

**Jagdish Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/463251](http://sooperkanoon.com/463251)

**Court :** Allahabad

**Decided On :** Aug-19-1966

**Reported in :** AIR1967All532; 1967CriLJ1467

**Judge :** T. Ramabhadran and ;H.C.P. Tripathi, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 3

**Appeal No. :** Criminal Appeal No. 2632 of 1965

**Appellant :** Jagdish

**Respondent :** State

**Advocate for Def. :** Govt. Adv.

**Advocate for Pet/Ap. :** S.N. Mulla and ;Krishna Capoor, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**Tripathi, J.**

1. Six persons namely appellant Jagdish and his brother Parath, Babu and his brother Begraj. Mahabir and Ram Nath were tried by the IInd Addl. Sessions Judge of Mujaffarnagar on an indictment that on 1st of May, 1965. at about 10 a.m. they had formed an unlawful assembly having armed themselves with lethal

weapons and in prosecution of their common object had committed the murder of Ram Nath son of Kishun Dayal near a culvert at Ghaloli-Rohana road in the district of Muzaffarnagar. The learned Sessions Judge held appellant Jagdish guilty under Section 302 I. P. C and sentenced him to death. The other five accused were acquitted on the finding that 'there is no doubt that they did not participate in the incident.' Appellant Jagdish has come up in appeal against his conviction and sentence and the learned Sessions Judge has made a reference for the confirmation of the sentence of death inflicted on the appellant.

2. The prosecution case in short is as follows.

One Sadho Singh a brother of Jagdish, was murdered about two years before the incident in question. In December 1963 in the trial which was held in respect of his murder Ram Nath (the victim). his father Kishun Dayal and some others were sentenced to undergo imprisonment for life. They were, however, released on bail and an application filed by Parath for the cancellation of their bail was dismissed by this Court. Begraj had lodged the first information report regarding the murder of Sadho Singh and Ram Nath and Jagdish had appealed as prosecution witnesses in that case. Eight or ten years before, appellant Jagdish and some others had been convicted for having beaten Kishun Dayal and Ram Nath. Jagdish and his collaterals had filed suits in the Panchatti Adalat for recovery of money against Ram Nath and those suits had been decreed but the decrees were set aside by the court of Munsif.

It is alleged that on the 1st of May, 1965, Ram Nath went on his tired bullock cart to Rohana for bringing drums of diesel oil. His residential village Ghaloli which lies at a distance of 1 1/2 miles from Muzaffarnagar is connected to Rohana by a pacca road which passes on a culvert and there is an unmanned railway crossing at a distance of about 100 paces from the culvert. When Ram Nath after having crossed the railway crossing was approaching the culvert this appellant and the other five acquitted persons who were lying in ambush under the culvert suddenly appeared on the road. Appellant Jagdish, Mahabir and Begraj were holding a gun each and Parath, Babu and Ram Nath were carrying lathis. Sensing danger from them Ram Nath jumped down from his cart and fled. Appellant Jagdish, Begraj and

Mahabir chased and fired at him. Ram Nath who was hit first fell down on the road, got up and then struggled in a small pit which was lying adjacent to the road on its south. Jagdish. Begraj and Mahabir came to the pit and fired on injured Ram Nath three more shots from close range which resulted in his instantaneous death. Sukhbir. Buddhu, Moola and Nathoo (P. W. 2 to 5) who were passing on the road at that time reprimanded the assailants but they were asked to keep themselves at a distance to avoid meeting a similar fate. The assailants thereafter ran away towards the village. Kishen Dayal, deceased's father, who was at his field at a distance of about three furlongs from village Ghaloli on being informed by Buddhu about the incident came to the spot and found his son Ram Nath lying dead in the pit. Sukbir, Nathoo and Moola were still present there. Hearing details from them he dictated a report to his son Murari and lodged the same at police station Deoband seven miles away at, 11-45 a.m. On the basis of this report a case was registered and investigation followed.

3. Sub-Inspector Bai.j Nath Singh reached the spot at about 2-30 p.m. on the same date. He found three fired cartridges lying in the pit near the dead body and blood spilt there. He obtained sample of the blood stained earth, recovered the cartridges and put them in a sealed cover in the presence of the witnesses. He searched for the accused but could not trace them. A licenced gun Exh. 2 of Jagdish along with some cartridges and another licenced gun Exh. 3 of Mahabir with cartridges were recovered on search of their respective houses. They were put in separate scaled covers and their recovery memos were prepared in the presence of the witnesses. The dead body of Ram Nath was thereafter sent for post-mortem examination.

4. The post-mortem examination on the dead body of Ram Nath was conducted by Dr. V. R. Sanwarwal (P. W. 6) on the 2nd of May, 1965, at 2-50 p.m. and the following ante mortem injuries were found:

1. One gun shot wound  $3/4'$  x  $3/4'$  x abdominal cavity on back side close to spine mid  $1/3$  margin of the wound lacerated and inverted. Scorching blackening and tattooing of the skin around the wound present. Direction of the wound was forward, downward and towards left inlet wound.

