

Kaliyan Singh Vs. State of U.P.

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Court : Allahabad

Decided On : May-17-2004

Reported in : 2004CriLJ4262

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

Acts : Indian Penal Code Code, 1860 - Sections 364

Appeal No. : Cri. A. No. 1963 of 2003

Appellant : Kaliyan Singh

Respondent : State of U.P.

Advocate for Def. : Umesh Verma, Additional Public Prosecutor

Advocate for Pet/Ap. : Begum Sabhiha Kamal, Adv.

Disposition : Appeal allowed

Judgement :

G.K. Gupta, J.

1. Through this appeal, the appellant, who is in jail, challenges the judgment and order dated 2-7-1998 passed by VIII Additional Sessions Judge, Sitapur in Sessions Trial No. 716 of 1993 whereby he has been convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 2000/-, in default, to undergo

three months S.I., for the offence punishable under Section 364, IPC.

2. In brief, the prosecution case runs as under :--

Murder of Aanand Singh, who was the brother of the complainant Muneem Singh, was committed about six years back. In that case Sanjeev Singh S/o Bachnu Singh was convicted and sentenced to life imprisonment. Due to this Bachnu Singh was nursing ill will against the complainant and his family. However, Bachnu Singh shifted from village Katighara to village Chanda Gaon in district Lakhimpur Kheri but he had his landed property in village Katighara.

The appellant Kaliyan Singh is a relative of Bachnu Singh. Acquitted accused Rajendra Singh is real nephew of Bachnu Singh.

Nanhey Singh, is the brother of the complainant. He was involved in a case under Section 307, IPC, in which 6-10-1994 was the date fixed at Sitapur. On that date in the morning at 7 a.m. appellant Kaliyan Singh came to the house of the complainant to meet Nanhey Singh. Nanhey Singh told the appellant that today is the date fixed in his case and he will be going to Sitapur where he will meet him (Kaliyan Singh). The appellant then went away.

On the said date i.e. 6-10-1994 Nanhey Singh along with the complainant and his nephew Balbir Singh came to Sitapur and attended the Court case, which terminated at about 12-30 noon. As soon as he came out of the Court, the appellant Kaliyan Singh met Nanhey Singh. Nanhey Singh told complainant that he would be going to Lakhimpur for some urgent work and would return day after tomorrow. The complainant came back to his village but his brother Nanhey Singh did not come back even on the third day. The complainant then started ascertaining his whereabouts and he went to the house of Kaliyan Singh but as Kaliyan Singh was not available he came back.

One Vinod Singh and Dilip Singh of complainant's village had also gone in search of deceased Nanhey Singh and they told that Bachnu Singh and co-accused Rajendra Singh are publicly saying in their village Chandapur that they have got their enemy eliminated through appellant Kaliyan Singh. One Munney Pandit also

told to the complainant that he has seen Nanhey Singh, Kaliyan Singh, accompanied by Bachnu Singh and co-accused Rajendra Singh in a bus going to Gola.

3. The complainant reported the matter to the police repeatedly on various dates but no heed was paid. He then reported the matter to the Superintendent of Police on 22-12-1994 vide Ext. Ka-1 on the basis of which the case was registered at the Police-Station Kotwali on 24-12-94 at 6-15 p.m. vide Ext. Ka 2 (Chick FIR) Necessary entries in the G.D. were made vide Ext. Ka 3.

4. The investigation of the case was taken up by S.I. Ram Lakhan Ojha, who prepared the site plan Ext. Ka 4 and submitted charge sheet against the appellant vide Ext. Ka 5.

5. The case, on being committed to the Court of Sessions, the charge under Section 364, IPC was framed against the appellant, who pleaded not guilty and claimed to be tried.

In support of its case the prosecution examined complainant Muneem Singh as P.W. 1, Balbir Singh as P.W. 2 and Vinod Singh as P.W. 3. None other amongst the witnesses cited in the charge sheet, including the formal witnesses, were examined.

After the closure of prosecution evidence the statement of the appellant was recorded under Section 313, Cr. P.C. No evidence in defence was adduced.

The genuineness of the relevant papers on record was admitted by the defence.

The learned trial Court found the testimony of the witnesses of fact, namely, Muneem Singh, Balbeer Singh and Vinod Singh trustworthy and accordingly recorded a finding of conviction against the appellant. However, co-accused Rajendra was given benefit of doubt and acquitted.

6. Aggrieved by his conviction and sentence the appellant has preferred this appeal.

7. We have heard Ms. Sabhiha Kamal learned counsel for the appellant and Sri Umesh Verma, Additional Public Prosecutor for the respondent and also perused the depositions 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.

Learned counsel for the appellant very vehemently contended that the entire findings of the learned trial Court are based on conjectures and surmises and the learned trial Court erred in placing reliance on the evidence of prosecution witnesses.

From a perusal of the evidence on record, the above contention does not appear to be barren of substance.

