

Chandra Pal Singh and anr. Vs. State

Chandra Pal Singh and anr. Vs. State

SooperKanoon Citation : sooperkanoon.com/479153

Court : Allahabad

Decided On : Jan-12-1989

Reported in : 1990CriLJ826

Judge : V.P. Mathur and ;Kamlakar Chaubey, JJ.

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

Appeal No. : Criminal Appeal No. 744 of 1978

Appellant : Chandra Pal Singh and anr.

Respondent : State

Advocate for Def. : Deputy Govt. Adv. and ;V.C. Katiyar, Adv.

Advocate for Pet/Ap. : Virendra Saran, Adv.

Disposition : Appeal dismissed

Judgement :

Kamlakar Chaubey, J.

1. This appeal has been filed against the judgment and order dt. 8-3-78 of Sri Parmatma Swaroop the Sessions Judge, Budaun in Sessions Trial No. 291 of 1977 by which he convicted the two appellants under Section 302 read with 34, IPC and sentenced each of them to undergo life imprisonment.

2. The case of the prosecution as per the FIR dt. 1-8-77 lodged by Sri Rajvir Singh son of Phool Singh, resident of village Bhajpura, P.S. Kotwali Budaun is that brother of Chandra Pal Singh son of Lallu Singh was murdered about one year back in which Phool Singh deceased was one of the accused. Since then Chandra Pal Singh and his family members were bearing ill-will against Phool Singh. About one and half months before the occurrence Phool Singh was released on bail. On 1-8-77 at about 6.30 p.m. Janaki had come back from the market with some articles purchased for Phool Singh. Janaki kept the articles on the chabutra in front of his ghar. Phool Singh was picking up articles from the bundle purchased by Janaki on that chabutra. In the mean time the she-buffalo of Janaki set loose and he proceeded to bring it back from the plot of chari. The first informant was in front of his door and his brother Raghubir and some other children were playing at the chabutra of Janaki. In the mean time the appellants Chandra Pal Singh and Shishupal Singh passed by the side of the chabutra where Phool Singh was sitting. They went towards south west for a few paces and suddenly turned back towards the chabutra: Chandra Pal Singh fired at Phool Singh from his gun. Immediately thereafter, Shishu Pal Singh fired upon him by his country made pistol. Phool Singh fell down and died. The appellants, thereafter, ran away. Besides the first informant, witnesses Kedar, Nathu, and Janaki (P.W. 3) had also seen occurrence.

3. After lodging of the FIR the Investigating Officer came to the spot, prepared inquest report of the dead body and sent it for post mortem examination. He interrogated witness, collected onion and potatoes from the place of occurrence, besides blood-stained and simple earth. He also took the Baniyain and underwear of P.W. 2 Raghubir Singh and prepared Fard for it. He arrested both the appellants on 7-8-77 and after completing the investigation submitted charge sheet. Ex ka 16.

4. The post mortem examination of the dead body of Phool Singh was conducted by Dr. V. P. Kulshrestha on 2-8-77 at 4.30 p.m. According to Dr. Kulshrestha the probable age of the deceased was 50 years, Rigor mortis was present in lower limbs. It was an average built body. Bleeding from mouth, nose and ears was found. The Doctor found the following ante mortem injuries on the body of the deceased:--

(1) Gun shot wound of entry 2 cm x 2 cm x communicating with wound of exit (of left side) on the right side neck with blackening and tatooing around the wound. Vertebrae of 2nd and 3rd cervical broken.

(2) Gun shot wound of exit (1) 6 cm x 6 cm x neck deep communicating to the wound of entry (situated on right side) on left side neck with no blackening and tatooing around.

(3) Lacerated wound 8 cm x 4 cm x cavity deep on the left side skull with multiple pieces and fracture of skull bone of left parietal. The whole other brain material was expelled out of cranial cavity. There was a round circular hole of 2 cm x 2 cm on the base of skull communicating to the wound of entry of right side neck. This wound of skull of left side head was as a result of gun shot wound of entry of right side neck and was thought to be wound of exit (II) of one single gun shot wound of entry on the right side. There was only one single fire arm with direction from right to left side of neck and after exit of the same entry from skull parietal region (right to left upwards).

5. On the internal examination of the dead body the base of skull was found fractured forming a hole of 2cm x 2cm towards the brain. Multiple fracture of left parietal bone in multiple pieces was found with whole brain material coming out of the skull. Membranes were ruptured completely. Brain was completely expelled out. Trachea was broken and lacerated. Both lungs were congested. Stomach was empty. Small intestine contained fluid and gas. In the opinion of the doctor the time of death was about one day and death had been caused due to shock and haemorrhage.

6. The learned Sessions Judge charged the appellants under Section 302 read with Section 34 IPC to which they pleaded not guilty.

7. The prosecution examined Rajvir Singh (P.W. 1), Raghubir Singh (P.W. 2) and Janaki (P.W. 3) as eye-witnesses of the occurrence. Out of whom Raghubir Singh (P.W. 2) is a child witness. Dr. V.P. Kulshrestha (P.W. 4) is the doctor who conducted the post mortem examination of the dead body of Phool Singh. Head Constable Krishna Kumar Singh (P.W. 5) has proved the registration of the case at

the police station and some other entries of general diary. Vishwanath Pande (P.W. 8) is the investigating Officer. The rest of the witnesses are formal.