2. Five gun shot wounds (of exit) and relating to injury No. 1 within an area of 5 3/4' x 4' upon the abdomen front of left side with margins inverted and lacerated.
3. Seven gun shot wounds (of entrance) within an area 7' x 5' in the lower part of the back of the cliesi right side in the lower half with margins invert and lacerated. There were no signs o blackening or of tatooing of the skin around the wounds. Each wound was 1/4' x 1/4 cavity deep, direction of each wound was downwards, forwards and towards left.
4. Abrasion 1' x 3/4 on the hack right side middle one third
5. One gun shot wound 1' x 1' x bone deep over the right buttock lower part Margins of the wound inverted and lacerated. Blackening scorching and tatooing of the skin around the wound present. There was fracture of the right pelvis under the wound.
5. On internal examination right pleura, right lung, peritoneum, right lobe of liver and small intestines were found lacerated and 6th, 7th, 8th and 9th ribs on the left side fractured. Five shots were recovered from the right pleural cavity Death in medical opinion was due to haemorrhage and shock as a result of injuries to lung, liver and small intestines caused by gun shots.
6. The sample of the blood stained earth taken from the spot was examined by the Chemical Examiner and Serologist and their reports indicate that it was found fo be stained with human blood.
7. The gun of Begraj Exhibit I which he had surrendered in court and the guns Exhibits 2 and 3 belonging to appellant Jagdish and Mahabir respectively were sent along with the three fired cartridges recovered from the place of occurrence to the Fire Arms Expert, Scientific Section C. I. D., U. P., Lucknow, for his examination and report. Sri Shiani Narain Fire Arms Expert (P W 1) has proved his reports and testified that on a careful examination he was of the opinion that all the three cartridges had been fired from the gun Exhibit 2 belonging to the appellant.
8. At the trial appellaant had pleaded not guilty and denied his connection with the crime. lie admitted that he was a licencee of gun Exhibit 2 but denied to have used

it against the deceased. He also admitted that in the trial relating to the murder of his brother two years back Ram Nath and his father Kishun Dayal had been sentenced to undergo life imprisonment and that they were on bail on the date of incident. A question was put to the appellant that the village was full of party factions and that his relations with the deceased and prosecution witnesses Sukhbir, Buddha, Moola and Nathoo were highly strained to which he replied in the affirmative. He expressed ignorance about the recovery of the fired cartridges from the place of occurrence and asserted that he had been falsely implicated in the case on account of enmity with the prosecution witnesses. Appellant, however, did not give any evidence in his defence.

9. The case of the prosecution rests on the testimony of four-witnesses namely Sukhbir, Buddha, Moola and Nathoo (P. Ws. 2 to 5) all of whom supported the prosecution story in all its essential particulars.

10. Kishun Dayal (P.W 26), father of the deceased Ram Nath. gave the history of the various litigations between him on the one hand and the appellant and his family members on the other and had stated that the appellant and the acquitted accused had formed one gang against him and that on learning the details of the occurrence from the eye-witnesses named above he had filed a report with the police.

11. Brahm Dutt and Ilam Chand (P.Ws. 8 and 20) testified to the recovery of guns Exhibits 2 and 3 from the respective houses of Jagdish and Mahabir in the afternoon of 1st May. 1965 and the recovery of fired cartridges from the place of occurrence.

12. The learned Sessions Judge on an assessment of evidence reached a conclusion that the presence of Moola (P.W. 4) at the spot was highly doubtful but Buddha, Sukhbir and Nathoo could have been there and witnessed the occurrence. He was, therefore, of the opinion that although they were highly partisan witnesses, a part of their testimony which connected the appellant with the crime found corroboration from the report and the statement of the Fire Arms Expert that the three fired cartridges which had been recovered from the spot had been fired from the gun Exhibit 2 belonging to Jagdish. The learned Judge,

therefore, held the charge of murder established against the appellant and convicted and sentenced him as stated above. As regards the other five persons who were put up on trial along with the appellant the learned Judge observed that 'that it was not difficult for Nathoo, Sukhbir, and Moola as well as Kishun Dayal to implicate falsely these five accused though the murder was committed by only one namely Jagdish' and acquitted them.

13. Learned counsel for the appellant has vehemently argued that the direct evidence in the case is of a highly partisan character, that the story given by the alleged eye-witnesses bristles with improbabilities, that the medical evidence does not support the account given by them, and that after giving a finding that the story given by the eye-witnesses so far as it tried to connect the acquitted persons with the crime under consideration was false it was not open to the trial Judge to convict the appellant on the basis of their evidence. Learned counsel contends that the only reasonable inference that can be drawn from the evidence of the Fire Arms Expert was that the fired cartridges had been fired from the gun Exhibit 2 the licence of which was in the name of the appellant but this inference does not necessarily lead to an other inference as has been drawn by the learned Sessions Judge that those cartridges had been fired from the aforesaid gun by the appellant. It is further contended that as the basic structure of the prosecution story as unfolded by the eye-witnesses has been found to be false there was no direct evidence to connect the appellant with the crime and therefore there was nothing to be corroborated by the evidence of the Fire Arms Expert We find force in these contentions.