8. It is pertinent to mention that in this case there is no witness who has seen the appellant committing the murder of Nanhey Singh. It is also pertinent to mention that in this case neither the dead body has been recovered nor any recovery which may connect the appellant with the crime has been effected.

The entire prosecution case is based on the circumstance of I 'last seen'.

9. Now we propose to examine the evidence of the witnesses.

P.W. 1 Muneem Singh stated that on 6-10-1994 the deceased Nanhey Singh was to go to Sitapur in connection with a criminal trial pending against him under Section 307, IPC. In the morning, at about 7 a.m. the appellant came to the house of the complainant to meet Nanhey Singh and Nanhey Singh told him that he would be going to Sitapur in connection with a case and would meet him there. Nanhey Singh accompanied by complainant Muneem Singh and his nephew Balbir Singh went to Sitapur to attend the case and after the proceedings had concluded in the trial Court, he came out of the Court where appellant Kaliyan Singh meet him. The deceased Nanhey Singh instead of returning to his village told the complainant and his nephew Balbir Singh that in connection with some urgent work he would be going to Lakhimpur Kheri along with Kaliyan Singh and would come back day after tomorrow i.e., 8-10-94. When the deceased Nanhey

Singh did not come, back on 8-10-1984, it caused anxiety in the minds of the complainant and his family members. Complainant is said to have gone to the place of Kaliyan Singh and also to the place of Bachnu Singh and Rajendra Singh but no one was available. On 10-10-1994 co-accused Rajendra Singh came to the village but he also did not tell anything. It is on 13-10-1994 Vinod Singh and Dilip Singh, who had also gone in search of Nanhey Singh, informed the complainant that Rajendra Singh and Bachnu Singh were publicly saying in village Chandapur that they had succeeded in eliminating Nanhey Singh through appellant Kaliyan Singh. Thereafter one Munney Pandit of his village also told him that he had seen the deceased Nanhey Singh and appellant Kaliyan Singh accompanied by Bachnu Singh and Rajendra Singh together in a Bus going to Gola.

P.W. 2 Balbeer Singh, who is the nephew (Bhanja) of the complainant Muneem Singh also stated that the appellant Kaliyan Singh came to the house of the complainant in the morning of 6-10-1994 and met Nanhey Singh and then at Sitapur also appellant met Nanhey Singh and then the deceased Nanhey Singh went along with Kaliyan Singh to Lakhimpur Kheri.

10. From the testimony of P.W. 1 Muneem Singh and P.W. 2 Balbeer Singh it is manifest that both these two witnesses are the witness of following facts :--

(i) that in the morning of 6-10-1994 appellant Kaliyan Singh came to the house of the complainant and met deceased Nanhey Singh and the latter told the appellant of his going to Sitapur where he would meet him.

(ii) At Sitapur, after Court proceedings, as soon as Nanhey Singh, came out of the Court appellant Kaliyan Singh met Nanhey Singh and after some conversation between them Nanhey Singh went away to Lakhimpur Kheri along with appellant.

Beyond the above two facts, neither P.W. 1 Muneem Singh nor P.W. 2 Balbeer Singh could depose anything which may amount to an account of eye-witness. The narration of facts beyond this is based on information allegedly furnished firstly by Vinod Singh and Dilip Singh and secondly by Munney Pandit.

11. As per its own case of the prosecution Vinod Singh and Dilip Singh of the village had also gone in search of deceased Nanhey Singh and reached village Chandapur where they found that Rajendra Singh and Bachnu Singh were publicly saying in the village that they had got their enemy Nanhey Singh eliminated through Kaliyan Singh and were rejoicing. Obviously neither the complainant P.W. 1 nor P.W. 2 Balbeer Singh is a witness of such fact. Recitals in the FIR and depositions on oath to this effect are being made on the basis of information furnished by Vinod Singh and Dilip Singh. Out of these two witnesses Vinod Singh was examined as P.W. 3. This Vinod Singh, as admitted by him is cousin brother of the complainant and the deceased. A perusal of his testimony would show that his entire deposition is based on hearsay evidence. He had no personal conversation either with the appellant or with any other of his associate. However, this witness P.W. 3 Vinod Singh stated that he had heard these talks from Bachnu Singh and Rajendra Singh but his testimony on this point is not trustworthy and appears to be an afterthought. If at all it would have been so, he must have disclosed such a fact to the Investigating Officer during the time of his statement under Section 161, Cr. P.C.

12. The second set of link evidence relates to the furnishing of information by Munney Pandit. It is said that Munney Pandit told informant that he had seen Nanhey Singh and Kaliyan Singh accompanied by Bachnu Singh and Rajendra Singh in a bus going to Gola. This part of evidence is also unbelievable and appears to be the result of afterthought. The fact that Munney Pandit passed on such information as having seen the deceased going with the appellant and others finds no mention in the FIR. This material lapse on the part of the prosecution cannot be brushed aside lightly and it has its own repercussions on the truthfulness of the prosecution version. It is also pertinent to mention that Munney Pandit would have been the best witness but despite he being arrayed as a witness in the charge sheet, for the reasons best known to the prosecution has not been examined. In the absence of the same the mere statement of the complainant on oath in this regard, in our judgment, has no evidentiary value.

