

Malkhan Singh and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-25-1992

Reported in : 1993CriLJ1145

Judge : B.P. Singh and ;V.P. Goel, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 323, 364, 504 and 506

Appeal No. : Criminal Appeal No. 807 of 1979

Appellant : Malkhan Singh and ors.

Respondent : State of U.P.

Advocate for Def. : Dy. Govt. Adv.

Advocate for Pet/Ap. : G.S. Chaturvedi, ;Vijai Manohar Sahai, ;G.S. Hajela, ;P.K. Tewari and ;P.C. Chaturvedi, Advs.

Disposition : Appeal dismissed

Judgement :

1. Appellants Malkhan Singh, Ujagar Singh and Narendra Singh have come in appeal against the judgment and order dated 26-2-1979 passed by the II Additional Sessions Judge, Etah, in S.T. No. 258 of 1978-State v. Malkhan Singh and Ors. under Section 302 read with Section 34, I.P.C.

2. The case of the prosecution, as was unfolded in the evidence of Munnu Singh PW 1, may briefly be stated as follows.
3. One Sardar Singh of village Ubhai P.S. Aliganj district Etah had four sons viz. Tilak Singh, accused Ujagar Singh, accused Malkhan Singh and Natthu Singh. Tilak Singh is the deceased while accused Narendra Singh is the son of accused Malkhan Singh. Munnu Singh PW 1, the first informant, is the son of Natthu Singh. Thus, it is obvious that the first informant, the deceased and the three accused are descendants from Sardar Singh.
4. For two-three years before the occurrence of this case, the deceased Tilak Singh was residing with Munnu Singh PW 1. Tilak Singh had about 33-34 Bighas land. He wanted to give this land to Munnu Singh. Accused Malkhan Singh and Ujagar Singh did not like the fact that their own brother Tilak Singh wanted to give the land to Munnu Singh. All these accused were annoyed with Tilak Singh on this count.
5. On 19-11-1977 it was at about 11.00 A.M. when Tilak Singh started from his house for Naglamai. Munnu Singh PW 1 saw that Tilak Singh was followed by accused Ujagar Singh who was armed with a gun while Malkhan Singh and Narendra Singh were carrying country made pistols. Munnu Singh PW 1 also followed and he called out his uncle Tilak Singh to come back. As soon as Tilak Singh turned back, he was fired at by all these three accused persons. Tilak Singh was hit and fell down after covering a distance of two or three paces. Munnu Singh PW 1 was at some distance away from Tilak Singh.
6. Munnu Singh PW 1 left the village stealthily for the police Station. While Munnu Singh PW 1 was proceeding towards the police Station, he saw that all the three accused were surrounding the dead body of Tilak Singh. It was for this reason that Munnu Singh PW 1 did not go near the dead body of Tilak Singh. Munnu Singh PW 1 wrote the F.I.R. Ext.ka-1 and handed over the same in police Station, Aliganj at 2.00 p.m.
7. Head Constable Dhanpal Singh PW 5, who was posted in police Station, Aliganj in November, 1977, had received the written report Ext. ka-1 from Munnu Singh on

19-11-1977 at 2.00 p.m. and had prepared the Chick report Ext. Ka-9 and had also made the G.D. entry Ext. Ka-10 regarding the commission of the crime. S.I. Meghraj Singh P.W. 4 and Inspector Raj Kumar Singh PW 8, who were posted in police Station, Aliganj, were present when the case was registered on 19-11-1977. Inspector Raj Kumar Singh PW 8 accompanied by S. I. Meghraj Singh PW 4 and other members of the police Force left for the scene of occurrence immediately after the registration of the case. After reaching the place of occurrence, Inspector Raj Kumar Singh PW 8 directed S.I. Meghraj Singh to carry out the inquest proceeding upon the dead body of Tilak Singh. The dead body was lying upon the place of occurrence in the field. S.I. Meghraj Singh PW 4 had conducted the inquest proceeding and had prepared panchayatnama Ext. ka-2 and other allied papers. A lathi Ext. 1 was also recovered from near the place of occurrence and samples of plain and blood stained earth were also taken by S.I. Meghraj Singh PW 4 and were sealed in separate tins.

8. The dead body of Tilak Singh was handed over by S.I. Meghraj Singh PW 4 in a sealed cover to Constable Ved Ram Misra PW 6 who had taken the same to Etah and had produced and identified the same before Dr. Kuldeep Sagar, PW 7. Dr. Kuldeep Sagar PW 7 had conducted the post-mortem examination upon the dead body of Tilak Singh. The result of the post-mortem examination was as follows :--

The deceased was aged about 70 years and had been dead for about 1 1/4 days. He was of average built and the rigor mortis had passed.

