

State of U.P. Vs. Iqbal Singh and ors.

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Court : Uttaranchal

Decided On : Apr-23-2010

Judge : B.C. Kandpal and; Nirmal Yadav, JJ.

Appellant : State of U.P.

Respondent : iqbal Singh and ors.

Judgement :

Nirmal Yadav, J.

1. This Government appeal has been preferred by the State against the judgment and order dated 29.08.1991 passed by the Ist Additional Sessions Judge, Nainital in Sessions Trial No. 182 of 1989 whereby accused-respondents Iqbal Singh, Guru Bachan Singh and Sukhbinder Pal Singh alias Sukhpal Singh have been acquitted of the charges under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short I.P.C.).

2. The facts, in brief, are that on 04.05.1988 at about 8:00 p.m. Baldev Singh alongwith his brother Balbir Singh and Gurudev Singh had gone to Sanjay Nagar Market for making some purchases. Meanwhile accused Iqbal Singh armed with pistol, Guru Bachan Singh and Sukhbinder Pal Singh alias Sukhpal Singh (hereinafter referred to as Sukhpal Singh) armed with double barrel gun came and started abusing Baldev Singh. The accused also stated that why he was not allowing them to draw water from Kulaba. Baldev Singh objected and asked them

to behave themselves. Meanwhile Malook Singh also reached the spot and tried to pacify them. Accused Iqbal Singh exhorted that Baldev Singh be not spared. On saying this all the three accused fired upon Baldev Singh from their respective weapons. On receiving the gunshot injuries Baldev Singh fell down and the accused ran away towards F.C.I. The motive for causing the death of Baldev Singh (deceased) is stated to be that at about ten days prior to the occurrence accused Guru Bachan Singh wanted to draw water from the Kulaba for their maize field but Baldev Singh (deceased) did not allow him to draw water and therefore, there was some altercation between both of them. In the evening on the date of occurrence also altercation took place on this account. The matter was reported in the police station by Balbir Singh by submitting an application (Ex. Ka-1) on the basis of which chick F.I.R. (Ex. Ka-16) was recorded at 8:50 p.m.

3. The investigation was conducted by Sub Inspector Vishnu Chandra Gautam (PW-9). He reached the spot and took into possession the dead body of Baldev Singh and prepared Panchnama (Ex. Ka-3) and other relating papers. He inspected the spot and handed over the dead body of Baldev Singh to constable Mahendra Pal Singh and Phool Singh for getting its postmortem. The postmortem of the dead body was conducted on 5.5.1988 at 4:00 p.m. in Civil Hospital, Haldwani by Dr. S.P. Ojha (PW-4). The accused were arrested.

4. On completion of the investigation, the challan was presented and accused-Iqbal Singh, Gurubachan Singh and Sukhpal Singh were charge sheeted under Section 302 read with Section 34 of the I.P.C. to which they pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case produced as many as ten witnesses. Balbir Singh, the complainant (PW-1), who is the real brother of the deceased, Malook Singh, (PW-2), Gurudev Singh (PW-3) are all the three eyewitnesses. Dr. S.P. Ojha (PW-4) conducted the autopsy on the dead body of Baldev Singh (deceased). Jeeta Singh (PW-5) joined the investigation and was present at the time of spot inspection and had witnessed the recovery of empty cartridges and other articles from the spot and Panchnama. S.H.O. Ishwar Chandra Sharma (PW-6) conducted the investigation from 01.05.1988 to 13.06.1988 as he was

posted at police station Rudrapur and arrested the accused persons and recovered the licensed gun (Ex.-1) alongwith three alive cartridges (Ex.-3) from the house of Manveer Singh, brother of accused-Sukhpal Singh. Sub Inspector Devki Nandan (PW-7) had prepared the Panchnama on the direction of the Investigating Officer and was also the witness of articles such as, one blood stained Gamchha, shoes which were lying near the dead body of the deceased and one 12 bore empty cartridge and two 9 mm empty cartridges. According to him, Panchnama was prepared and the proceedings for preparation of Panchnama was initiated at 10:05 p.m. on 04.05.1988 and it was concluded at 12:30 a.m. on 05.05.1988. Head Constable Mohd. Tahir (PW-8) was present in police station Rudrapur on 04.05.1988 at 8:50 p.m. when Balbir Singh, the complainant (PW-1) had submitted written application (Ex. Ka-1) and on the basis of which he recorded chick F.I.R. (Ex. Ka-16). Vishnu Chandra Gautam (PW-9) is the Investigating Officer and constable Mahendra Pal Singh (PW10) accompanied Vishnu Chandra Gautam to the place of occurrence and had been handed over the dead body of Baldev Singh and he alongwith Phool Singh carried the same to the hospital for the autopsy.

