

**Sri Kant Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/490650](http://sooperkanoon.com/490650)

**Court :** Allahabad

**Decided On :** Oct-31-2002

**Reported in :** 2003CriLJ3150

**Judge :** M.C. Jain and ;Y.R. Tripathi, JJ.

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

**Appeal No. :** Criminal Appeal No. 1286 of 1980

**Appellant :** Sri Kant

**Respondent :** State

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** V.K. Srivastava, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**M.C. Jain, J.**

1. Appellant-Sir Kant and his real brother Rama Kant faced trial before the then Vth Addl. Sessions Judge, Kanpur in Sessions Trial No. 240 of 1979. The charge against the appellant-Sri Kant was of Section 302, I.P.C., whereas, his brother Rama Kant faced trial under Section 120B, I.P.C. read with Section 302, I.P.C. By

the judgment dated 10-6-1980 recorded by the trial Court, Rama Kant was acquitted but the appellant-Sri Kant was convicted under Section 302, I.P.C. and sentenced to life imprisonment. Aggrieved, he has preferred this appeal.

2. The incident took place in between 28/29. 5.79 at about 1 a.m. in village Sen Paschim Para, P.S. Bidhnu, District Kanpur. The F.I.R. was lodged on 29-5-1979 at 6.20 a.m. by one Vishwa Nath Dubey. The distance from the place of occurrence to the police station was 7 miles. The victim of the offence was Sheo Adhar. He was allegedly shot dead by the present appellant. The facts, shorn of superficialities, are that on 28-5-1979 there, was Phaldan ceremony of Chhutkau, the grandson of Basant Singh of the resident of village Sen Paschim Para. P.W. 2 Vishwa Nath had gone to attend it at about 8 p.m. The function was largely attended by the residents of the village and concluded at about mid-night, followed by dinner. After the festivities ended, P.W. 2 Vishwa Nath along with Sheo Adhar deceased, Maluke, Jai Narain, Raj Narain, P.W. 3 Sheo Narain and few others left for their houses together. Appellant-Sri Kant was carrying the gun of his brother Rama Kant. When they reached in front of the house of Raja Ram Kachhi, the appellant fired on Sheo Adhar who fell down on receiving the shot. He shot at him a second time after he had fallen. Sheo Adhar died then and there. The appellant made his escape good threatening that whosoever dared to pursue him, would be killed likewise. There was longstanding enmity between the appellant and Sheo Adhar, which was the cause of this murder. On lodging of the F.I.R., the case was registered and investigated by the police as usual. P.W. 5 Ved Prakash Gautam and P.W. 6 S.O. Rama Shankar Mishra were associated in succession with the investigation of the case.

3. The post-mortem over the dead body of the deceased was conducted by P.W. 1 Dr. Swami Din Raghuvanshi on 30-5-1979 at 2.30 p.m. The deceased was 38 years of age. The following ante-mortem injuries were found on his person :

1. (a) Gunshot wound of entry with margins inverted 5 cm. x 3 cm. x chest cavity deep on the right side back. Scorching and tattooing present.

(b) Wound of exit of the above injury 1 cm. x 1 cm. on the left shoulder below the lateral end of the left clavicle, one wadding piece found in the left lung. Five pellets

found on the left side chest muscle.

2. (a) Gunshot wound of entry with margins inverted 7 cm. x 5 cm. x right abdominal cavity deep 11 cm. above the right iliac crest. Scorching and tattooing present. Direction right and left.

(b) Wound of exit pertaining to injury No. 2 (a) 1 cm. x 1 cm. on the left side of abdomen with muscular tissue protruding out.

(b)(ii) Wound of exit pertaining to injury No. 2 (a) 1 cm. x 1 cm. on the left side of abdomen muscular tissue protruding out. Four pellets found in the abdomen on the right side and two wadding pieces found in the liver.

4. The cause of death was shock and haemorrhage as a result of gunshot wounds.

5. The appellant pleaded false implication, though this part of the prosecution story was admitted to the defence side that the deceased Sheo Adhar, Anant Singh, Dr. Kailash and one Vishwanath (other than the informant) were accused of having attempted to murder Dharam Raj in the compound of the Civil Court, Kanpur on 21-5-1975 and Rama Kant was a witness of the incident from the side of the prosecution. According to him, he had not been invited in the Phaldan ceremony of Chhutkau at the house of Basant Singh and he did not know as to who shot dead Sheo Adhar. Later on, he had seen his dead body in front of the house of Raja Ram Kachhi. He also examined Basant Singh as D.W. 1 to say that he had not invited the appellant in Phaldan ceremony at his residence as he was a Brahmin and he had no social relations with him. According to this defence witness, it was true that the deceased had come to his residence in the Phaldan ceremony and had only taken cold beverage (Thandai) and had remained at his house till 8 or 9 p.m. He did not go along with others of the village but earlier to them. He heard the firing by gun after Sheo Adhar had left his residence. He went in that direction along with 5-10 others and saw Sheo Adhar lying dead at a distance of about 1 furlong. He did not stay there because his guests had yet to take dinner at his house. It would be unnecessary to refer to the testimony of another defence witness, namely, D.W. 2 Ganga Prasad, as he does not throw any light on the

matter in issue.