9. The Doctor had found the following ante mortem injuries :--

1. Gun shot wounds gutracia 3 1/2 x 1 1/4 x bone deep (Right cheek cavity from the Rt. middle part of cheek and extending up to the Rt. eye. No blackening and scorching present. Margins lacerated and inverted.

2. Gun shot wound of Exit 7' x 3' x skull cavity deep extending up to left cheek upper middle part to the parietal region (left) left eye absent; front fractured underlying bones and bone of the skull fractured; margins lacerated and enverted. No blacking and scorching; brain matter coming out.

3. Gun shot wound of Exit 4' x 2' x bone deep on the front of the right upper arm with the lower 1/2 Rt. elbow joint fractured. No blackening and scorching (Rt. humerus fractured).

4. Gun shot wound of entrance 2 1/2 x 1 1/2' x bone deep on the front of Rt. forearm upper 1/4 part. Right elbow joint and both radial ulna fractured.

5. Eight gun shot wounds of entrance each 1/4' x 1/4' x chest cavity deep on the front of left side chest in an area of 3' x 3'. No blackening and scorching present; margins lacerated and inverted underlying ribs fractured.

6. Eight gun shot wounds of Exit on left side chest. Each wound is 1/2' x 1' x 1/2'. No blackening and scorching present underlying ribs fractured.

7. Two grazing gun shot wounds skin deep on the upper part.

10. On internal examination, Dr. Kuldeep Sagar found that both the right and left temporal bones were fractured. The membranes of the brain were lacerated. A number of ribs were also found fractured. In the opinion of the Doctor, Tilak Singh died due to shock and haemorrhage as a result of multiple gun shot wounds. He was of the opinion that ante-mortem injuries of Tilak Singh were sufficient to cause death in the ordinary course of nature.

11. After deputing S. I. Meghraj Singh PW4 to carry out inquest proceeding, Raj Kumar Singh PW 8 had started investigation of the case. After completing the investigation, he submitted a charge-sheet Ext. Ka-13.

12. At the trial, the accused pleaded not guilty and claimed to be tried.

13. In all, the prosecution examined eight witnesses, Munnu Singh, PW1, Badshah Singh PW2, Vishambhar Singh PW3, S. I. Meghraj Singh PW4, H. C. Dhanpal Singh PW5, Constable Ved Ram Misra PW6, Dr. Kuldeep Sagar PW 7 and Inspector Raj Kumar Singh PW 8, in the case. The accused did not lead any evidence in their defence.

14. The learned Sessions Judge did not rely upon the evidence of Badshah Singh, PW 2, but relying upon the evidence of the remaining witnesses held that all the

three accused, Malkhan Singh, Ujagar Singh and Narendra Singh were guilty of the offence punishable under Section 302 read with Section 34, IPC. Consequently, each one of the accused was sentenced to undergo rigorous imprisonment for life.

15. Aggrieved by the judgment and order of the trial Court, Malkhan Singh and others have come in appeal.

16. We have heard the learned counsel for the parties and we have gone through the record of the case. As we have already observed the learned Sessions Judge did not rely upon the evidence of Badshah Singh PW 2. We agree with the view taken by the learned Sessions Judge in relation to Badshah Singh and in all probability he had reached the place of occurrence after the occurrence had taken place.

17. Before discussing the evidence of witnesses of fact, we may deal with the evidence which is more or less of a formal nature. S.I. Meghraj Singh PW 4 has proved the inquest report and allied papers. Head Constable Dhanpal Singh PW 5 has proved the Chick Report Ext, Ka-9 and the G. D. entry Ext. Ka-10. Constable Ved Ram Misra PW 6 had taken the dead body of Tilak Singh from the place of occurrence in a sealed cover to Etah mortuary and had produced the same before Dr. Kuldeep Sagar PW 7. Dr. Kuldeep Sagar PW 7 has proved the postmortem report. In cross-examination, he has stated that the gun shot injuries of Tilak Singh could have been caused from the front or side, but could not have been caused from the back. He was not in a position to say as to how many shots were responsible for the gun shot injuries of Tilak Singh and that shots must have been fired from a distance of three to four feet. In reply to a question from the side of defence, Dr. Kuldeep Sagar PW 7 opined that injuries of Tilak Singh could have been caused at 7.00 a.m. on 19-11-1977. Inspector Raj Kumar Singh PW 8 has proved the site plan. We have gone through the evidence of these witnesses. There is nothing on the record from which it could be inferred that these witnesses were not reliable. Nothing has come out in their cross-examination from which it could be argued that these witnesses were not telling the truth. S.I. Meghraj Singh PW4 Head Constable Dhanpal Singh, PW 5, Constable Ved Ram Misra, PW 6

and Inspector Raj Kumar Singh PW8 belong to U. P. Police Force while Dr. Kuldeep Sagar PW 7 is a member of the State Medical Service. They have absolutely no concern whatsoever with either the complainant or the accused. They have deposed about their acts which were performed by them in the discharge of their official duty. They had no personal interest in the case. Furthermore, their evidence finds corroboration in the documents on the record, which had come in existence at the relevant time.

