

Atul Singh Vs. State of U.P.

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Court : Allahabad

Decided On : May-13-2003

Reported in : 2004CriLJ111

Judge : S.K. Agarwal and ;M. Chaudhary, JJ.

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

Appeal No. : Crl. A. Nos. 2173 and 2199 of 2001 connected with 1965 of 2002

Appellant : Atul Singh

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Ashok Misra, Adv.

Disposition : Appeal allowed

Judgement :

M. Chaudhary, J.

1. In Sessions Trial No. 91 of 1999 State v. Sanjay Vishwakarma and others Police Station Kotwali Basti, District Basti accused-Sanjay Vishwakarma, Brij Kishore Singh alias Dimple and Atul Singh were placed on trial to answer the charge under Section 302 read with Section 34, I.P.C. On conclusion of the trial

learned 1st Additional Sessions Judge, Basti convicted accused-Sanjay Vishwakarma under, Section 302, I.P.C. and accused-Atul Singh and accused-Brij Kishore Singh alias Dimple under Section 302 read with Section 34, I.P.C. and they were sentenced to imprisonment for life thereunder and also to a fine of Rs. 5000.00 each and in default of payment of fine to further undergo six months' rigorous imprisonment.

2. All the three accused preferred separate appeals against their conviction and sentence passed by the learned Additional Sessions Judge. Since all the three appeals have arisen out of one and the same judgment they have been heard together and are being disposed of by common judgment.

3. The prosecution case in nutshell is that in the forenoon of 21-11-1998 Radhey Shyam Pandey was at his house situate at Avas Vikas Colony District, Basti and his son Ajay Kumar alias Pintu returned back home from the city and told him that a scuffle took place between him on one hand and Sanjay Vishwakarma, Atul Singh and Brij Kishore Singh alias Dimple on the other in front of APN Degree College; that at that time he was accompanied by Vikas Singh and Sunil Kumar Verma and that his opponents were in search of him in order to kill him. Then Radhey Shyam Pandey taking his son Ajay Kumar alias Pintu accompanied with Vikas Singh and Sunil Kumar went from his house in order to make a complaint to the principal of APN Degree College. When they reached near the PCO in the pavement leading to the main road accused-Sanjay Vishwakarma, Brij Kishore Singh alias Dimple and Atul Singh sighting Ajay Kumar exhorted that he should be killed. Thereupon Ajay Kumar intended to run away by turning but Sanjay Vishwakarma fired at him with country-made pistol and on receiving firearm injury Ajay Kumar fell down and all the three miscreants ran away on the motor cycle standing nearby. At that very time one Dina Nath Pandey and Udai Shankar Shukla reached there and tried to catch hold of the miscreants but they succeeded in making their escape good. Immediately thereafter Radhey Shyam Pandey and his wife Smt. Anirudh Kumari took their injured son Ajai Kumar in a jeep to the District Hospital, Basti but by the time they reached the Hospital injured Ajay Kumar succumbed to fatal injuries sustained by him in the said incident. Then Radhey Shyam Pandey, father of the deceased went to the Police Station Basti

Kotwali, District Basti and lodged an FIR of the occurrence with the police there at about 12.30 noon. The police registered a crime against the accused under Section 302, I.P.C. and started the investigation. After completing the investigation the police submitted charge-sheet against the accused accordingly.

4. After framing of the charge against the accused the prosecution examined Radhey Shyam Pandey (P.W. 1), Dina Nath Pandey (P.W. 2), Udai Shankar Shukla (P.W.

3) and Vikas Singh (P.W.

4) as witnesses of the occurrence. Testimony of the remaining witnesses is more or less of formal nature. P.W. 6 Dr. Mohd Iqbal who conducted autopsy on the dead body of Ajai Kumar has proved the post-mortem report (Ext. Ka 4). P.W. 5 HC Achhey Lal Yadav who prepared check report on the basis of the written report of the occurrence (Ext. Ka

1) handed over to him by Radhey Shyam Pandey, father of the deceased at the police station, has proved the check report (Ext. Ka

2) and the G D entry regarding registration of the crime (Ext. Ka 2). P.W. 7 SI Gauri Shankar Tewari who drew inquest proceedings on the dead body of Ajay Kumar on the directions of Station Officer Surendra Pratap Singh, the Investigating Officer has proved the inquest report (Ext. Ka

5) and the papers relating thereto (Exts.Ka 6 to Ka 10). P.W.8 SI Surendra Pratap Singh who investigated the crime initially has proved the site plan map of the place of occurrence (Ext. Ka

11) and recovery memo of tikli, blood stained and simple earth etc. collected from the scene of occurrence (Exts. Ka 12 and 13). P.W. 11 Dy. SP Anil Kumar CO Sadar to whom investigation of the case was transferred by Superintendent of Police, Basti and who completed the investigation and submitted charge-sheet against the accused on 21-12-1998 has proved the charge-sheet (Ext. Ka 15). P.W. 10 CP Suresh Kumar is one of the two Constables to whom dead body of Ajay Kumar in sealed cover along with necessary papers was handed over to be

taken to the mortuary for its post-mortem. P.W. 9 CP Kamla Kant Pandey is the Police Constable to whom sealed packets of blood stained and simple earth and that of blood stained clothes were entrusted to be taken to Forensic Laboratory Lucknow for Serologist's opinion.