6. When examined under Section 313 Cr.P.C. the incriminating evidence was put to the accused-respondents, which they denied and claimed innocence and false implication. Accused-Iqbal Singh stated that he had an altercation with Sub Inspector Devki Nandan prior to the occurrence and he had made written complaint to D.I.G. and other senior police officer. On this account the accused have been falsely implicated. In defence accused-respondents produced Dhyan Singh, Junior Engineer, Hydel Project, Rudrapur (DW-1) who stated that there was no streetlight in Sanjay Nagar Market in the month of May 1988. Umesh Ram, Seenchpal, Irrigation Department, Rudrapur (DW-2) stated that there was no maize in the field bearing No. 15 to 64 of Guru Bachan Singh during Kharif crop and there is a separate Kulaba for irrigating field No. 15 to 64 and a separate Kulaba for field No. 66 to 70 which are owned by Harnam Singh and Jeet Singh sons of Batta Singh. The distance between two Kulaba is 400 meters.

7. The trial court after taking into consideration the evidence and the documents available on record came to the conclusion that the prosecution has not been able to prove its case against all the three accused-respondents beyond reasonable

shadow of doubt and thereby acquitted all the three accused. While acquitting the accused the trial court had arrived at the conclusion that there is no corroboration between the ocular testimony and medical evidence. The trial court further concluded that it is not proved from the ballistic report that the licensed gun of Sukhpal Singh was used in the incident as empty cartridges recovered from the spot were not fired from the said gun as per the report of ballistic expert. It has further been observed that it is not being proved from the record that all the witnesses were present at the time of the occurrence as their presence at the place of occurrence is not natural and therefore prosecution story appears to be doubtful.

8. We have heard Mr. Nandan Arya, learned A.G.A. for the State and Mr. S.K. Agarwal, learned Sr. Advocate assisted by Mr. B.S. Adhikari, learned Counsel for the accused-respondents and perused the material available on record.

9. The postmortem was conducted by Dr. S.P. Ojha (PW-4), who found the following injuries on the person of the deceased:

(i) Gun shot wound of in let 1 c.m. x 1 c.m. with blackening of margin around the wound with fracture of zygomatic bone on the side just lateral to left eye directing to the right and posteriorly.

(ii) Gun shot wound of out-let 1.5 c.m. x 1 c.m. on the right occiput.

(iii) Gun shot wound of in let 5 c.m. x 4 c.m. on the lateral aspect of left shoulder directing medially with fracture of II and III rib with blackening of margin. 13 pellets recovered from the wound alongwith four pieces of wads (tickless).

(iv) Gun shot wound of in let 7 c.m. x 5 c.m. on the upper part of right side of chest near the shoulder joint with blackening of margin. There is fracture of outer third of clavicle (r) second and third rib, nine pellets removed with three pieces of wads.

(v) Gun shot wound of in let 1 c.m. x 1 c.m. with blackening of margin on the left front of chest just above the left nipple directing downward medially.

10. On internal examination the doctor found the following injuries:

- (1) Head and neck: the bones of scalp were fractured under the wound.
- (2) Membranes: Perforated under the wound. Subdural haemorrhage present.
- (3) Brain: Lacerated under the wound through and through. Intra-cerebral hamatoma present.
- (4) Base: N.A.D.
- (5) Vertebrae. N.A.D.
- (6) Spinal Cord. N.A.D.

(II) Thorax

- (a) Walls ribs, cartilages ruptured under the wound. Fracture of rib already mentioned.
- (b) Pleura: Pucctured under the wound. Filled with blood on both side.
- (c) N.A.D.
- (d) Right lung: punctured wound in its upper part. Seven pellets removed.
- (e) Left lungs: punctured wound as its upper part. Eight pellets removed.
- (f) Perecardium: punctured over left side of heart.
- (g) Heart: punctured in the left verticle through and through heart empty.
- (h) N.A.D.
- (i) Bullet removed from the body of thoracic. Seven vertebrae imbedded in it posterior to heart.

(III) Abdomen:

- (1) Wall: N.A.D.
- (2) Cavity: N.A.D.

(3) Peritoneum: N.A.D.

(4) Teeth: 32

(5) N.A.D.

(6) Stomach: filled with semi digested food.

(7) Small intestine: filled with gas and fluid. Pale

(8) Large intestine: filled with gas and faces.

(9) Liver: 8 ounce Pale: N.A.D. Gall bladder: Half full.

(10) Pancreas: N.A.D.

(11) Spleen: 4 ounce pale normal

(12) Kidney: 6 ounce both N.A.d. (Pale)

(13) Bladder: half full.

