

Gajendra Singh Vs. State

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Court : Allahabad

Decided On : Jul-03-2000

Reported in : 2000CriLJ4940

Judge : R.R.K. Trivedi and ; U.S. Tripathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 82 and 313

Appeal No. : Criminal Appeal No. 72 of 1981

Appellant : Gajendra Singh

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Kamleshwar Singh, ;V.S. Singh and ;S.K. Srivastava, Advs.

Disposition : Appeal dismissed

Judgement :

U.S. Tripathi, J.

1. Aggrieved with his conviction and sentence appellant-Gajendra Singh has preferred this appeal against the judgment and order dated 6-1-1981 passed by

Sri Bhagwandin, the then learned 4th Additional Sessions Judge, Hamirpur convicting the appellant under Section 302, I.P.C. and sentencing him to undergo imprisonment for life.

2. The prosecution story, briefly narrated, was that appellant-Gajendra Singh and deceased-Ram Bahadur were residents of village Deogaon. P. S. Sumerpur, District Hamirpur, About three years before the occurrence of this case, Mahipat Singh father of appellant was murdered. Ram Bahadur -deceased and his brother Chandra Bhan Singh (P.W. 1), Vijai Bahadur, Raghu Nath Singh and others were accused in the said case. At the time of occurrence of this case the said murder case was pending in the Court of Session. Smt. Roop Rani, mother of appellant, had contested election of Pradhan against Ram Bahadur-deceased. Ram Bahadur deceased won the said election. Smt. Roop Rani filed Election Petition but the same was also dismissed. On account of above incidents there was strong enmity between the appellant and the deceased.

3. On the afternoon of 16-10-1978 Ram Bahadur-deceased had gone to grocery shop of Ram Sajeewan (P.W. 8) along with his daughter Km. Arundhati (P.W. 2) for purchasing vegetable. Directing Ram Sajeewan (P.W. 8) to give two Kgs. Potato to Km. Arundhati (P.W. 2) Ram Bahadur-deceased sat on a Charpai in southern room beside the shop of Ram Sajeewah' (P.W. 8). Ram Naresh, Mangali and Madan Singh (P.W. 3) were also present at the shop of Ram Sajeewan. At about 1.00 p.m. appellant-Gajendra Singh came to the shop of Ram Sajeewan with a country-made pistol and fired upon Ram Bahadur-deceased who sustained injury, tried to run but fell down in the room. Km. Arundhati (P.W. 2) raised alarm. Chandra Bhan (P.W. 1) heard sound of fire at his house and rushed to the spot. He observed appellant running from the spot with a country-made pistol. He came to the deceased and found him lying in injured condition. He arranged a bullock cart and with the help of other villagers was taking the deceased to hospital. In the way near village Shokhar the deceased succumbed to his injuries. On the basis of information collected from the witnesses, Chandra Bhan Singh (P.W. 1) got prepared report (Ext. Ka1 of the occurrence from one Devi Singh at police station Sumerpur and lodged the same at police station at 2.45 p.m. Chik F.I.R. (Ext. Ka-2) was prepared by Head Constable Himmat Singh who made an endorsement of

the same at G.D. report (Ext. Ka-3) and registered a case under Section 302, I.P.C. against the appellant.

4. At the time of lodging of the report there was no Sub-Inspector at the police station. Under the orders of CO. Sri Kusheshwar Singh Dubey (P.W. 6) the then S.I. P. S. Kotwali, District Hamirpur reached P. S. Sumerpur, conducted inquest of the dead body of deceased and prepared inquest report (Ext. Ka-6) and other relevant papers (Exts. Ka-7 to Ka-9). The dead body of deceased was sealed and sent for post-mortem. Sri Babu Singh Sengar (P.W. 7) the then S.H.O. P.S. Sumerpur came to the P.S. at 8.15 p.m. and took over investigation. He searched the appellant but his house was locked. He interrogated witnesses present at the police station and reached the spot. On 17-10-1978, he interrogated Km. Arundhati (P.W. 2), Madan Singh (P.W. 3) and Ram Sajeewan (P.W. 8). He inspected the place of occurrence and prepared site plan (Ext. Ka-10). The I.O. collected bloodstained and simple earth from the spot. He also found Guriyas of Rudraksh lying on the spot collected the same and prepared recovery memo (Ext. Ka-11).

