of Sunil Kumar and Anand Singh, Sukhnidhan Singh, Udai Bhan Singh, Dilip Singh and Vinod Kumar from the roof of Dilip

Singh, had indiscriminately fired from their licensed and unlicensed arms. Hue and cry was raised and informant's son Ramesh Chand, sister Rani Devi and a relative Chunuk Lal received injuries on their heads and Pratibha Devi had received injuries on her hand. All were seriously injured. Shyam Behari, Manoj Kumar, Gaya Prasad, Sunil Kumar, Dilip Singh, Anand Singh, Sukhnidhan Singh, Vinod Kumar and Udai Bhan Singh were recognised by the persons who were attending the ceremony in the light of bulbs and tube lights which were on through the Generator. The informant took the injured persons in a marshal Jeep to Fatehpur for medical treatment and thereafter the report was lodged at the police station Khakhredu on 28.2.2003 at 10 a.m. The distance of the police station from the place of occurrence was 6 km.

3. The injured Pratibha Tewari was medically examined at 11.15 p.m. on 27.2.2003 at District Hospital, Fatehpur and the doctor had noted following injuries:

Multiple small rounded lacerated wounds of 0.5 cm. size on left forearm and palm. Fresh blood was oozing from the wounds. Margins of wound were inverted.

4. Ramesh Chand Pandey, son of the informant was medically examined on 27.2.2003 at 11.45 P.M. at District Hospital, Fatehpur and the doctor had noted following injuries:

Multiple pellet rounded lacerated wounds on left side of forehead and scalp size 0,5 cm, Margins were inverted. Fresh blood was oozing.

5. The injured Mrs. Rani Devi Dubey was medically examined on 27.2.2003 at 11.30 P.M. at District Hospital, Fatehpur and the doctor had noted following injuries:

Multiple pellet rounded lacerated wounds on left of forehead, temple, and fronts parietal region size 0.5 cm. Margins were inverted. Fresh blood was oozing.

6. Kandhai Lal was medically examined on 28.2.2003 at 00.30 a.m. a.... District Hospital Fatehpur and the doctor had noted following injuries:

A small round lacerated wound on scalp at occipital region 11 cm. above and lateral let car size 0.5 cm. Margin inverted. Fresh blood oozing.

7. Chunuk Lal had succumbed to his injuries and his post mortem examination was conducted by Dr. Sanjay Gupta on 28.2.2003 at 3.30 p.n He had noted following ante mortem injuries on the person of the deceased:

Multiple small lacerated wounds of size approximately 0.5 cm. present over the occipital midline and left side of parietal region, margins were inverted, combined area of all the wounds was 8 cm. X 5 cm., wounds were bone deep.

8. The doctor had also recovered 11 small round metallic pieces from the dead body. According to the opinion of the doctor cause of death was syncope and shock as a result of ante mortem injuries.

9. After registration of the case S.I. Amur Singh had commenced investigation. He had recorded the statement of Krishna Chand Pandey and prepared the site plan of the place of occurrence, which is Ext. 13. He had also "prepared the recovery memo of 7 tiklis, which is Ext. Ka 2. He had collected blood stained and plain earth from the place of occurrence, which is Ext. Ka-3. He had also received information about the death of Chunuk Lal and converted the case u/s 302 I.P.C. He had also recorded the statements of witnesses. S.I. Rajendra Singh concluded the investigation and submitted the charge sheet against the accused persons.

10. After the submission of charge sheet case was committed to the court of Sessions in usual manner.

11. In order to prove its case prosecution has examined six witnesses in all.

12. P.W. 1 Kishan Dutt Pandey informant of the case, P.W. 2 Ramesh Chand Pandey, eye witness, P.W. 3 Dr. Sanjay Gupta, conducted the medical examination of the injured and post mortem, P.W. 4 Ram HC 11 had prepared the chik F.I.R., P.W. 5 Rajendra Singh, S.I. Had submitted the charge sheet and P.W. 6 Amar Singh S.I. is the investigating officer.

