

Sipector Alias Inspector Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-13-2004

Reported in : 2005CriLJ343

Judge : M.C. Jain and ;K.K. Misra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300

Appeal No. : Criminal Appeal No. 557 of 1981

Appellant : Sipector Alias Inspector

Respondent : State of U.P.

Advocate for Def. : A.K. Bhatt, AGA

Advocate for Pet/Ap. : D.N. Wali, Adv.

Disposition : Appeal allowed

Judgement :

M.C. Jain, J.

1. The appeal has been preferred by one Sipector alias Inspector Kachhi against the judgment and order dated 2-3-1981 passed by Sri M. P. Singh I, the then V Additional Sessions Judge, Etah in S. T. No. 289 of 1980. He has been convicted under Section 302 read with Section 34 I. P. C. and sentenced to life

imprisonment.

2. We first give a brief resume of the relevant facts. The incident took place in between the night of 19/20-8-1979 at about 3.00 A. M. outside the house of the complainant Abdul PW 1 in village Manauta, Police Station Kasganj, District Etah. The report was lodged by Abdul PW 1 on 20-8-1979 at 9.30 A. M. The deceased was Abdul's father Ismail Khan and the culprits were allegedly four including the present accused-appellant. In between the fateful night, the complainant's father Ismail was sleeping outside his house on the raised platform covered by a hut. At about 3.00 A. M., the complainant and his brother Islam, sleeping in the house, heard the alarm calling for help. The complainant and his brother Islam came out of the house and saw 3-4 persons assaulting their father. Both of them tried to intervene but the assailants did not spare them and assaulted them also. An earthen lamp was kept ablaze in the Chhappar. The complainant and his brother identified the accused-appellant and one Kishan Lal out of four assailants. The hue and cry raised at the time of the incident attracted other villagers also. The assailants bolted away after committing the crime. The injuries sustained by Ismail resulted in his death in the morning.

3. On the lodging of the F. I. R. Head Constable Shyam Behari Lal P.W. 3 prepared the chick report and registered the case. The investigation was taken up by S. I. Mohan Chandra Sharma P. W. 5 who proceeded to the spot and found the dead body of Ismail lying on the platform in front of the complainant's house. Inquest was held and other formalities completed relating to investigation and the dead body was sent for post mortem. The investigation was subsequently taken up by S.I. V.K. Gupta P.W. 4 who ultimately submitted the charges-sheet.

4. Post mortem was conducted on the dead body of the deceased Ismail Khan by Dr. R. P. Dixit P. W. 6 on 21-8-1979 at 3.30 P. M. The deceased was aged about 65 years and about 1 1/2 days had passed since he died. The following ante-mortem injuries were found on his person :--

1. Lacerated wound 3 cm x 1 cm x bone deep on the right side of skull, 6 cm above the right ear.

2. Lacerated wound 5 cm x 1 cm x bone deep on the right side of forehead, 6 cm above the right eye brow.
 3. Contusion 5 cm x 1 cm on the anterior side of right arm, 4 cm above the elbow joint.
 4. Abrasion 6 cm x 3 cm on the back of right forearm, 4 cm above wrist joint.
 5. Contusion 8 cm x 1 cm obliquely placed on the front of right side of abdomen lateral part.
 6. Contusion in the back of chest right side 4 cm x 3 cm right scapular region.
 7. Lacerated wound 1.5 cm x 1 cm x skin deep on the back of left hand at the base or ring finger.
 8. Multiple abrasions in an area of 5 cm x 2 cm on the back in midline.
 9. Abrasion 5 cm x 1 cm on the front of left leg lower part.
5. Internal examination showed that small intestine were empty and large intestine were full of faecal matter. As per the opinion of the Doctor, the death was due to coma as a result of injuries No. 1 and 2.
6. The injuries of the complainant Abdul P. W. 1 and his brother Islam were also examined at P. H. C. Kasganj on 20-8-1979 at 8.15 P. M. and 8.00 P. M. respectively. The following injuries were found on the person of Abdul:-
1. Lacerated wound 1.5 cm x 1 cm x scalp on left side head, 7 cm above left ear.
 2. Abrasion (swelled) 1.5 cm x 1 cm on the left temple.
 3. Multiple abrasions with contusions (blue) in an area of 30 x 10 cm on back of left forearm.
 4. Abraded contusion 10x5 cm on back of right forearm.
 5. Abraded contusion 19 x 10 cm on left lower back.

