

Munshi Singh Vs. the State

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Court : Allahabad

Decided On : Mar-16-2004

Reported in : 2004CriLJ2975

Judge : Vishnu Sahai and ;G.K. Gupta, JJ.

Acts : [Evidence Act, 1872](#) - Sections 8 and 114; [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Criminal Appeal No. 83 of 1997

Appellant : Munshi Singh

Respondent : The State

Advocate for Def. : Umesh Verma, APP

Advocate for Pet/Ap. : Amit Chaudhary, Adv.

Disposition : Appeal allowed

Judgement :

Vishnu Sahai, J.

1. Through this appeal, appellant Munshi Singh challenges the judgment and order dated 31-1-1997 passed by the Sessions Judge, Unnao in Sessions Trial No. 169 of 1990, whereby he has been convicted and sentenced to undergo imprisonment

for life for the offence punishable under Section 302, IPC.

2. Shortly stated, the prosecution case runs as under :--

The informant Shree Krishna P.W. 1 is the real brother of the deceased Ram Pal. At the time of the incident, the informant, his brother Ram Narain P.W. 2, the deceased and the appellant were living in village Maswasi, within the limits of Police Station Kotwali, in District Unnao.

About eight days prior to the incident, at about 6.00 p.m. when Jasti Devi, the wife of the deceased, had gone to answer the call of nature in the field appellant Munshi Singh had teased her. Jasti Devi complained about this to the family members. Thereupon, her husband Ram Pal complained about the appellant's conduct to his elder brother Naurang Singh, who gave him a beating. This incensed the appellant.

On 28-2-1990, at about sunset, when the deceased Ram Pal was returning to his house from the field and had reached near the temple of Lord Shiva, situated near the informant's house, the informant, Ram Narain and other members of the family, who were warming themselves in the courtyard of their house, heard sound of firing. Hearing it they rushed towards the said temple and saw the appellant running away with a pistol in his hands and Ram Pal, who has sustained a gun shot wound on the left side of his chest, lying near the temple. Thereupon, the informant and his family members brought Ram Pal to their house and from there on a bullock-cart took him to Police Station Kotwali, where the informant lodged his FIR.

3. The evidence of S.I. Jagdish Singh Sengar P.W. 5, in short, shows :--

On 28-2-1990 he was posted as Sub-Inspector at Police Station Kotwali, District Unnao. In his presence the informant Shree Krishna lodged his oral FIR on the basis of which Head Moharir R.D. Mishra, whom he had seen writing and signing, prepared the chik FIR Exhibit Ka-4 (A perusal of the chik FIR shows that the FIR was lodged on 28-2-1990 at 8.40 p.m.; the distance between the place of the incident and Police Station Kotwali was seven kilometres and on the basis of the

FIR a case under Section 307, IPC was registered against the appellant). Thereafter, the victim Ram Pal, who was unconscious, was sent for treatment to District Hospital, Unnao. He then recorded the statements of the complainant, Ram Narain, Kallu and Gangadei and proceeded to the place of the incident, where he prepared the site-plan. From the place of the incident he seized plain and blood stained earth in two separate containers, under a recovery memo. On 1-3-1990, between 10-45 a.m. to 11.55 a.m. he performed the inquest on the corpse of the deceased and thereafter sent it for autopsy. On the said date, he also recorded the statements of Sri Ram, Sripal, and Jasti Devi. On 2-3-1990 and 5-3-1990 he searched for the appellant but could not find him. On 7-3-1990 he learnt that the appellant had surrendered in the Court. On 16-3-1990 he recorded the statement of the appellant inside Jail and submitted the charge-sheet.

4. Going backwards, the injuries of Ram Pal were medically examined on 28-2-1990 at 9.05 p.m. in District Hospital, Unnao by Dr. V. K. Nigam P.W. 4, who found on his person one multiple gun shot wound of entry in an area of 9 cm x 8 cm on left side chest just below the clavicle, .5 cm x .5 cm to 2 cm x 2 cm x chest cavity deep, under observation and fresh bleeding present on the wound.

It is pertinent to mention that in his statement in the trial Court Dr. Nigam stated that the said injury could have been caused to Ram Pal on 28-2-1990 at sunset.

In his cross-examination Dr. Nigam also stated that Ram succumbed to his injury at 10-05 p.m., the same night.

5. The evidence of S.I. Jagdish Singh Sengar P.W. 5 shows that on 29-2-1990 at 1-10 a.m. on receiving information about the death of Ram Pal the case was converted from one under Section 37, IPC to one under Section 302, IPC.

6. Once again going backwards, the autopsy on the corpse of deceased Ram Pal was conducted on 2-3-1990 at 2.45 p.m. by Dr. O.P. Gupta P.W. 3, who found on it the following injury :--

Multiple fire-arm injury in an area of 9 cm x 8 cm on left side below left clavicle a large wound of entry 1 cm x 1 cm x chest cavity deep. Margins inverted with

dressings of the wound present. Ten pellets and two wadding taken out from the left lung.