6. To come to the point, the prosecution examined nine witnesses in all including the Doctor who had conducted the postmortem over the dead body of the deceased, two Investigating Officers and formal witnesses. The eye-witnesses were P.W. 2 Vishwa Nath (informant) and P.W. 3 Shiv Narain.

7. We have heard Sri V. K. Srivastava, learned counsel for the appellant in support of the appeal and learned A.G.A. from the side of the State in opposition thereof. The record of the lower Court has been summoned before us, which we have carefully examined. The central core of the arguments of learned counsel for the appellant is that he had no motive to commit the crime; there was no source of light at the spot; the F.I.R. is ante-timed and none of the eye-witnesses was present at the spot and they have simply rendered their testimony on the basis of their imagination or suspicion to support this blind murder committed by unknown person. We intend to proceed further to deal with the arguments made at the bar in the light of evidence and relevant circumstances.

8. Taking the question of motive first, we wish to say that it is insignificant in the present case of eye-witness account. That apart, the prosecution has put forth the previous background. The F.I.R., states that the murder had been committed by the appellant because of old enmity. It has been elucidated by the informant P.W. 2 Vishwanath in his testimony before the trial Court that a dacoity had taken place at the house of Triloki who happened to be the cousin brother of the deceased Sheo Adhar. Sheo Adhar had made a mention to the police that the accused-appellant-Sri Kant could have had a hand in the commission of such dacoity. As a result, the appellant-Sri Kant was interrogated and roughed up by the police while trying to work out the said dacoity. In his statement before the Court under Section 313, Cr. P.C., the accused-appellant-Sri Kant admitted the factum of commission of dacoity at the house of Triloki, but denied to have been interrogated or roughed up by the police on this account. Obviously, there could be no documentary evidence in this behalf, but in our opinion, the learned trial Judge has rightly observed that it was quite probable that the accused-appellant-Sri Kant developed animosity against Sheo Adhar deceased on learning that he had been suspected

to be associated with the commission of dacoity at the house of Triloki at the instance of Sheo Adhar deceased. He must have been interrogated and even roughed up by the police in this behalf. To be short, it cannot be accepted that there was no motive on the part of accused-appellant to commit this crime. It should be stated at the risk of repetition that in the instant case, because of availability of eye-witness account, the question of motive pales into insignificance also.

9. We take up the question of light in the second instance. True, the source of light has not been mentioned in the F.I.R. but then it should be kept in mind that every minute detail is not expected to be recorded in the F.I.R. when it is a spontaneous document presented without any deliberation or concoction. It has come in the testimony of eye-witnesses, namely, P.W. 2 Vishwa Nath and P.W. 3 Shiv Narain that a bulb was glowing on a nearby Chakki at a distance of about 80-90 paces. Really speaking, the question of light also is not important in the present case. The reason is that the witnesses knew the accused-appellant very well from before. All of them along with the deceased and many others had participated in Phaldan ceremony at the residence of one Basant Singh, wherefrom they were returning together in midnight. The accused-appellant was armed with a gun. The incident took place at a little distance from the house of Basant Singh, wherefrom the accused-appellant, deceased, witnesses and few others were returning. Moreover, it has also come in the testimony of P.W. 2 Vishwa Nath that it was a moonlit night. We have consulted the Panchang of the relevant period and find that it was a Shukla Paksha Tritiya night. Therefore, the evidence has to be accepted that it, was a moonlit night. All the factors being considered, there was no possibility of misidentity. Therefore, the argument complaining the non-availability of light at the spot is lost.