18. The fact that Tilak Singh died as a result of having sustained gun shot wounds on 19-11-1977 near the eastern Mend of Badshah Singh's plot is not disputed. While the case of the prosecution is that the occurrence took place at about 11.00 a.m., the contention of the learned counsel for the appellants is that no one saw the occurrence and perhaps the occurrence took place some time early in the morning. We have gone through the evidence of two witnesses of fact Munnu Singh PW 1 and Vishambhar Singh PW 3 in the light of the arguments advanced at the Bar.

19. First of all, we may take up the question of motive. Munnu Singh PW 1, the first informant, has categorically stated that two three years prior to his death, the deceased Tilak Singh was living with him and that deceased Tilak Singh, who had no issue, wanted to give his share, 33-34 Bighas land to him. The fact that Tilak Singh was living with Munnu Singh PW 1 before the occurrence of this case is not disputed. The only suggestion given to Munnu Singh PW 1 in the cross-examination is that Tilak Singh was an old man and he had not executed any will or sale deed in respect of his plots in favour of Munnu Singh PW 1. Admittedly, the accused would have a share in the property left by deceased Tilak Singh if he died without executing any will, sale deed or gift deed in favour of any one. The contention of the learned counsel for the State is that Tilak Singh was done away by these accused persons so that they may also inherit the agricultural land of Tilak Singh before he could execute any will, sale deed etc. in favour of Munnu Singh PW 1 with whom he was residing for the last two or three years. The above contention has force. The contention of the learned counsel for the appellants that the accused would not have killed Tilak Singh because if they were branded as murderers of Tilak Singh and were finally convicted for the said offence, they

would not have inherited the agricultural plots of Tilak Singh. The above contention has no force. The devolution of agricultural land is governed by the provisions of U. P. Act No. 1 of 1951. No provision was shown to us in the said Act from which a person alleged to have murdered the Bhumidhar was debarred from inheriting the Bhumidhari plots left by him. It was also argued by the learned counsel for the appellants that it was the first informant Munnu Singh PW 1 who might have been responsible for the murder of Tilak Singh. The argument is simply preposterous and cannot be accepted. The first informant, Munnu Singh PW 1 had to gain nothing by either murdering or get Tilak Singh murdered. When Tilak Singh was residing with Munnu Singh PW 1 for the last two-three years, Munnu Singh PW 1 had every reason to expect that before his death Tilak Singh would execute some kind of document bequeathing or transferring his property to him. Thus, it is obvious that the accused persons had motive to kill Tilak Singh so that they could not be deprived of inheriting the property left by Tilak Singh.

20. Admittedly, Munnu Singh PW 1 and accused Narendra Singh are nephews of Tilak Singh while accused Ujagar Singh and Malkhan Singh are his real brothers. The main characters in the case i.e. the deceased, the first informant and the three accused belong to the same family and are descendants from Sardar Singh, who was the father of the deceased. It is also not disputed and is proved by the evidence of Meghraj Singh PW 4 that on 13th November, 1977, the deceased Tilak Singh had lodged the report in P.S. Aliganj under Sections 323/504/506, IPC against one Sukhu and accused Malkhan Singh, Ujagar Singh and Narendra Singh and the relevant entry Ext. Ka-8 was made in the G.D. by Constable Ravindra Singh. It is also admitted to Munnu Singh PW 1 that Tilak Singh had lodged the report against these accused. He has further admitted that a report relating to the disappearance of the son of accused Narendra Singh was lodged against him, his brother, mother and one Collector Singh by accused Malkhan Singh S.I. Meghraj Singh PW 4 has also proved the FIR Ext. Ka- which shows that on 10-10-1977 a report under Section 364, IPC was lodged by accused Malkhan Singh against Munnu Singh, Shiv Singh, Collector Singh and Smt. Ram Pyaree. Vishambhar Singh PW3 has admitted that Collector Singh was residing with him for the last 8-10, years. Thus, it would appear that the first informant Munnu Singh is a close relation of the deceased while Munnu Singh PW 1 and Vishambhar