13. The case of the defence was of denial and false implication and it was stated that they were not present at the time of occurrence and some firing had taken place at the time of Tilak Ceremony and some of them had sustained accidental injuries and they are falsely implicated on account of influence of brother of informant who is A.D.M. It was also the case of the defence that the investigating officer had admitted that when he reached at the place of occurrence he was told by Mahesh Chandra Pandey, whose Tilak ceremony was being held that two three hundreds of people were collected and some people were drunk and on account of interse enmity they had fired. Due to influence of A.D.M. false case has been concocted. There is inordinate and unexplained delay in lodging the report. The defence has examined D.W. 1 Purshottam Pandey and D.W. 2 H.N. Trivedi to prove the plea of alibi of Simil Kumar.

14. The Sessions Judge after considering the evidence on record convicted the appellants, as aforesaid and acquitted Sunil Kumar Pandey.

15. We have heard Shri J.S. Sengar, Advocate and Shri K.D. Tewari learned Counsel for the appellants, Shri G.S. Chaturvedi and Shri V.P. Srivastava, Sr. Advocates and Shri Arunendra Singh, learned A.G.A. for the State.

16. P.W. 1 Krishna Dutt Pandey deposed that on 27.2.2003 Tilak Ceremony of his son Mahesh Chand was going on in front of his house. Several persons were attending the Tilak Ceremony including his son, Chunuk Lal, sister Rani Devi, Pratibha Devi and several other relatives. As the ceremony started, the accused persons with prior concert, Gaya Prasad, Manoj Singh, Shyam Behari and Sunil Kumar Singh from the roof of Sunil Kumar and from the roof of Dilip Singh, Anand Singh, Sukhnidhan Singh, Udai Bhan Singh, Dilip Singh and Vinod Kumar, on the exhortation of Gaya Prasad that Tilak ceremony Should not be concluded,

had fired indiscriminately from their licensed and unlicensed arms. The Generator was on and tube lights and bulbs were glowing. His sister Rani Devi, son Mahesh Chand, relative Chunuk Lal, and Pratibha Devi received fire arm injuries and they all became seriously injured, The accused were recognized by the relatives while they were running away. All the injured were taken in a Marshal Jeep to Fatehpur. Rani Devi, Kamesh Chand were taken to the Regency Hospital and thereafter he returned to his house and he prepared the F.I.R. and lodged at the police station, which is Ext. Ka-1. Next day he received information that Chunuk Lal succumbed to his injuries in the Hospital. He and Anand Singh had enmity with regard to the election of Pradhan. He had won the election of Pradhan and Anand Singh was defeated. His statement was recorded by the Investigating officer at the police station.

17. P.W. 2 Ramesh Chand Pandey had also supported the testimony of P.W. 1. He deposed that there was Tilak Ceremony of his younger brother and about 250 - 300 peoples were collected. Generator was on and Bulbs and Tube Lights were glowing. There was enmity regarding election of Pradhan. At about 9 P.M. Gaya Prasad, Manoj Singh, Shyam Behari and Sunil Kumar Singh were on the roof of Sunil Kumar and on the roof of Dilip Singh, Anand Singh, Sukhnidhan Singh, Udai Bhan Singh, Dilip Singh and Vinod Kumar, were present. All were carrying guns. Anand Singh and Sukhnandan Singh had double barrel guns, As soon as Tilak ceremony started, on the exhortation of Gaya Prasad that Tilak ceremony should not be concluded, all the accused had fired indiscriminately from their arms. He was sitting at his door. His maternal uncle Chunuk Lal was 4 - 5 steps ahead. Rani Devi, Pratibha Devi and Chunuk Lal were also standing there. They had received injuries. Thereafter he became unconscious. His father brought them to Khaga and then Fatehpur and thereafter took them to Regency Hospital Kanpur. Chunuk Lal succumbed to his injuries.