5. Autopsy on the dead body of the deceased was conducted on 17-10-1978 at 11.45 a.m. by Dr. K. C. Srivastava (P.W. 5) who found following ante-mortem injuries:-

1. Gun' shot wound of entry 3.5 cm x 2.5 . cm x chest cavity deep on right side chest, 10 cm. above the right nipple at 1'O clock position.
2. Gun shot wound of entry 0.5 cm x 0.5 cm x chest cavity deep on the right side of chest, 3 cm medial and below to the injury No. 1.
3. Gun shot wound of entry 1 cm x 0.5 cm x chest cavity deep on the right side of chest, 1 cm, medial to injury No. 1.
4. Gun shot wound of entry 10 cm x 0.5 cm x chest cavity deep on the right of chest, 1.5 cm medial and above to injury No. 1.
5. Gun shot wound of entry 3 cm x 1.5 cm x chest cavity deep on the right side of chest 0.3 cm above and medial to injury No. 1.

6. Tattooing were present surrounding all the injuries in a circle of 0.5 cm. Direction of all the gun shot injuries was downwards and backwards.
7. On internal examination 2nd, 3rd and 4th ribs were found fractured, Pleura was perforated on right side under the injuries. 1.5 pint of dark fluid blood and two shots and one wadding found in right chest cavity. Right lung was severally lacerated in medial and lower lobe. Right side of dome of diaphragm perforated at 5 places. Abdominal cavity contained one pint of dark fluid blood. Stomach contained pasty food material about 10 ounce. Small intestine contained pasty food and gases. Large intestine contained gases and faecal matter. Right lobe of liver severally lacerated laterally. Right kidney lacerated laterally. Shots were found in muscle plain of right side back in renal area at different places. The cause of death was found as shock and haemorrhage. The Doctor prepared post-mortem report (Ext. Ka-4).
8. The appellant surrendered in the Court on 24-10-1978. On completion of investigation the I.O. submitted charge-sheet on 2-12-1978.
9. The appellant pleaded not guilty and set up a case of denial and contended that he was falsely implicated on account of enmity.
10. The prosecution in support of its case examined Chandra Bhan Singh (P.W. 1), Km. Arundhati (P.W. 2). Madan Singh (P.W. 3), Head Constable Himmat Singh (P.W. 4), Dr. K. C. Srivastava (P.W. 5), Kusheshwar Prasad Dubey (P.W. 6), Babu Singh Sengar, I.O. (P.W. 7) and Ram Sajeewan (P.W. 8).
11. Considering the evidence of the prosecution witnesses the learned Sessions Judge held that the prosecution has successfully proved the guilt of appellant beyond all reasonable doubt. Accordingly he convicted and sentenced the appellant as mentioned above.
12. At the time of hearing of appeal none appeared from the side of appellant. We have heard learned A.G.A. and thoroughly considered the evidence on record.
13. Death of Ram Bahadur -deceased due to fire-arm injuries is not disputed. The ocular witnesses Arundhati (P.W. 2) and Madan Singh (P.W. 3) have categorically

stated that country-made pistol shots were fired on the deceased. Dr. K. C. Srivastava found as many as 5 gun shot wounds of entry on the chest of the deceased. Pellets and wadding were also recovered from the body. There is no challenge of the above medical evidence. Thus, it is proved that the deceased-Ram Bahadur died due to gun shot injuries.

14. The motive alleged by the prosecution was that father of appellant was murdered three years ago and deceased-Ram Bahadur as well as his other brothers were accused in the said murder case. It is also alleged that Smt. Roop Rani, mother of appellant contested the election of Pradhan against Ram Bahadur-deceased in which she was defeated. She also filed election petition against Ram Bahadur-deceased but it was dismissed. Chandra Bhan Singh (P.W. 1) and Madan Singh (P.W. 3) have elaborated above motive. No cross-examination was made on the above point. The appellant has also admitted above facts in his examination under Section 313, Cr.P.C. Therefore, there was strong motive for the appellant to commit the murder of deceased.