14. Each one of the eye-witnesses has stated that appellant Jagdish, Begraj and Mahabir fired from their respective guns at the deceased as soon as he jumped from his cart. They have further added that all the three went to the pit and fired at him again when he was lying fallen in it but none of the lathiwalas had attacked him. Sukhbir and Buddhu both have stated that they had heard seven or eight reports of gun fire. Moola (P.W. 4) has added that there were a number of persons working in the nearby fields. According to Sukhbir and Buddhu, Ram Nath was lying on his back in the pit when he was fired upon again by the three musketeers. Therefore the picture which emerges from the statement of these witnesses is that

Ram Nath was first fired upon while he was running away by the three gunmen. He fell down on the road, got up and struggled himself inside the nearby pit. Then when he was lying on his back in the pit the three gunmen went close to him and fired at him again.

The medical evidence however, does not corroborate this picture. According to the post mortem report and the evidence of Dr. Sanwarwal there were only three gun shot wounds of entrance and all at the back of the deceased. If five or six shots were fired at the deceased how is it that only three wounds were caused by them. Even if it is assumed that some of those shots went astray how is it that the three shots which were fired by the three assailants from their respective guns from a close range on the deceased when he was lying on his back in the pit caused injuries on the back side and not on his front side. How is it that although five or six shots were fired only three fired cartridges were recovered from the place of occurrence?

Further it is a strange coincidence that although each one of the three gunmen are alleged to have fired at least two shots each from their respective guns, all the three cartridges recovered from the spot are those which had been fired from only one of these three guns. It will be noticed in this connection that Sukhbir (P.W 2) has stated that he did not see any of the accused picking up fired cartridges from the ground or taking them out of the barrel of his gun although he was alone looking at them. If the deceased had been fired at first while he was running away on the road how is it that no fired cartridges were found there and all the three cartridges were recovered near the pit. The report of the Fire Arms Expert instead of corroborating the prosecution story as unfolded by the witnesses definitely falsifies a major part of it. It is difficult to believe that if the three gunmen had repeatedly fired on the deceased from close quarters while he was lying in the pit none of those shots hit him in his front. These dark spots in the prosecution case, in our opinion, indicate that in all probability none of the eye-witnesses was near the scene at the time of the occurrence and they were drawing on their imagination in weaving out the prosecution story.

15. Kishan Dayal father of the deceased says that he did not name the accused to any person in the village and when he came back to his house after visiting the scene of occurrence he found the cart which had been taken by Ram Nath on his journey to Rohana standing at his door with a drum and a Kanaster on it. He did not know as to who had brought the cart from the place of occurrence to his house. On the basis of this statement it has been urged by the learned counsel for the appellant and with some justification that in all probability the murder of Ram Nath was not witnessed by any person and after the cart had returned without the cartman to the house of the deceased with blood stains on it his family members went in search of him and found his dead body lying in a pit and three fired cartridges lying there and thereafter manufactured the prosecution story implicating the appellant and the acquitted accused on the basis of suspicion engendered by the past history of repeated incidents and criminal litigations.

16. It is true that the maxim of falsus in uno falsus in omnibus (false in one thing false in everything) has not received general acceptance in different jurisdictions in India nor has it come to occupy the status of a rule of law. It is merely a rule of caution. Therefore where one part of a witness's evidence is disbelieved, Judges of fact have the right to act on the rest of his testimony if it inspires complete reliance. But where the basic structure of the story is found to be wholly unreliable and the testimony of the eye-witnesses false in material particulars it is hazardous to pick out a portion of the statement of those witnesses and make it a basis for a judgment of conviction.

17. In the instant case the evidence is of a highly partisan character, it does not find corroboration from the medical evidence and suffers from various blemishes. The trial Judge for good reasons has disbelieved the major part of the prosecution story and has given a categorical finding that the acquitted persons did not participate in the incident and it was not difficult for the eye-witnesses and Kishan Dayal to implicate them falsely. In view of the categorical findings by the learned trial Judge which are based on adequate reasons and in view of the various infirmities pointed out in the ocular testimony of the witnesses we are of opinion that the conviction of the appellant is not sustainable on the facts and circumstances of the case.

18. In the result this appeal is allowed and the conviction and the sentence of the appellant are set aside. The appellant is in jail. He shall be released forthwith unless required in connection with some other case. The reference made by the learned Sessions Judge for the confirmation of the sentence of death inflicted on the appellant is rejected.

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