18. We have carefully examined the testimonies of these witnesses and the medical examination reports.

19. P.W. 1 Krishna Dutt Pandey is informant of the case and P.W. 2 Ramesh Chandra Pandey is the son of the informant and no other witness has been examined by the prosecution. According to the prosecution case about 250-300 people were collected at the time of occurrence to attend the Tilak ceremony of the son of the informant, even though no independent witness has been produced by the prosecution in support of its case. Both these witnesses are interested and inimical and their statements deserve more careful and critical appraisal. Their presence at the time of occurrence cannot be doubted because occurrence took place in front of their house where Tilak ceremony was being held. Moreover, P.W. 2 Ramesh Chandra Pandey is an injured witness. His injuries lends assurance of his presence at the time of occurrence. We have carefully examined the testimonies of these witnesses in the light of submissions made by counsels for the parties. There are certain circumstances which go to show that the testimonies of these witnesses are not such on which implicit reliance could

be placed. The presence of witnesses at the time of occurrence does not ensure truthfulness.

20. The first circumstance is that a large number of persons are roped in this case. The prosecution case of indiscriminate firing by 9 persons does not correspond to the injuries sustained by the injured. The injured only received firearm injuries of dispersal of few shots. If 9 persons will fire indiscriminately upon a group of people sitting together, as alleged by the prosecution witnesses, there should have been more serious injuries to a large number of persons. The main enmity of the accused was with the informant but he did not receive any injury.

21. Secondly specific allegations were made against all the accused persons. It was stated that Gaya Prasad, Manoj Kumar, Shyam Behari and Sunil Kumar had fired from the roof of Sunil Kumar and Anand Singh, Sukhnidhan Singh, Udai Bhan Singh, Dilip Singh and Vinod Kumar fired from the roof of Dilip Singh. The defence of Sunil was of alibi and in support of his defence he had examined two witnesses. The prosecution witnesses realising the difficulty that Sunil was not present in the village at the time of occurrence changed their version and tried to exonerate Sunil. They stated that one person like Sunil was standing behind others and he may or he may not be Sunil but he did not fire. The Sessions Judge acquitted Sunil and no appeal has been filed against his acquittal. It is true that the principle of *falsus in uno, falsus in omnibus* is not applicable in our country but if we carefully examine their evidence we find that it was not possible for the witnesses to identify any of the assailants if they are not sure about the participation of Sunil. The witnesses were sitting on the ground floor and there was light of generator and the accused according to prosecution case were standing on their roofs of double story house which was about 22 and 45 steps from the place of occurrence. The accused were standing at a place where there was no light as compared to the place where witnesses and victims were sitting. It is difficult to identify any person from brighter light to darkness.

22. Another circumstance to doubt the prosecution case is (that the manner of assault is not corroborated by the medical evidence. The accused were firing from roofs of double storied house and the victims were sitting on the ground floor about 40-50 feet away but in the medical examination report the direction of injuries is not mentioned. In none of the medical examination report it was mentioned that the injuries were downward. In evidence the doctor P.W. 3 Dr. Sanjay Gupta did mention that the injuries were downward but he admitted that in the injury reports he did not mention that the injuries were downward. His evidence was recorded after more than a year. His explanation about the direction of injuries cannot be accepted.

23. The first information report is also very delayed. The occurrence took place on 27.2.2003 at 9.00 P.M. and F.I.R. is lodged at 10.00 A.M. on 28.2.2003. The distance of the police station was only 6 Kms. The case of the prosecution is that the delay in lodging the report is properly explained and no adverse inference