8. The appellants, in their statements, recorded before the learned Sessions Judge admitted that they are cousin brothers, that the houses of Chandrapal appellant and Phool Singh deceased adjoin each other; that Om Pal, the brother of appellant Chandra Pal Singh was murdered on 1-8-76 in which Phool Singh deceased was one of the accused and that Phool Singh deceased had been released on bail 1 1/2 and 2 months before the occurrence. The two appellants denied rest of the prosecution story and claimed that they have been implicated because of enmity.

9. The defence also examined Ram Lal Pathak, a Record keeper of the S. P. Office, as P.W. 1.

10. We have heard learned counsel for the parties and gone through the record. In the FIR motive had been alleged. It is stated that about a year before the occurrence, the brother of appellant Chandra Pal Singh had been murdered in which Phool Singh deceased was also an accused and ever since the appellants were bearing illwill towards the deceased. In the witness box P.W. 1 Rajvir Singh stated that his father Phool Singh was an accused in the murder case of Om Pal, the brother of appellant Chandrapal and 1 1/2 and 2 months before the day of occurrence Phool Singh had been granted bail. Because of that the appellants and their family members were bearing illwill towards the deceased. He also stated that 2 and 3 months before the murder of Om Pal, the mother of this witness had eloped away with Agra Pal Singh, a cousin brother of Om Pal. The two appellants have also admitted in their statements before the learned Sessions Judge that Om Pal, the brother of Chandra Pal had been murdered on 1-8-76 and in that murder case Phool Singh deceased was arrayed as an accused. Ex. Ka 7 is the General diary's entry No. 31, dt. 1-8-76 regarding a report under Section 302 IPC lodged by Chandra Pal Singh, son of Lallu Singh resident of Bhajpura against Phool Singh son of Budh Pal Singh resident of village, Bhajpura. This general diary relates to the aforesaid murder case of Om Pal Singh, brother of appellant Chandra Pal Singh. It is thus established that the appellants Chandra Pal Singh and Shishu Pal

Singh were on animical terms with deceased Phool Singh on account of the murder of Om Pal Singh, Enmity is a double edged weapon which cuts at both the ends. If there is any possibility of false implication on account of enmity, there is equal possibility of committing the murder for the said reason. Moreover, this case is based on the eye-witness account and so the question of motive is not of very great importance, let us, therefore, consider the evidence on record.

11. As stated earlier the murder of Phool Singh is said to have been committed on 1-8-77 at about 6.30 p.m. at the chabutra of Janaki. The time and place of occurrence are fully established from the evidence on record. The three eye-witnesses Rajvir Singh (P.W. 1), Raghubir (P.W. 2) have consistently stated that the murder took place on 1 -8-77 at a time when one hour day was left. P.W. 3 has stated the time specifically at about 6 p.m. All these three witnesses have further stated that the murder took place at the chabutra of P.W. 3, Janaki. It has further come in the evidence of these three witnesses that shortly before murder Janaki (P.W. 3) had come from the market with some articles of deceased and he had kept the bundle at his chabutra from which the deceased was picking up his articles i.e. Onion and potatoes. It has also come in the evidence of these witnesses that blood had fallen on the ground from the wounds of the deceased. The Investigating Officer, Sri Vishwanath Pandey (P.W. 8) stated on oath that he collected onion and potatoes, besides blood stained and simple earth from the chabutra. He prepared Fard Ex Ka 9 for potatoes and onion and; another Fard Ex Ka 10 for blood stained and simple earth. The presence of potatoes and onion and also of blood at the chabutra clearly goes to corroborate the statements of the three eye-witnesses that the occurrence did take place at the chabutra. Thus it is established that the occurrence took place at the chabutra of Janaki.

12. Corning to the evidence of occurrence, P.W. 1, Rajvir Singh who is son of Phool Singh deceased stated that when his father was picking up onion and potatoes at the chabutra of Janaki, the she buffalo of Janaki set loose and Janaki went to bring it back. At the chabutra Raghubir (P.W. 2), the younger brother of this witness was present besides his sister Mithilesh and some other children. This witness was standing at the door of the hut of Janaki. He further stated that at that very time Chandra Pal Singh and Shishu Pal Singh, the appellants passed by the

side of the chabutra. After going 3-4 paces ahead, they returned and Chandra Pal fired at his father from his gun. His father shaked and tried to get up. Immediately thereafter, at the exhortation of Chandra Pal Singh, Shishu Pal fired at his father from his country made pistol. The appellants, thereafter, ran away 6-7 paces towards south and then went towards west. Kadar and Nathu had also seen the occurrence besides Janaki. The witness went near his father and found that he had died. The clothe of his younger brother Raghubir had also blood stains, the witness thereafter went to the police station and lodged the FIR.