5. According to the Serologist's report human blood was found on the blood stained clothes and the earth but it was opined by the Serologist that blood stains found on the blood stained articles were disintegrated for opinion regarding blood group (Ext. Ka 17).

6. The accused while putting forward a case of total denial of the incident examined two witnesses D.W. 1 A.K. Singh and D.W. 2 Daya Ram Sharma in their support. D.W. 1 A.K. Singh Chief Pharmacist District Hospital, Basti stated that on 21st of November, 1998 Ajai Kumar was brought by his mother Smt. Anirudh Kumari to the District Hospital where he was declared dead and a note was made to the said effect in the concerned register by Dr. S.C. Chaturvedi, D.W. 2 Daya Ram Sharma employed as Assistant in APN Degree College stated that accused-Atul Pratap Singh was not a regular student of the Institution in the year 1998-99.

7. On an appraisal of the parties' evidence and after hearing the parties' learned counsel the learned Additional Sessions Judge recorded conviction and sentence against the accused as stated aforesaid.

8. Feeling aggrieved by the impugned judgment and order the accused-appellants preferred these appeals for redress.

9. We have heard learned counsel for the appellants and learned AGA for the State as well and gone through the record of the case and the impugned judgment.

10. After going through the record of the case and hearing the parties' learned counsel we do not find ourselves in agreement with the findings recorded by the learned trial Court for the following reasons :

11. Out of four witnesses examined by the prosecution testimony of P.W. 4 Vikas Singh and P.W. 3 Udai Shankar Shukla is of no use to the prosecution P.W. 4

Vikas Singh has not supported the prosecution case at all as he has stated in his examination-in-chief that he did not witness the murder of Ajay Kumar and hence he could not say as to where he was murdered and by whom. He also stated that he did not know any of the accused at the time of the alleged occurrence. P.W. 3 Udai Shankar Shukla tried to support the prosecution case in his examination-in-chief stating that the alleged noon when he reached the rear gate of the tehsil building he heard the sound of shot fired and the cries of Radhey Shyam to catch hold of the miscreants and saw all the three miscreants running on the motor cycle but he could not withstand his cross-examination as he stated in his cross-examination that he learnt the names of the three miscreants subsequently at the scene of occurrence as their names were told to him by the persons present there. Statement of this witness Udai Shankar Shukla was recorded on 26-10-1999 and in his statement he stated that he used to reside at village Thakurpur as he was employed as a teacher in Thakurpur Primary School for the last four years, that he was President of Primary Teachers' Association since October, 1998 and that he had come to the Basti Headquarter as his family resides there and at the time of the incident he was going to the Basic Education Officer in connection with the work of the Association.

12. Testimony of PW 3 Dina Nath Pandey too is not of much avail to the prosecution as he stated in examination-in-chief that he used to reside at Avas Vikas Colony, that fateful day he had gone to the tehsil in order to know about the realization proceedings of the arrears of entertainment tax and at about 11.30 a.m. the alleged noon as he was returning back by the rear gate of the tehsil building he heard the shouts of Radhey Shyam and few others for catching hold of the miscreants and that then he saw Sanjay Vishwakarma and Atul Singh along with one another going on a motor cycle. However he could not withstand his cross-examination as he stated in cross-examination that about 8000-10,000 persons resided in Avas Vikas Colony and he knows only those persons with whom he is on visiting terms but he never visited the houses of any of the accused nor any of them ever visited him. He nowhere stated that he heard the sound of shot fired. Admittedly he and Radhey Shyam both originally belong to village Bari Deeha and he is also distantly related to him. Under these circumstances he is no better than a got up witness.

13. Now remains the solitary testimony of PW1 Radhey Shyam Pandey, father of the deceased and the first informant. He has narrated all the facts of the alleged occurrence from the beginning to the end as disclosed in the FIR. But his testimony too is not worthy of credence.