15. Date, time and place of occurrence are also not seriously disputed. According to prosecution occurrence took place on 16-10-1978 at 1.00 p.m. inside southern room of the house of Ram Sajeewan. Chandra Bhan Singh (P.W. 1), Km. Arundhati (P.W. 2) and Madan Singh (P.W. 3) stated that occurrence took place on said date, time and place. Ram Sajeewan (P.W. 8) who has not supported the prosecution case has also admitted that occurrence took place in his room on the above date and time. Babu Singh Sengar (P.W. 7) the I.O. visited the spot in the night of occurrence and found blood on the spot. Thus, there is no ground to disbelieve the date, time and place of occurrence alleged by the prosecution.

16. The occurrence took place at about 1.00 p.m. and report of the occurrence was lodged at 2.45 p.m. while the distance of police station is only 5 miles. Chandra Bhan Singh (P.W. 1) explained that he travelled the above distance by bullock cart. He also stated that after the occurrence he arranged a bullock cart and put the deceased on it and proceeded to the hospital. Himmat Singh (P.W. 4) also testified that Chandra Bhan Singh (P.W. 1) reached police station at 2.45 p.m. on 16-10-1978 and handed over report (Ext. Ka-1), on the basis of which he

prepared Chik F.I.R. (Ext. Ka-2). Considering the above distance and mode of traveling we are of the view that the report was promptly lodged.

17. To prove the manner of occurrence and complicity of the appellant the prosecution relied on testimony of Chandra Bhan Singh (P.W. 1), Km. Arundhati (P.W. 2) and Madan Singh (P.W. 3). Chandra Bhan Singh admittedly was not present when the shot was fired on the deceased. According to his evidence he was at his house which is at a distance of 80-90 paces from the shop of Ram Sajeewan (P.W. 8). Hearing the alarm of Km. Arundhati (P.W. 2) and sound of fire he rushed to the spot and observed the appellant running towards south with a country-made pistol. He came in the room and found the deceased lying in injured condition. The witness had taken the deceased to the police station and lodged report within 1.45 hours of the occurrence. His presence at the police station along with dead body of deceased was testified by Himmat Singh (P.W. 4). The witness has stated what he actually observed. Though, the witness was real brother of deceased and also an accused in the murder of father of appellant, but on this ground alone his above testimony cannot be discarded. The witness had offered plausible explanation of his presence on the spot. The manner in which the witness came to the spot also appears reasonable and probable.

18. Km. Arundhati (P.W. 2) is an eyewitness of the occurrence. She stated that her mother asked her to bring vegetable. That her father took her to the shop of Ram Sajeewan for purchasing vegetable as he has to go somewhere. She came to the shop of Ram Sajeewan in the company of deceased and while she was purchasing the vegetable by standing in front of shop of Ram Sajeewan, the deceased was sitting in the southern room. In the meantime appellant came there armed with country-made pistol and fired on him. The witness has clarified that though there were two other shops of Ramesh and Mohan in the village but vegetable was not available on those shops. She also offered explanation for accompanying her father. She also stated that she was standing and purchasing vegetable on the door of the shop in Kotha (verandah). It is also clear from her evidence that the room in which the deceased was sitting had a door towards north (towards Kotha). Though, she stated that the deceased was not visible from the place where she was standing and purchasing the vegetable, but it is clear

from site plan that the appellant fired on deceased from place 'B' which is on the northern door of the Kothari. Therefore, she was in a position to observe the assault.