10. The third argument of learned counsel for the appellant is that the F.I.R. has been ante-timed. As per the record, the incident took place in between the night of 28/ 29th May, 1979 at about 1 a.m. and the report was lodged on 29-5-1979 at 6.20 a.m., the distance of the police station being 7 miles. Learned counsel for the appellant pointed out that the dead body of the deceased had reached the Police Lines on 30-5-1979 at 10.15 a.m., though the statement of the first Investigating

Officer, namely, P.W. 5 Ved Prakash Gautam is that the dead body after being sealed had been handed over to the Constables at the spot on 29-5-1979 at 11 a.m. As per the record of inquest report, the Investigating Officer had reached the spot at 9 a.m. on 29-5-1979 and had started preparation of Panchayatnama which concluded at 11 a.m. The contention of learned counsel for the appellant is that the Investigating Officer had been fabricating the evidence and it is wrong to say that the dead body had been handed over to the Constables on 29-5-1979 at 11 a.m. He tried to support this contention by referring to the statement of P.W. 2 Vishwa Nath that the Investigating Officer had left the spot carrying the dead body also at about 9.30 or 10 p.m. The statement of P.W. 3 Shiv Narain has also been referred to that the Investigating Officer was preparing the Panchayatnama at about 2 1/2 or 3 O'clock in the afternoon. In our opinion, it is not possible to jump and accept the inferential conclusion as suggested by the learned counsel for the appellant. We note that P.W. 4 Constable Shyam Kishore stated that the dead body had been handed over to him and Constable Sita Ram on 29-5-1979 at 11 a.m. Because of non-availability of conveyance, they could reach Kanpur at about 7 p.m. The statement of P.W. 9 Constable Sita Ram is that they could start from the spot with the dead body at about 3.30 p.m. because of non-availability of conveyance. He explained that because of illness, he could not get it noted at the Police Lines on 29-5-1979. It was for this reason that the entry could not be made in the Police Lines on 29-5-1979. No foul play can be scented and a little delay in bringing the dead body to Police Lines would not adversely affect the prosecution case. Nor can it justify the inference of any tampering in the preparation of inquest report. A little contradiction as to the time of dispatch of the dead body at the spot in the testimony of rustic eye-witnesses is attributable to lapse of time and consequent failure of memory. In any case, late dispatch from the spot or receipt in the Police Lines of the dead body does not lead to the conclusion that the F.I.R. is ante-timed. The statement of P.W. 1 Dr. Swami Din Raghuvanshi who conducted the postmortem over the dead body of the deceased is that the death could have occurred on 29-5-1979 at about 1 a.m. We are of the opinion that the prosecution could hardly have any purpose in ante-timing the F.I.R., as it was not likely to render, any benefit thereby under the facts and circumstances of the present case.

11. Learned counsel for the appellant then doubted the time of incident given as about 1 a.m. in between the night of 28/29th May, 1979 by the prosecution. Referring to the statement of D.W. 1 Basant Singh at whose house, the appellant, deceased and witnesses with many others had attended the Phaldan ceremony wherefrom they were returning, it has been urged that according to him the function had ended at about 9 p.m. We form the opinion that this witness unnecessarily tried to create a confusion about the time of incident in a vain attempt to help the accused-appellant. It was the summer season of May. It came to be stated by him in his cross-examination that dinner had started at 9 p.m. He also admitted that there was big crowd and he could not say as to who left when. We do not think that any doubt can be entertained as to the time of incident alleged by the prosecution on the basis of what has been stated by D.W. 1 Basant Singh who appears to be out to favour the accused-appellant, as is very clear from a careful scrutiny of his testimony.

12. Rather, the place of occurrence is fixed to be that as alleged by the prosecution according to the testimony of this witness also. He has admitted that after Sheo Adhar (deceased) had left his house, he had heard the sound of firing. He with 5 or 10 others had rushed to that direction and had found Sheo Adhar lying dead at a distance of about one furlong from his house. We should point out that the accused-appellant-Sri Kant himself admitted in his statement under Section 313, Cr. P.C. that he had seen the dead body of Sheo Adhar lying in front of the house of Raja Ram Kachhi. Of course, he added that he could not say as to who shot him dead. The point we wish to emphasize is that the place of incident is beyond doubt even by the own statement of the accused-appellant under Section 313, Cr. P.C. and that of D.W. 1 Basant Singh.

13. Learned counsel for the appellant then tried to impeach the veracity of the eyewitnesses, namely, P.W. 2 Vishwa Nath and P.W. 3 Shiv Narain on the basis of injuries sustained by the deceased and contents found in his stomach. We cannot locate any merit in this argument. The deceased sustained two gunshot wounds of entry, one on the right side of back and the other on the right side of abdomen. Consistent testimony of P.W. 2 Vishwa Nath and P.W. 3 Shiv Narain is that first gunshot had been fired by the accused-appellant in the back of the