(14) Genitals: normal

11. As per the opinion of the doctor the cause of death was due to haemorrhage and shock.

12. Mr. Nandan Arya, learned A.G.A. for the State at the outset argued that prosecution case mainly rests on the ocular testimony of three witnesses, namely, Balbir Singh, the complainant and real brother of deceased (PW-1), Malook Singh, the independent eyewitness (PW-2) and Gurudev Singh cousin brother of deceased (PW-3). He further argued that all the three witnesses have categorically stated that all the three accused-respondents had fired from their respective weapons, which hit Baldev Singh (deceased) who succumbed to his injuries at the spot. He further pointed out that report with regard to the incident was lodged promptly and the medical evidence fully supports the ocular testimony of the three witnesses. All the three witnesses categorically stated that two shots were fired by Iqbal Singh and one shot each was fired by Sukhpal Singh and Guru Bachan

Singh. In the postmortem report, there are four entry wounds; namely, injury No. 1, 3, 4 and 5 are entry wounds while injury No. 2 is exit wound.

13. Learned A.G.A. further argued that Balbir Singh, the complainant (PW-1) categorically stated that altercation had taken place between Baldev Singh and Guru Bachan Singh ten days prior to the occurrence and even at about 4-5 p.m. on the date of occurrence. The learned A.G.A. argued that the merely because empty cartridges recovered from the spot were not fired from Sukhpal Singh's licensee gun would not adversely affect the testimony of the eyewitnesses who have given the consistent and cogent account with regard to occurrence.

14. On the other hand Mr. S.K. Agarwal, learned Sr. Advocate argued that from the evidence available on record, it is well proved that the F.I.R. is not recorded at the time alleged by the prosecution. He pointed out that according to Balbir Singh (PW-1) the copy of chick F.I.R. was not given to him on the same day but it was given to him on the next day after the postmortem of the dead body was conducted clearly indicates that F.I.R. was recorded much after the time mentioned in the F.I.R. and this time was utilized by the prosecution to deliberate, concoct and falsely implicate the accused persons. Learned Counsel for the respondents has challenged the testimony of the three eyewitnesses saying that Balbir Singh (PW-1) and Gurdev Singh (PW-3) are the related and interested witness being the brother and cousin brother of the deceased. He further argued that it is not possible that all the three witnesses could be present at the place of occurrence. According to them, they have gone to make some purchases i.e. vegetables and some other articles but Malook Singh (PW-2) stated that they had not made any purchase till the time of occurrence. Therefore, all the three witnesses are just chance witnesses, therefore cannot be relied and the conviction cannot be based on their testimony.

15. Learned Counsel for the respondents argued that there is no evidence that there was source of light at the place of occurrence as Dhyan Singh (DW-1) stated that there was no light in the Sanjay Nagar Market in the month of May 1988.

16. On careful consideration of rival submissions made by learned Counsel for the parties and the material available on record, we are of the opinion that the finding

of the trial court are totally perverse and misconceived. The trial court has not considered the evidence in the proper prospective. We have gone through the testimony of Balbir Singh, real brother of deceased (PW-1), who had made a complaint to the police immediately after the occurrence. This witness categorically stated that he alongwith his brother Baldev Singh (deceased) and Gurdev Singh (PW-3) had gone to Sanjay Nagar Market for making some purchases where all the three accused armed with their respective weapons i.e. Iqbal Singh armed with pistol, Gur Bachan Singh and Sukhpal Singh armed with double barrel gun each, came there and while hurling abuses exhorted towards Baldev Singh (deceased) that they will see him on that day. Meanwhile Malook Singh (PW-2) also reached the spot and tried to intervene but on the exhortation of Iqbal Singh, all the three accused-respondents fired towards Baldev Singh (deceased). On receiving the firearm injuries Baldev Singh (deceased) fell down and died at the spot. Balbir Singh (PW-1) categorically stated that he had procured a plain paper and pen from a shop in the market and had written the complaint Ex. Ka-1 there and then only and thereafter submitted complaint in police station Rudrapur. He also proved the motive for causing the death of Baldev Singh. Though this witness was not present at the time of earlier dispute about ten days ago between Baldev Singh (deceased) and Guru Bachan Singh and also an altercation between them on the date of occurrence. However, he states that when the altercation took place on the date of occurrence he was at a distance of one furlong and the entire incident was disclosed to him by Baldev Singh. He did not report the matter to the police as such small matter continue happening in day today life. This witness was thoroughly cross examined but nothing fruitful could be elicited to demolish his testimony. He categorically stated that Iqbal Singh had fired two shots at his brother while one shot each was fired by Sukhpal Singh and Guru Bachan Singh.