14. Learned counsel for the appellant has argued that the FIR is ante-timed reflecting adversely on the prosecution case and for that his contention is three fold : (i) It is contended that names of the accused and particulars of the crime have not been given at the top of the inquest report and other papers relating thereto meaning thereby that by the time the inquest proceedings were concluded it was not known as to who were the assailants of Ajay Kumar. It is also not mentioned in column No. 3 the inquest report as to with what weapon Ajay Kumar was shot dead. It is contended that had the FIR been in existence at the time of drawing inquest proceedings these informations must have found mentioned in the inquest report. (ii) A perusal of the inquest report goes to show that inquest proceedings on the dead body were concluded at about 3.05 p.m. PW10 CP Suresh Kumar who is one of the two constables to whom dead body of Ajay Kumar was handed over to be taken for its post mortem stated that the dead body, of Ajay Kumar in a sealed cover along with necessary papers was handed over to him at about 3.45 p.m. after completion of inquest proceedings. A perusal of challan lash (Ext ka8) goes to show that dead body reached at the police headquarter at about 9:30 p.m. whereas the police headquarter Basti is situate at a distance of five kilometers only from the District Hospital. Explaining the delay in reaching the police headquarter PW10 CP Suresh Kumar stated that since no vehicle was available and they could get a rickshaw at about 8:00 p.m. they after putting the dead body on the rickshaw reached the police headquarter at 9:30 p.m. The explanation offered by this witness for non availability of any vehicle or rickshaw in the noon time at about 3-4 p.m. outside the District Hospital for 4-5 hours is neither convincing nor plausible. The possibility cannot be ruled out altogether that since by the time the inquest proceedings were concluded it was not known as to who were the assailants the FIR was not in existence by that time. (iii) It has not been brought on the record as to at what time special report of the crime aforesaid sent to the Higher Authorities was delivered at their respective offices PW5 HC Achhey Lal who registered the crime and made the entry

regarding thereto in the general diary stated in his cross-examination that special report of the said crime was sent to Higher Authorities through constable Zulfikar and the same was to be distributed at the places situate within 3-4 kilometres from the police station but admittedly there was no entry of Ahamad of the constable abovenamed in the general diary of 21st November, 1998. In view of the above facts and circumstances attending the case said argument advanced on behalf of the appellants that the FIR is ante-timed is not devoid of any force. We are of the view that the FIR was not lodged at the police station at the time it purports to be but was lodged at some late hour subsequently that day which is supported, in our view, by one more circumstance that the FIR does not mention the names of Ataullah, Narendra, Fazrul Rehman, Ramjan, Muhsen, Govefdhan and others as witnesses who own or run their respective shops or stalls situate adjacently just around the scene of occurrence or across the road where the incident occurred. Had the FIR of the said incident been lodged at the police station soon after the alleged occurrence the names of the persons aforesaid must have found mention in the FIR as witnesses of the occurrence though it is quite a different matter that either of them would have supported the prosecution case. It appears that the FIR was lodged at some late hour of the day after due consultation and deliberations making it ante-timed and due to this very reason it lacks spontaneity and conviction.

15. It has been argued by the learned counsellor the appellants that PW1 Radhey Shyam, father of the deceased did not witness the murder of his son Ajay Kumar and hence his testimony should not be relied upon. For that he contended that admittedly the death certificate of Ajay Kumar issued by the doctor of District Hospital mentions that Ajay Kumar was brought dead by Anirudh Kumari, mother of the deceased. The said argument advanced by learned counsel for the appellant too has got much substance in it. PW1 Radhe Shyam stated that it was he who took Ajay Kumar to emergency ward in critical condition where he was declared dead and that the dead body was taken on a stretcher from the emergency ward to 'shav garh of the District Hospital. We are of the opinion that if Radhey Shyam had accompanied his son Ajay Kumar to the Hospital as stated, by him in all probability it must have found mention in the death certificate that Ajay Kumar was brought by Radhey Shyam father of the deceased to the Hospital.