deceased and the second one thereafter. It is urged that as per P.W. 2 Vishwa Nath, Sheo Adhar had fallen down on receiving first shot and thereafter second shot had been fired by the accused-appellant. Referring to the statement of P.W.1 Dr. Swami Din Raghuvanshi, it has been urged that according to him there was lesser possibility of the second injury having been received by the deceased after falling down. A careful scrutiny of the testimony of the Doctor reveals that he did not state that the second injury could not have been sustained by him at all after he had fallen down. He has only spoken of the possibility that there was less likelihood of injury No. 2 having been caused at a time when Sheo Adhar had fallen down. The second shot could have been fired when Sheo Adhar was in the process of falling and was in a ducking state. Regard is to be had to this aspect also that both the shots had been fired in quick succession, one after the other, from close range. Blackening and tattooing had been found at the time of postmortem and wadding pieces had also been taken out by the Doctor from the dead body of the deceased. The accused-appellant availed of the opportunity when the deceased was just ahead of him. He fired the first shot in his back and instantaneously fired another shot, which hit on the right side of abdomen while he was in the process of falling or had fallen down. The medical evidence, in our opinion, is in conformity with the eye-witness account given by the informant.

14. Of course, the Doctor did not find solid food in the stomach of the deceased, but it does not make any dent in the prosecution version, nor the, same renders the time of incident to be suspicious. The contents of stomach cannot be a sure guide to determine the time of incident. D.W. 1 Basant Singh state that Sheo Adhar had only taken beverage (Thandai) at his residence and had not eaten anything else. At the same time, he says that there was big crowd and he could not say as to who left when. He could hardly be particular in noticing as to who had taken what. The testimony of P.W. 2 Vishwa Nath is that Sheo Adhar deceased had only taken Kheer. It cannot be speculated as to what were the contents of Kheer. Learned trial Judge has also rightly observed that when the small intestines had been ruptured through and through, the Doctor could not have found any evidence of any solid food taken by the deceased, because by 1 a.m., the same would have left the stomach and passed into small intestine which were blown off. The argument raised by the learned counsel for the appellant on the

premise of the injuries received by the deceased and his stomach condition does not impress us and it cannot render any benefit to the accused-appellant.

15. The last argument of learned counsel for the appellant is the criticism against the statements of the eye-witnesses. It is also urged on the basis of testimony of D.W. 1 Basant Singh that the deceased had not gone in the function at his house. According to him, he had not invited him as he was a Brahmin and he had no social relations with him. So far as his testimony is concerned, we are of the definite opinion that it cannot overshadow the trustworthy testimony of the eye-witnesses of the prosecution. The appellant too, had gone to attend the Phaldan ceremony at his house. This witness has obviously attempted to help the appellant. In his cross-examination he could not deny that P.W. 2 Vishwanath and P.W. 3 Shiv Narain had gone to attend the function at his house. He could only say that he was unable to say about their presence, as there was huge crowd at his house. P.W. 2 Vishwa Nath being Pradhan of the village would not have ordinarily been left out from the list of invitees when a large number of persons had been invited, He has simply pretended lack of memory about the presence of these witnesses to help the appellant. In the trial Court, this witness Basant Singh was cited as witness on the prosecution side in the charge-sheet, but he was later on discharged. The accused, side did not object to his discharge and it indicates that during the pendency of the trial he was won over by the defence. The eye-witnesses, namely, P.W. 2 Vishwa Nath and P.W. 3 Shiv Narain withstood the test of cross-examination firmly and nothing has come out to impeach their evidence. They were natural witnesses of the incident, who were returning with the appellant, deceased and few others after attending the Phaldan ceremony at the house of Basant Singh when the incident took place in the way. P.W. 2 Vishwa Nath is the next door neighbour of the appellant. There is nothing to show that he had any dispute with him. There is a copy of judgment of Nyaya Panchayat dated 8-6-1969, relied upon by the appellant relating to Parnala's case between his father and P.W. 2 Vishwa Nath. Nothing happened thereafter. It cannot be accepted that simply because of this old dispute between this witness and father of the appellant, he would falsely implicate him in this case. Such uneven textures in the fabric of rural life are common, but that does not mean that one would implicate the other in false murder case after the lapse of several years. P.W. 3 Shiv Narain

also explained that during the days of the incident he used to do tailoring work at his house in the village, though thereafter he started working with Tiwari Tailors, Kanpur. Our impression is that both the eye-witnesses were neither thick with the deceased nor bore any animosity against the appellant. They are independent witnesses whose testimonial assertions have ring of truth. They have rightly been believed by the learned trial Judge. We reject the argument levelling criticism against their testimony.

16. Resultantly, we find this appeal to be wholly unmerited. The appellant shot dead the deceased Sheo Adhar at the given date, time and place. As he committed murder of the deceased, he has rightly been convicted under Section 302, I.P.C. and sentenced to life imprisonment by the Court below.

17. The appeal is dismissed. The appellant Sri Kant who is on bail shall be arrested and sent to jail to serve out the sentence awarded to him. The C.J.M. concerned shall take necessary steps in this behalf and report compliance within one month.