13. Raghubir Singh (P.W. 2) is the younger brother of Rajvir Singh (P.W. 1). He is a child witness. He was administered oath. He stated that Janaki had brought some articles for his father from the market and kept the same at the chabutra where Phool Singh was sitting. The father of this witness was picking up potatoes and onions from the bundle. In the meantime the she-buffalo of Janaki set loose and Janaki proceeded to bring it back. At that very time the two appellants passed near the chabutra, went 2-3 paces ahead, abruptly turned back and Chandra Pal fired at the father of this witness, Phool Singh, at the exhortation of Chandra Pal, Sishu Pal Singh also fired from his country made pistol. The appellants, thereafter, ran away towards south and then west. The clothes of the witness had blood stained. The witness also named Rajvir (P.W. 1), Janaki (P.W. 3), Kedar and Nathu as other eye-witnesses of the occurrence.

14. Janaki (P.W. 3) is the last eye-witness of the occurrence examined in the case. He stated that on the date of occurrence at about 12 noon he had gone to Budaun city. Phool Singh deceased had given him one rupee for purchasing onion and potatoes. After making purchases the witness came to the village at about 6 p.m. He saw Phool Singh sitting at his chaubtra where children of Phool Singh and this witness, were playing. The witness kept the bundle at his chabutra and asked Phool Singh to take out his articles. At that very time the she buffalo of this witness went to a chari plot and he brought back the cattle. The height of chari crop was 1 cubit. When the witness was coming back with his she buffalo Chandra Pal fired from his gun and Shishu Pal from his country made pistol at Phool Singh. The appellants, thereafter, went towards south and then west. The witness came near Phool Singh who was dead.

15. All the three witnesses have been cross-examined but we do not find any inconsistency in their evidence so as to create doubt or infirmity in their testimony. Learned counsel for the appellants argued that it was not possible that Phool Singh could give one rupee for purchasing potatoes and onion. We have seen that the occurrence is of Jan., 1977. Those days onion and potatoes could be purchased in small quantity for rupee one.

16. Learned counsel for the appellants argued that there is inconsistency in the evidence of the prosecution regarding the place where Rajvir Singh (P.W. 1) was standing at the time of occurrence. In the site plan Ex. Ka 16 'C' is said to be the place from where the first informant Rajvir saw the occurrence. In para 12 (P.W. 1) stated that at the time of occurrence he was not sitting at his eastern door but in front of eastern door of Janaki. As a matter of fact, point C in the site plan is not exactly at the eastern door of this witness. It lies at a distance of 6 paces from the place of occurrence. It further appears that two doors of the house of Janaki also open towards point C as shown in the site plan. Therefore, we do not find any inconsistency in the statement of P.W. 1 in para 12 and the place where he is shown to have been present in the site plan.

17. The evidence of Raghubir (P.W. 2) was criticised on the ground that the pebbles from which the children were playing at the chabutra have not been taken into custody by the Investigating Officer. It is a negligible omission on the part of the Investigating Officer. If he did not collect the pebbles from the spot, it will not make any difference because there is consistent evidence of the three eye witnesses, including P.W. 2 that he was present at the chabutra at the time of the occurrence and blood stains were also found at the clothes of this witness.

18. The three eye-witnesses examined by the prosecution are most natural witnesses. Janaki (P.W. 3) is a close door neighbour of the deceased and two other eye-witnesses are sons of the deceased. Their presence at the place of occurrence cannot be doubted.

19. Our attention was drawn to the medical evidence and it was argued that it does not corroborate the oral evidence. It was pointed out by the learned counsel for the appellants that two shots are said to have been fired, one by each of the

appellant, but according to the medical evidence all the three injuries had been caused by one shot only. After careful consideration of the argument of the learned counsel for the appellants we feel that, it has no merit, no doubt it has come in the evidence that Chandra Pal fired the first shot and immediately thereafter Shishu Pal also fired from his country made pistol. But it has not been stated by any witness that both the shots caused injuries to Phool Singh. It is, quite possible that one of the shots missed the target. Only one shot appears to have caused injury. Dr. V.P. Kulshrestha has stated very clearly that out of the three ante mortem injuries, injury No. 1 is a wound of entry. One pellet appears to have caused injury No. 2 which is an exit wound and another pellet after coming into contact, with vertebrae appears to have reflected upwards causing injury No. 3 which is second exit wound. Dr. Kulshrestha has also illustrated it by a diagram prepared on the post mortem report Ex. Ka 2 itself. Therefore the medical evidence fully corroborates the oral evidence.

20. From the above discussion we come to the conclusion that the case against both the appellants was established beyond doubt and they have been rightly held guilty of the offences charged with. As stated earlier it cannot be definitely said as to which of the shot fired by each appellant gave the fatal blow to the deceased. Hence both of them were rightly convicted and sentenced under Section 302 read with Section 34, I.P.C.

21. In the result the appeal fails and is hereby dismissed. The appellants Chandra Pal Singh and Shishu Pal Singh are found guilty and their conviction under Section 302 read with Section 34, IPC and the sentence for imprisonment for life, awarded to each of them, is upheld and confirmed. They were on bail. They shall surrender forthwith. They shall be taken into custody to serve out their sentences in accordance with law and their bail bonds shall be cancelled.