13. Thus both the two above sources of information on the basis of which prosecution was banking to prove kidnapping or abduction in order to commit

murder by the appellant and his associates could not be established. In the absence of same, chain of circumstantial evidence cannot obviously be completed.

14. Now reverting back to the testimony of P.W. 1 Muneem Singh and P.W. 2 Balbeer Singh, it is pertinent to mention that both these witnesses are highly interested witnesses. Their testimony is to be viewed very cautiously. Apart from this, it is quite clear from a perusal of the recitals made in the FIR and also as per depositions made by the prosecution witnesses that there is long standing enmity between the complainant and his family on the one hand and Rajendra Singh and Bachnu Singh on the other hand as stated in para 2 of this judgment. Besides Muneem Singh deposed in his cross-examination that Bachnu Singh had also been murdered in which case Balbir Singh, Chhotey Singh and Dilip Singh are the accused and the said case is still pending. The enmity, as we know, cuts both ways. It can be a reason for assault as well as one for false implication. In such a situation where parties are at daggers drawn, independent corroboration is very much material. It is regretful that in this case not a single independent witness has been produced to at least say that the deceased Nanhey Singh had gone along with the Kaliyan Singh. Even Vinod Singh (P.W. 3) has admitted in his cross-examination that he is cousin brother of the complainant Munim Singh and Nanhey Singh. He further admitted that he has long standing enmity with Bachnu Singh.

15. From the above depositions of P.W. 1, P.W. 2 and P.W. 3 it is manifest that all these witnesses are related by blood and their relations with Bachnu Singh and Rajendra Singh were inimical.

It is also pertinent to mention as deposed by P.W. 1 Munim Singh that Bachnu Singh is a relative of Kaliyan Singh and this fact he (Munim Singh) also disclosed to the Investigating Officer. It is difficult to digest in such circumstances that Nanhey Singh would go along with Kaliyan Singh who is a relative of his enemy Bachnu Singh.

16. Before closing, it is very crucial to mention that in this case the FIR has been very belatedly lodged. The occurrence took place on 6-10-1994 and the complainant suspected some foul play on 8-10-1994 when the deceased Nanhey

Singh did not come back but still he continued tracing his whereabouts, but, strange enough did not lodge any report at the Police Station. As per the own admission of the complainant two or four days after the incident Vinod Singh and Dilip Singh told him that co-accused Rajendra Singh and Bachnu Singh (not accused) were publicly saying in the village that they had eliminated their enemy Nanhey Singh through Kaliyan Singh but to our utter surprise, no report was still lodged. It has been averred in the FIR that the complainant lodged report on 17-10-1994 and then on 1-11-1994 through 'dusti' and then again on 19-11-1994 and 19-12-1994 through registered post. The question is that when the complainant had come to know about the murder of Nanhey Singh on 13-10-1994, through Dileep Singh and Vinod Singh. Why a report was not lodged either on the same day or day before 17-10-1994. It is also unbelievable that he continued giving information to the police and the police did not take any action but still the complainant kept silence and did not resort to any legal action as available under law. It is also pertinent to mention that the complainant has stated that he repeatedly reported the matter to the police on various occasions (as stated above) but there is no iota of evidence to substantiate the same. The complainant stated to have lastly reported the matter to the Superintendent of Police on 22-12-1994 on the basis of which the present FIR has been registered. Looking at the entirety of the situation, this FIR was lodged after more than 2 months, which delay could not be convincingly explained by the prosecution. The genuineness of the FIR is further marred from the fact that same has been lodged after due consultation with a lawyer as admitted by P.W. 1 Muneem Singh in his cross-examination.

In the background of such inimical relations between parties, lodging of the FIR so belatedly renders the prosecution case against the appellants very doubtful.

17. Besides the above, P.W. 2 Balbir Singh is a resident of another village and his presence on the relevant date at the place of the complainant could not be explained. Further there is also no evidence to show that the deceased as well as the complainant Muneem Singh P.W. 1 and Balbir P.W. 2 had, at all, gone to Sitapur in connection with the case allegedly pending there.

18. As a result of foregoing discussions we are of the opinion that the prosecution has not been able to establish its case beyond reasonable doubt and accordingly the conclusions arrived at by the learned trial Court cannot be sustained.

19. In the result the appeal is allowed. The judgment and order dated 2-7-1998 convicting and sentencing the appellant for imprisonment of life for offence punishable under Section 364, IPC is set aside. The appellant is in jail and shall be set at liberty forthwith if not wanted in any other case.

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