17. Malook Singh (PW-2) is an independent witness. He was known to the accused as well as to complainant party. He categorically denied having any relationship with the complainant. He also supported and corroborated the testimony of Balbir Singh (PW-1) on all material points. He categorically stated that Iqbal Singh had fired two shots while one shot each was fired by Guru Bachan Singh and Sukhpal Singh. All the three witnesses categorically stated that all the

shops were having gaslights in Sanjay Nagar Market. Moreover, it is common knowledge that if there is no electricity then all the shops have gaslights or patromax in their shops. A suggestion was given to Malook Singh (PW-2) that he owed Rs. 30-40 thousand to Guru Bachan Singh on account of payment for a tractor and for this reason he was deposing against the accused, however, no cogent evidence has been produced by the defence to prove that this witness had to pay the said amount to Guru Bachan Singh. Thus, we find no evidence on record to prove that this witness is in any way biased against the accused or he was related or interested in the complainant party. He categorically denied a suggestion put to him that he had appeared in twenty other cases as a witness. To prove this suggestion the defence has not produced any documentary evidence showing that this witness is a stock witness or had been appearing in many other cases. Gurdev Singh (PW-3) is of course cousin brother of the deceased and the complainant. His statement was recorded at the spot. This witness has also been thoroughly cross-examined but his testimony has not at all been shaken on any account.

18. After going through the testimony of these three witnesses, we are of the opinion that this deposition is cogent, truthful and their presence at the spot was natural. The ocular testimony is duly supported and corroborated by the medical evidence. As per the postmortem report five gunshots wounds have been found on the person of the deceased. Out of which injuries No. 1, 3, 4 and 5 are entry wound while injury No. 2 is exit wound. All the three witnesses categorically stated that Iqbal Singh had fired two shots while Guru Bachan Singh and Sukhpal Singh fired one shot each. According to the witnesses, the accused had fired at Baldev Singh (deceased) from a distance of 2-3 paces. In the cross examination Dr. S.P. Ojha stated that injuries could have been caused from a distance of six feets and injuries No. 1, 2 and 5 were individually sufficient to cause death of Baldev Singh (deceased).

19. Learned Counsel for the respondents argued that Balbir Singh (PW-1) did not check to find out that after receiving injuries whether his brother was alive or not. The argument has not force as this witness categorically stated that after receiving the gunshots injuries Baldev Singh (deceased) had fallen on the ground and died

at the spot. Even as per the opinion of doctor S.P. Ojha (PW-4) the death could be instant after receipt of the injuries.

20. It is true that as per the ballistic expert the empty cartridges taken into possession from the spot were not fired from the licensed gun of Sukhpal Singh, however, this report does not affect the prosecution case in view of the cogent and trustworthy evidence of all the three eyewitnesses.

21. The trial court has mentioned in paragraph-21 of the judgment that Baldev Singh (deceased) was involved in another criminal case and his father Harnam Singh was also involved in some cases. But in our view, these facts does not at all have any impact on the veracity of the testimony of the eyewitnesses. How does it effect the present case if the deceased was involved in some other criminal case. There is nothing on record to prove that this incident was a result of the enmity of the complainant or their family with any other persons or this was a handiwork of some other criminals who were having enmity against the complainant party. Rather the defence has failed to produce any documentary or any other evidence to prove that some other persons were having enmity against Baldev Singh (deceased) or they could be involved to cause his death.

22. From the entire evidence available on record we are of the view that the prosecution has been able to prove its case beyond reasonable doubt and the finding of the trial court rejecting the ocular testimony of the three witnesses appears to be misconceived. It has been held by the Apex Court in a catena of judgments that when there is any contradiction between ocular version and the medical evidence or the ballistic expert's report then ocular version would prevail. In the instant case ocular version appears to be trustworthy and reliable. As discussed above the presence of the witnesses at the scene of occurrence appears to be quite natural. Though two of the witnesses are related to Baldev Singh (deceased) but this factor only cannot be said to be sufficient for discarding their testimony. In case any suspicion is created with regard to the weapons used in the commission of the crime then in the light of the truthful, reliable and trustworthy testimony of the eyewitness, the opinion of the expert cannot be a decisive factor and thus would not affect the value and credibility of the

prosecution case.

23. In view of the above discussion, we find that the prosecution has been able to prove its case, which points out the finger of guilt towards the accused-respondents. Accordingly, the judgment and order of the trial court dated 29.08.1991 is set aside. Since accused-Iqbal Singh is reported to have died on 21.10.2008, thus conviction and sentence of Iqbal Singh stand abated. Accused, namely, Guru Bachan Singh and Sukhbinder Singh alias Sukh Pal Singh are held guilty for commission of offence punishable under Section 302 read with Section 34 of the I.P.C. and are convicted accordingly. They are sentenced to undergo life imprisonment. Registry is directed to send back the lower court record so that accused-respondents may be taken into custody forthwith to serve out the sentence.

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