Further PW1 Radhey Shyam stated in his examination-in-chief that at about 11:15 a.m. or so he was at his house that Ajay Kumar returned from the city and told him that some quarrel had taken place between him on one hand and Sanjay Vishwakarma, Atul Singh and Dimple alias Brij Kishore Singh on the other at the gate of APN Degree College and they were chasing him in order to kill him and therefore he rushed back, to house, that at that time he was accompanied by Vikas Singh and Sunil Kumar; that immediately he taking his son Ajay Kumar along with Vikas Singh and Sunil Kumar went out of his house in order to go to the principal of APN Degree College and complain to him regarding the alleged incident and were going through the pavement leading to the main road and as AJay Kumar reached at the end of the pavement joining the main road all the three miscreants shouted that he should be killed and thereon Ajay Kumar tried to return back towards him but immediately Sanjay Vishwakarma fired a shot putting the pistol on the back of his head and that sustaining the fatal injury Ajay Kumar fell down. Immediately thereafter all the three miscreants ran away on the motor cycle. However this witness Radhey Shyam could not tell the colour, number etc. of the motor cycle on which the miscreants ran away. This witness Radhey Shyam could not withstand his cross-examination as he stated in his cross-examination that Ajay Kumar was going some ten paces ahead from him, that as Ajay Kumar tried to flee back on the pavement towards him he could not perceive as to why he wanted to turn back and that in the meanwhile a shot was fired hitting Ajay Kumar at his head. He further stated that the motor cycle on which all the three miscreants ran away was already started. A perusal of the site plan map goes to show that there is a coal depot and other constructions of shops in between the place of occurrence and the pavement on which he along with his son Ajay Kumar and others was passing and on account of those constructions the place where the alleged murder took place was not visible to the person going on the pavement and a person would be able to perceive as to what was going on at the place of occurrence only when he would reach the end of the pavement joining the main road. Thus if according to his own statement Radhey Shyam was about 8-10 paces behind Ajay Kumar on the pavement when Ajay Kumar was fired at and according to the site plan map the place where he was fired at was not visible from the pavement because of construction in between the pavement and the place of

occurrence it is unintelligible and unfathomable as to how this witness could see the assailants attacking and firing at Ajay Kumar as the alleged incident occurred in the open space in front of the coal depot some seven paces towards east from the pavement and it is a case of hit and run and the entire occurrence would have hardly taken a minute or so. It may also be mentioned here that in the site plan the place from where this witness Radhey Shyam saw the incident of firing at his son Ajay Kumar has not been shown. For the above presence of PW1 Radhey Shyam appears to be highly doubtful at the time of the occurrence at the site.

16. Further, PW1 Radhey Shyam does not appear to be truthful and straightforward witness as his statement is self-inconsistent and incongruent on the material points. PW1 Radhey Shyam stated in his deposition that his son Ajay Kumar was going some ten paces ahead from him as they were going to see the principal of APN Degree College and he had asked his son Ajay Kumar to engage some rickshaw to go there. However he admitted that APN Degree College is situated at a distance of half a kilometer only from his residence and Principal of the Degree College resides in the premises of the College. This witness Radhey Shyam is an advocate and was aged about 44 years at the time of the incident and it was 21st of November 1998 when the incident took place. It is incomprehensible and unpalatable that after covering a distance of about one furlong from his residence he would have needed a rickshaw for going to the College situated at a distance of about three furlongs only from the main road. Further this witness Radhey Shyam stated in his examination-in-chief that at about 11:15 p.m. when Ajay Kumar returned back home and told him about the said incident he was accompanied with Vikas Singh and Sunil Kumar. However he stated in his cross-examination that Vikas Singh and Sunil Kumar had not come to his residence. At another place he stated that when Ajay Kumar returned back home and told him about the incident he was accompanied with Vikas Singh and Sunil Kumar but thereafter both of them went back to their respective houses. It is incomprehensible and unintelligible that when Ajay Kumar returned back home and told about the quarrel to his father at about 11:15 a.m. he was accompanied with Vikas Singh and Sunil Kumar and thereafter both of them went back to their respective houses how they could join them in order to go to the principal of APN Degree College when the said incident took place at about 11:30 a.m.

Furthermore, Ajay Kumar was not a student of APN Degree College as according to PW1 Radhey Shyam he was appearing as a private candidate in High School examination from Asnahra College. And since Ajay Kumar was not a student of APN Degree College we are of the view that there was no occasion for his father to go to the principal of APN Degree College for complaining about the alleged quarrel. There is yet another circumstance that casts serious doubt in the presence of this witness at the spot. PW1 Radhey Shyam being an advocate at about 11:00 a.m. must be in the Court's premises being busy in his work. His presence at his house at that hour in our opinion in itself does not fit in the chain of events.

17. In view of the above infirmities and incongruities in the prosecution case and the evidence, we find that the prosecution failed to bring the charge home to the accused beyond reasonable doubt and hence the findings of conviction and sentence recorded by the trial Court against the accused cannot be sustained in law as the learned Additional Sessions Judge failed to appreciate the parties' evidence in its true perspective. The appeals are therefore allowed and the impugned judgment and order convicting accused. Sanjay Vishwakarma under Section 302, IPC and accused Atul Singh and Dimple alias Brij Kishore Singh under Section 302 read with Section 34, IPC and sentencing them thereunder is hereby set aside. The accused-appellants are hereby acquitted. They are on bail. Their bail bonds are hereby discharged.

18. Office to send copy of the judgment along with lower Court record to the Court below immediately for information and compliance.

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