In the opinion of Dr. Gupta the said injury was attributable to a fire-arm and was sufficient in the ordinary course of nature to cause death.

7. The case was committed to the Court of Sessions in the usual manner, where the appellant was charged for the offence punishable under Section 302, IPC. He pleaded not guilty to the charge and claimed to be tried. His defence was that he did not participate in the incident and had been falsely implicated.

During trial, in all, the prosecution examined six witnesses. It is significant to mention that there is no eye-witness of the incident and the case against the appellant rests on circumstantial evidence, the two circumstances being :--

(a) Motive; and

(b) On 28-2-1990, at sunset, the informant Shree Krishna P.W. 1 and Ram Narain P.W. 2 on hearing the sound of firing came out from inside their house and saw the appellant running away with a pistol and their brother Ram Pal lying injured, having sustained a gun shot injury, near the temple of Lord Shiva.

The learned trial Judge believed the evidence led by the prosecution to establish these circumstances and convicted and sentenced the appellant in the manner stated in para 1.

Hence, this appeal.

8. We have heard Mr. Amit Chaudhary for the appellant and Mr. Umesh Verma, learned Additional Public Prosecutor, for the respondent and gone through :-- the deposition of the prosecution witnesses, the material exhibits tendered and proved by the prosecution, the statement of the appellant recorded under Section 313, Cr. P.C. and the impugned judgment. In our view, this is a case wherein the appellant deserves the benefit of doubt.

9. It would become manifest from the above that the case against the appellant rests on circumstantial evidence, the two circumstances being :--

(a) Motive; and

(b) On 28-2-1990, at sunset, the informant Shree Krishna P.W. 1 and Ram Narain P.W. 2 on hearing the sound of firing came out from inside their house and saw the appellant running away with a pistol and their brother Ram Pal lying injured having sustained a gun shot injury, near the temple of Lord Shiva.

In our view, it would not be safe to accept the aforesaid circumstantial evidence.

We now propose furnishing our reasons for reaching the said conclusion.

10. We would first like to take up circumstance (a), namely, motive. According to the prosecution, about seven to eight days prior to the incident, at about 6.00 p.m. Jasti Devi, the wife of the deceased Ram Pal, had gone to answer the call of nature in the fields. At that time, the appellant misbehaved with her. She came home and complained of the incident to informant Shree Krishna and other members of the family. Consequently, her husband Ram Pal went and complained of the behaviour of the appellant to his elder brother Naurang Singh, who gave the appellant a beating. This incensed the appellant, resulting in his committing the instant crime.

11. We have examined the said motive and we feel that it would not be safe to accept it. The best witness to prove it was Jasti Devi, but she has not been examined by the prosecution and nor any reason has been furnished by it for not examining her. Section 114(g) of the Indian Evidence Act provides that if evidence which could be produced and is not produced the presumption is that it would have gone against the party which withholds it. In our view, since the prosecution has not spelt out any plausible reason for not examining Jasti Devi this is a fit case where the said inference should be drawn against it.

That apart, it is pertinent to mention that although Ram Narain P.W. 2 has stated that he told the Investigating Officer that Jasti Devi had mentioned to the family members that while she was returning after answering the call of nature the appellant had teased her and he could give no reason as to why the Investigating Officer had not mentioned this in his statement under Section 161. Cr. P.C. but we

are not inclined to believe him because the Investigating Officer S.I. Jagdish Singh Sengar P.W. 5 candidly stated that Ram Narain had made no such statement to him. We see no good reason for not accepting the testimony of the Investigating Officer. In our view, this motive has been introduced by Ram Narain to multiply circumstantial evidence in the instant case.

12. For the said reasons, in our view, it would not be safe to accept circumstance (a).

13. We now come to circumstance (b), namely, on 28-2-1990, at sunset, the informant Shree Krishna P.W. 1 and Ram Narain P.W. 2 on hearing the sound of firing came out from inside their house and saw the appellant running away with a pistol and their brother Ram Pal lying injured having sustained a gun shot injury, near the temple of Lord Shiva.

So far as this circumstance is concerned we have the evidence of Shree Krishna P.W. 1 and Ram Narain P.W. 2. In short, their evidence shows :--

On the date of the incident, at sunset, they, along with their third brother, their father, their mother and Jasti Devi were warming themselves in the courtyard of their house. At that time, they heard sound of firing and came out from their courtyard and saw the appellant running away with a pistol in his hand and Ram Pal precariously injured, having sustained gun shot injuries lying near the temple. Thereafter, they brought him to the house and on a bullock-cart took him to Police Station Kotwali, where after lodging of the FIR he was sent to District Hospital, Unnao, where after medical examination he died.

14. We have gone through the statements of Shree Krishna and Ram Narain and have deep doubts regarding their presence on the place of the incident and their claim of having seen the appellant running away with a pistol in his hands and Ram Pal lying injured near the temple of Lord Shiva.