6. Contused swelling 14 cm x 8 cm on left ankle outer side.

7. Contusion 4x2 cm on right great toe.

7. On the person of Islam, the following injuries were found :-

1. Lacerated wound 1.5 cm x 0.5 cm x scalp on back of head on occiput.

2. Six contusions (blue) 7x2 cm x 3 cm. 15x3 cm, 10x3 cm, 15x3 cm, 11x3 cm size on whole back.

3. Multiple contusions with traumatic swelling on the whole of left arm, forearm and left head. Adv. X-ray.

4. Contusion with swelling 10 cm x 5 cm on right shoulder.

5. Contused swelling with abrasion 10 x 5 cm on left waist.

8. The duration of the injuries of both of them was about 1 1/2 days.

9. The defence was of denial.

10. Besides formal evidence, the prosecution relied upon the testimony of eye witnesses Abdul P. W. 1 and Durga Prasad P. W. 2. Three witnesses were examined in defence also. They were Roshan Lal DW1, Teni DW 2 and Asgar DW3. They were examined to say that actually a dacoity was committed at the house of Abdul; that they were assaulted by the dacoits and that the injuries caused to Ismail Khan by the dacoits led to his death.

11. Since the evidence of the prosecution appealed to the trial judge, he recorded the impugned Judgment.

12. On record the accused-appellant is represented by Sri D. N. Wall, Advocate. However, he did not turn up on 6-7-2004 to argue out the appeal when it was listed for hearing. We, therefore, directed that the appeal would be decided in terms of the decision of the Apex Court in the case of Bani Singh v. State of U. P., AIR 1996 SC 2439 : (1996 Cri LJ 3491). 14-7-2004 was fixed for the purpose and on that date too, the learned counsel for the accused-appellant did not appear to

argue out the appeal.

13. We have heard the arguments of learned A.G.A. Sri A. K. Bhatt from the side of the State. We propose to decide the appeal on merits as provided by the Supreme Court in the case referred to above. It is clear from the evidence including that led in defence that there is no dispute that an occurrence took place in between the fateful night at the house of the complainant in which his father was done to death and he as well as his brother Islam sustained injuries. Even the defence witnesses stated that when they reached the house of Ismail Khan at about 3.00 A.M. in the fateful night, they saw Ismail Khan, Abdul and Islam lying injured. Obviously, the place, time and injuries caused to the complainant, his father and brother are beyond question. Therefore, the only question that remains to be considered is as to whether the accused-appellant was included amongst the culprits who assaulted the deceased, the complainant and his brother or the counter version put forth from the defence side deserved to be believed that actually a dacoity was committed by unknown dacoits and the accused-appellant was not at all amongst the participants of the crime.

14. On consideration of the evidence on record, we are of the opinion that the learned trial Judge recorded the conviction of the accused-appellant without proper appreciation of some important aspects. Firstly, the F.I.R. of this case does not seem to be a spontaneous document. As mentioned earlier, the incident took place in between the night of 19/20-8-1979 at about 3.00 O'clock and report was lodged on 20-8-1979 at 9.30 A.M. by Abdul PW-1. The distance of the Police Station from the place of occurrence was four miles. While in the witness box, he stated that after the incident he lost consciousness and regained the same at about 8.00 A.M. and at that time a number of villagers had collected there including police personnel. It is suggestive of the fact that the police reached the spot even before the F.I.R. had been lodged. The possibility cannot be ruled out that the accused-appellant came to be named in the F.I.R. as one of the culprits as an afterthought in consultation with the police.

15. At another place, he (Abdul PW-1) stated that he had regained consciousness after two hours of the incident. If it were so, he must have regained consciousness

much before 8.00 A. M. A look at the injury report of Abdul PW-1 would indicate that his all injuries were simple. Out of seven injuries, six were abrasions or contusions and only one was lacerated wound 1.5 cm x 1 cm x scalp deep on left side head, 7 cm above left ear. Having regard to his injuries, this itself is doubtful that he would have lost consciousness after the incident to regain it after two hours or at 8.00 A.M. in the morning.