can be drawn. The Sessions Judge has also considered this aspect and has held that the delay in lodging the first information report is properly explained. We have carefully considered the evidence in the light of the submissions of the counsel for the parties and also perused the findings recorded by the trial court. In our opinion, the explanation for delay in lodging the report is false. In the first information report the informant mentioned that he had prepared the first information report after admission of the injured in Fatehpur hospital. The medical examination of the injured Pratibha Tewari, Ramesh Chand Pandey, Rani Devi Dube and Kanhaiyee Lal was over by 12.30 midnight. If the informant was present at the time of medical examination of all the injured at Fatehpur Hospital and medical examination was, over by 12.30 midnight, then certainly there was delay in lodging the report at 10.00 A.M. on 28.2.2003. In evidence the informant had introduced another story. He stated that in district hospital Fatehpur injured were referred to Regency Hospital, Kanpur and he reached at 2.30 3.00 A.M. in Regency Hospital. He stayed in Regency Hospital for about 2 and 2 1/2 hours. He further stated that he took Rani Devi, Ramesh Chandra, and Pratibha Devi in his vehicle. This statement of the informant is absolutely false. The informant did not mention in the report that he took injured in his vehicle to Regency Hospital. He only mentioned that he returned after injured were admitted to Fatehpur Hospital. There is no evidence on record to show that injured were treated in Regency Hospital. At the time when Chunuk Lal was brought in the hospital his identity was not known. If the informant was present at the time of admission of the injured the identity of Chunak Lal must have been told by him to the doctors.

24. The Sessions Judge has held that presence of informant as a person at the time of medical examination cannot be doubted only on the ground that his name was not mentioned as a person who had brought the injured. This is correct that presence of a person cannot be doubted only because his name was not mentioned by the doctor in the medical examination report. In the case of Sukhchain Singh Vs. State of Haryana and Others, the Apex Court has observed that it is neither the requirement of law nor usually expected that names of all the relatives of the injured should be mentioned in the medico legal report prepared by the doctor in his discretion. In the present case the doctor had mentioned the name of Rajendra Kumar Pandey, Rajan Tiwari Rajendra Kumar Dubey as persons who had brought, the injured. The name of different persons were mentioned but the name of the informant was not mentioned in the medical examination report. It is also very relevant to point out that the report was lodged u/s 307 I.P.C. at 10.00 A.M. whereas Chunuk Lal was already declared dead in the night of 27.2.2003 when he was brought to the Hospital alongwith other injured. It is very surprising that why the first informant did not know about the death of Chunuk Lal if he remained present throughout the medical treatment of other injured. We are of the view that the first informant did not go to the hospital along with injured and his explanation about delayed lodging of the report is false. There is inordinate and unexplained delay in lodging the

report. The Apex Court in the case of Thulia Kali Vs. The State of Tamil Nadu, has held that "the object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets benefit of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. In our opinion this circumstance would raise considerable doubt regarding the veracity of the evidence and point to an infirmity in evidence as would render it unsafe to base conviction.

25. The story of exhortation by Gaya Prasad is also highly unbelievable. The prosecution witnesses had stated that Gaya Prasad had exhorted to kill so that Tilak ceremony could not be performed. According to the prosecution case about 250-300 people were collected in front of the house of informant to attend the Tilak Ceremony and a generator was also on. It is highly unbelievable that any one could hear the exhortation made from the roof of two-storied building across the road.

26. In our opinion the prosecution could not prove its case beyond doubt and the Sessions Judge has erroneously convicted and sentenced the appellants. We did not consider the infirmities in the prosecution case as pointed out by us.

27. In view of the above, the appeals are allowed. The order dated 23.8.2004 passed Additional Sessions Judge, Court No. 7 Fatehpur convicting and sentencing the appellants, as aforesaid, is set aside. The appellants Udai Bhan Singh, Dilip Kumar Singh and Sukhmidhan Singh of CrI. Appeal No. 4542 of 2004 and appellant Gaya Prasad of CrI. Appeal No. 5076 of 2004 are on bail. They need not surrender. Their bonds are canceled and sureties discharged. The appellants Shyam Behari, Manoj Kumar, Anand Singh and Vinod Kumar of CrI. Appeal No. 5076 of 2004 are in jail. They shall be released forthwith unless wanted in any other case.

28. Office is directed to communicate this order to the court concerned within two weeks for compliance.