Singh PW 3 belong to the same group and had enmity with the accused persons from before the occurrence of this case. The contention of the appellants' counsel that no reliance could be placed upon the evidence of these two witnesses cannot be accepted. Close relationship of one of the witnesses with the deceased and the enmity of the two eye-witnesses with the accused is not a ground for discarding or disbelieving their evidence. When an occurrence takes place in broad day light, a close relative of the deceased is not expected to rope innocent persons in a murder case. He is not expected to permit the real culprits to go free and to implicate persons with whom he has enmity. His main interest in such a case is to see that the main culprits are brought to the book. Of course, there may be cases where the occurrence takes place in the dark hour in the night or in a day time at such a place that no one could have witnessed the occurrence and in that case the close relative may take recourse to implicate his enemies in the crime in question for the simple reason that he was not certain about the real culprits and had the occasion to take revenge upon his enemies. It is significant to note in the present case that Munnu Singh PW 1, the first informant, is equidistant from these accused and the deceased. Of course, when the evidence in a murder trial is of witnesses, who are shown to be inimical to the accused, prudence requires that their evidence is to be scrutinised with great care and caution. We have scrutinised the entire evidence of these two witnesses. We find no reason to discard or disbelieve the same. These two witnesses of fact have been fairly consistent in their deposition so far as the | main points of the prosecution story relating to the main occurrence are concerned. There are no variations or contradictions or inconsistency in their evidence from which it could be inferred that either they were not telling the truth or their evidence was unreliable. In our opinion, these two witnesses of fact Munnu Singh PW 1 and Vishambhar Singh PW 3 have successfully withstood the test of cross-examination.

21. These two witnesses of fact are emphatic when they state that the occurrence took place at about 11 a.m. Their evidence on this point finds corroboration in the evidence of Dr. Kuldeep Sagar PW-7, who has stated that the death of Tilak Singh could have taken place at about 11 a.m. on 19-11-1977. It was suggested to Dr. Kuldeep Sagar PW7 in the cross-examination that Tilak Singh could have died at about 7 a.m. Dr. Kuldeep Sagar PW 7 did not rule out the above possibility, but the

fact remains that even at 7 a.m. there would be enough light in which the witnesses would not have failed to recognise the main culprits.

22. It was also suggested from the side of the appellants that the place from where the witnesses have claimed to have seen the occurrence was about 50 yards and it was not possible to identify the assailants of Tilak Singh from such a distance. In broad day light, a person can easily identify another person at a distance of about 100 yards if the said person is known to him very closely from before.

23. It was contended that admittedly the houses of Ram Phal, Dauli, Ram Chandra Parmai, Ram Chandra Sunar, Ram Sanahi are situated near the scene of occurrence, but no witness from these houses was examined in the case and as such it should be inferred that the prosecution version of the occurrence was unreliable. The argument is specious. It is no doubt true that the houses of these persons are near the scene of occurrence, but there is no material on the record from which it could be inferred that the inhabitants of these houses were either present near the scene of occurrence or had seen the occurrence itself. None of these persons was named in the F.I.R. as a witness of fact. Further more, one has to keep in mind the realities of the village life in this State. As we have already observed all the main characters in the case i.e. the deceased, the first informant and the accused are of one family. The general reluctance of outsiders not to involve themselves in a criminal case when both the deceased and the accused are coming from the same family is to be kept in mind. Thus, the evidence of these two witnesses of fact could not be discarded for the simple reason that the inhabitants of the houses, which were near the place of occurrence, were not forthcoming to support the prosecution version of the occurrence.

24. Much emphasis was laid upon the postmortem report according to which the stomach was empty. The argument was that the deceased must have taken meals earlier in the day and if the occurrence had taken place at about 11 a.m. the stomach must not have been empty. Nothing much turns upon this point. It may be noted that the deceased was aged about 70 years. There is no evidence that he had taken any substantial meals in the morning. It was quite likely that he had taken some drinks, tea or milk in the morning and was going to another village for

some purpose. Furthermore, the food habits of the Indian villagers are not very definite and unless there is evidence in this regard one cannot take any specific view in a given case.

25. It was also contended by the learned appellants that the conduct of the first informant PW 1 in not going near the deceased at the time of the occurrence was suspicious and was enough to indicate that the first informant did not see any occurrence. In this connection we may point out that the above contention has absolutely no force. A volley of shots from three fire-arms was said to have been fired upon the deceased and in such circumstances there is nothing surprising if Munnu Singh PW 1 did not show the courage to go near the deceased.

26. It was also contended during the course of arguments that there was cutting in the inquest report regarding the time when the inquest proceedings had started. The overwriting appears to be the result of some mistake on the part of the Inspector concerned.

27. It was also argued from the side of the appellants that no used cartridges or Tikilies were recovered by the Investigating Officer when he had inspected the scene of occurrence. There is nothing surprising if the Investigating Officer failed to find out any used cartridge or Tikli upon the scene of occurrence when he made the local inspection. The occurrence had taken place at about 11 a.m. while the Investigating Officer had made the local inspection sometime in the evening. In the meantime in case the cartridges were left upon the scene of occurrence, some one could have taken them away.

28. In view of the above discussions, we come to the conclusion that the prosecution has sufficiently proved its case against the appellants.

The appeal has no force and is hereby dismissed. The appellants are on bail. Their bail bonds are cancelled. They shall be taken into custody to serve out the sentences imposed upon them.