16. There is another firm reason to doubt the genuine character of the F.I.R. The only other eye-witness examined is Durga Prasad PW-2. Durga Prasad PW-2 is not named in the F.I.R. Though resident of the same village, but instead of interrogating him with promptness, his statement was recorded by the Investigating Officer on 25-8-1979 wherefor there is no plausible explanation. He stated that he had disclosed the names of four persons as culprits to the Daroga. They were Sipector alias Inspector (present accused-appellant), Kishan Lal, Ant Ram and Karia. Karia had alias name of Ram Ji Lal also. He had named Sipector alias Inspector and Kishan Lal as actual assailants and the other two whom he had seen fleeing. His hut was just nearby 10-12 paces in the northern side of the scene of incident. Naturally, he would have informed the names of all those said four persons to allaround before the F.I.R. was lodged. In that eventuality, non-naming of Ant Ram and Karia alias Ram Ji Lal in the F.I.R. goes unexplained. Abdul PW-1 also admitted in his cross-examination that witnesses had informed him that Ant Ram and Karia alias Ram Ji Lal were also included amongst the culprits. Obviously, their not naming in the F.I.R. is mysterious. At one place, Abdul PW1 stated that 5 or 6 persons had assaulted him. It does not reconcile with the recital of the F.I.R. that total number of the assailants was only four. As per the statement of Durga Prasad PW-2 also, the total number of culprits was four. As pointed out above, he named them as Sipector alias Inspector (present accused-appellant), Kishan Lal. Ant Ram and Karia alias Ram Ji Lal. On consideration of the evidence on record, a serious doubt is cast on the spontaneity of the F.I.R. and it seems to be because of concocted F.I.R. that the two eye-witnesses made inconsistent statements as to the number of assailants. It also went unexplained as to how the names of the other two Ant Ram Karia alias Ram Ji Lal were omitted from the F.I.R. The Supreme Court has held in the case of Marudanal Augusti v. State of Kerala, 1980 SCC (Cri) 985 : (1980 Cri LJ 446) that once the F.I.R. is held

to be fabricated or brought into existence long after the occurrence, the entire prosecution case would collapse.

17. The second aspect of the matter is that it was a night incident. The accused appellant also resided in the same village. It is not shown that he was of such a hazardous character as to go to commit this crime with open face without taking precaution to conceal his identity. There is no evidence in this regard either that there was any quick igniting cause for his having taken such a step to commit this crime.

18. The possibility cannot be ruled out of his having been named in the F.I.R. by Abdul PW-1 out of suspicion and due to intervention of the police. Needless to say, the commission of dacoity tells upon adversely on the efficiency of the local police in keeping proper vigil in the area. It speaks of unsatisfactory law and order situation in the area where the dacoity is committed. Therefore, the endeavour of the local police is to twist even an incident of dacoity/robbery or attempt to commit dacoity/robbery to be that of murder owing to personal enmity and to get someone named by the victim of the offence to lessen its burden to work out the crime and to avoid the displeasure of the superior officers. It could be for this reason that the police intervened to prompt the informant to name the accused-appellant as one of the culprits.

19. It appears from the perusal of the statement of Abdul PW-1 that there was some bad blood between him and the accused-appellant. He bore some grudge against him because his statement is that the accused-appellant Sipector alias Inspector wanted to take Begar from him and used to offer threats to him. For this reason, he (Abdul PW-1) was aggrieved.

20. It is self-explained as to why no sign of the ransacking of the house of the complainant was found. The complainant and his brother had come out from inside the house at the alarm of his father raised from outside who was being assaulted by his assailants. When the complainant and his brother came out, they were also assaulted. Naturally, there would have been a hue and cry attracting the witnesses. It is a fact that the father of the complainant died and he himself and his brother sustained injuries. Because of the arrival of the witnesses, culprits had to

hastily retreat without accomplishing the mission of dacoity to guard against counter-attack, only leaving one person dead and two injured.

21. On cumulative consideration of the evidence and attending circumstances, the defence version seems to be probable that actually it was an attempted dacoity/robbery at the hands of unknown miscreants who could not succeed in their main mission but had to flee leaving one person dead and two others injured. The naming of the accused appellant Sipector alias Inspector out of suspicion or due to mechanism of police cannot be ruled out. The benefit of such circumstances must naturally go to the accused-appellant.

22. For the discussion made hereinabove, we allow this appeal, setting aside the conviction and sentence passed against the accused appellant Sipector alias Inspector. He is acquitted. He is already on bail.

23. Let a copy of this judgment along with record of the case be immediately sent to Court below for necessary entries in the relevant register under intimation to this Court within one month from the date of its receipt.