15. We are not inclined to believe the evidence of Shree Krishna for the reasons stated hereinafter :--

(a) In his cross-examination, he admitted that in the proximity of the temple of Lord Shiva there were about 20 to 25 houses and excepting 2 or 3 houses people were residing in the said houses at the time of the incident and near the temple was the house of one Kali Prasad and at some distance therefrom was the house of Rajendra Prasad Srivastava. It is pertinent to mention that in his statement in the trial Court he stated that none of those living in the houses in the vicinity of the place of the incident saw the appellant running away with a pistol in his hands and they only reached after he had run away from the place of the incident. However, during his cross-examination when he was confronted with the recitals contained in his FIR and in his statement under Section 161, Cr. PC. wherein he had stated that the persons living in the vicinity of temple of Lord Shiva had seen the appellant running away with a pistol in his hands, he denied having made the same. We are not prepared to accept this denial of his. In our view, this explanation has been introduced by him because no person living in the vicinity of the temple of Lord Shiva is forthcoming to support the prosecution case. In our Judgment had the incident taken place in the manner deposed to by him there was no reason why persons living near the temple did not see it.

(b) He admitted that Ram Pal did not succumb to his injury on the spot. He also admitted that neither he nor any member of the family, including the widow of the deceased, embraced him. In our judgment, this is an extremely unnatural conduct, which renders his evidence doubtful.

In this connection, it would be apposite to advert to the decision of the Supreme Court rendered in the case of *Meharaj Singh v. State of U. P.*, 1994 SCC (Cri) 1390 : (1994 All LJ 1032 : 1995 Cri LJ 457), where according to the prosecution the widow of the deceased was an eye-witness but since she did not try to embrace her husband after he had fallen, died as a consequence of the assault, the Supreme Court held that her conduct was unnatural. In our view, had he (Shree Krishna) seen the incident he would have certainly embraced the deceased.

(c) He stated that his hands and that of his brother Ram Narain had become stained with blood as a result of their picking up Ram Pal and putting him in the

bullock-cart. However, it is pertinent to mention that the Investigating Officer S.I. Jagdish Singh Sengar in his cross-examination (in para 29) admitted that in the case diary he had not mentioned that the hands of the informant and Ram Narain had become stained with blood;

(d) although according to Ram Narain he also picked up Ram Pal and brought him to his house but there was no blood on his clothes; and

(e) His conduct in not taking Ram Pal, who was precariously injured and was hovering between life and death, first to District Hospital, Unnao and instead taking him to Police Station Kotwali was also extremely unnatural. In our judgment, the normal conduct would have been first to give medical aid to his brother.

15A. When the aforesaid infirmities in the evidence of Shree Krishna are examined in the background of the fact that being the real brother of the deceased he (Shree Krishna) is a highly interested witness it becomes extremely unsafe to accept his evidence.

16. In our view, it would be extremely unsafe to accept the evidence of Ram Narain for the reasons stated hereinafter :--

(a) In his cross-examination he candidly admitted that when from the place of the incident he and Shree Krishna brought Ram Pal to their house blood trickled and fell on the way. Had this been so the Investigating Officer S.I. Jagdish Singh Sengar would have found a trail of blood between the place from where Ram Pal was picked and his house. However, we find that the Investigating Officer in his cross-examination (in para 19) has stated that between the place of incident and the house of deceased he did not find any trail of blood or drops of blood and

(b) In his cross-examination he admitted that after the incident he, the informant and their two brothers picked up Ram Pal and brought him to their house but the clothes of none of them were stained with blood. We find this to be extremely improbable; in fact wholly unacceptable. A perusal of the ante mortem injury suffered by the deceased (which we have extracted in entirety earlier) would show that blood would have gushed out. It is significant to mention that a perusal of the

post-mortem report shows that the heart was empty. This obviously means that the deceased must have bled profusely as a consequence of being fired upon and that being so had he and his brother Shree Krishna (the informant) brought him to their house their clothes would have been bound to be stained with blood.

16A. In our judgment, when the aforesaid infirmities are examined in the background of the fact that being the real brother of the deceased he (Ram Narain) is an extremely interested witness, it would not be safe to accept his evidence.

17. To us it appears that neither informant Shree Krishna P.W. 1 nor Ram Narain P.W. 2 witnessed the incident and on the date of the incident, sometimes after sunset, the deceased Ram Pal was fired upon by someone, who immediately thereafter ran away. Thereafter, when he was found lying injured near the temple of Lord Shiva information was conveyed to the informant and his brother Ram Narain, who thereafter brought him to the house and proceeded with him to Police Station Kotwali, where they lodged the FIR.

18. For the aforesaid reasons, we are not inclined to place reliance on circumstance (b) also.

19. In the result, we allow the appeal; set aside the conviction of appellant Munshi Singh for the offence punishable under Section 302, IPC and the sentence of imprisonment for life awarded to him thereunder, and direct that he shall be released forthwith unless wanted in some other case.

Office is directed to communicate the operative part of our order to the authorities by 18-3-2004.

Before parting with the judgment, we would like to put on record the extremely able assistance which we have received from Mr. Amit Chaudhary, learned counsel for the appellant in the disposal of this appeal.