19. From the perusal of entire evidence of Km. Arundhati (P.W. 2) it is clear that she was present on the spot as she had gone with the deceased at the shop of Ram Sajeewan (P.W. 8). It cannot be said that she is a got up witness. As mentioned above Chandra Bhan Singh (P.W. 1) brother of the deceased, claimed that he reached on the spot on hearing sound of fire. It is also clear from the evidence of Chandra Bhan Singh (P.W. 1) that one son of deceased was aged about 26 years old and in case the prosecution wanted to introduce Km. Arundhati (P.W. 2) subsequently it would have introduced elder son of deceased and Chandra Bhan Singh (P.W. 1) would have also claimed himself to be an eye-witness. But the evidence on record shows that the prosecution has cited only those witnesses who had actually observed the occurrence. In these circumstances, there is no ground to disbelieve the testimony of Km. Arundhati (P.W-2).

20. The next witness of the occurrence is Madan Singh (P.W. 3). He Claimed that at the time of occurrence he had gone to the shop of Ram Sajiewan (P.W. 8) for purchasing Katechu and 'Supari'. After some time Ram Bahadur deceased along with his daughter Km. Arundhati (P.W. 2) came to the said shop. Asking Ram Sajeewan (P.W. 8) to deliver two kg. Potato to Km. Arundhati (P.W. 2) the deceased sat on a charpai in the southern room. Thereafter, appellant came there and fired pistol shot on Ram Bahadur-deceased and fled way with the pistol. The witness went to the deceased and found him in injured condition. Chandra Bhan Singh (P.W. 1) also came on the spot.

21. Though, the father of the witness was also co-accused in the murder of father of appellant but the witness also clarified that the father of the appellant and his father were co-accused in some other cases. Except the above enmity there is nothing in the evidence of the witness to disbelieve him. But on account of above enmity the testimony of witness cannot be discarded as he satisfactorily explained his presence on the spot.

22. Ram Sajeewan (P.W. 8) in whose house the occurrence took place, has no doubt not supported the prosecution case and stated that at the time of occurrence he was taking food inside his house. Though, he heard sound of fire but he thought that it could be sound of cracker. But the witness admitted that Ram Bahadur-deceased was lying in injured condition in southern room of his house. It is clear from the record that summons were sent to this witness several times but he avoided to appear in the Court. Non-bailable warrants and processes under Section 82, Cr.P.C. were also issued against him. Ultimately he appeared in the Court after issuance of proclamation under Section 82, Cr.P.C. The above circumstances clearly indicate that the witness was being pressurised not to support prosecution story.

23. There is also a circumstance which shows that the witness was not disclosing the truth. Admittedly deceased was murdered in southern room of the house of the witness but he had not lodged any report. He stated that after observing Ram Bahadur-deceased in injured condition inside his room he fled away. This conduct of the witness again suggest that he was concealing the truth for obvious reason.

24. The evidence of ocular witnesses referred above also finds support from the medical evidence, F.I.R. which was promptly lodged and other circumstances of the case. The learned Sessions Judge, therefore, rightly believed the evidence of ocular witnesses regarding manner of occurrence and complicity of accused/appellant.

25. The case of appellant set up during trial was that of total denial. However, it was suggested to the prosecution witnesses that deceased was a bully man and had enmity with certain other persons. It was also suggested that the deceased had developed illicit connection with the daughter-in-law of brother of Ram Sajeewan (PW 8) and he would have been murdered by his other enemy. The prosecution witnesses had repelled the above suggestion. Except bald suggestion to this effect, there is no other evidence or circumstance to rule out the complicity of the appellant in the murder of the deceased as he had strong motive against the deceased.

26. In view of our discussions and observations we are of the view that the prosecution has successfully established the guilt of the appellant for the offence punishable under Section 302, I.P.C. and the appellant was rightly convicted and sentenced.

We find the appeal devoid of any force. The appeal is, accordingly, dismissed. The conviction and sentence of the appellant are confirmed. The appellant is on bail. He shall surrender before the Chief Judicial Magistrate, Hamirpur. The Chief Judicial Magistrate is directed to procure the arrest of the appellant and send him to jail for serving out the sentence awarded by the trial Court and confirmed by this Court. He shall send compliance report within one month from today.

27. The office is directed to send a copy of this order to the Chief Judicial Magistrate, Hamirpur within a week.

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