

Prabhakar Singh and Another Vs. State of U.P.

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Court : Allahabad

Decided On : May-06-2011

Judge : Amar Saran, J.

Acts : Indian Penal Code (IPC) - Section 147, 201, 302; Arms Act - Section 25, 25/4; Code Of Criminal Procedure (Cr.P.C) - Section 366,

Appeal No. : 59 of 2010

Appellant : Prabhakar Singh and Another

Respondent : State of U.P.

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Apul Misra; Dhriendra.Kumar.Srivastva; P.N. Misra, Advs

Judgement :

1. The abovementioned Capital Criminal Appeal, Criminal Appeal and Criminal Reference arise out of the judgement of the Additional Sessions Judge/F.T.C. Court No. 4, Allahabad dated 21.12.2009.

2. The Capital Criminal Appeal No. 59 of 2010 has been preferred by the appellants Prabhakar Singh and Kamlakar Singh. The said appellants have been awarded a sentence of death and a fine of Rs. 25,000/- each under section 302 IPC. A reference No. 3 of 2010 for confirmation of their death sentence has also been received from the Sessions Court. under section 366 Cr. P. C.. Criminal

Appeal No. 298 of 2010 has been preferred by the appellants Dev Sharan Singh, Raj Narain Singh, Ram Narain Singh @ Daroga Singh, Narendra Pratap Singh, Diwakar Singh and Baj Bahadur Singh who have been awarded imprisonment for life under section 302 IPC and fines of Rs. 20,000/- each. All the 8 appellants above named have also been sentenced to 5 years' R.I. under section 201 IPC and fines of Rs.5,000/- each. All the appellants have further been convicted to one year's R.I. under section 147 IPC with fines of Rs. 1000/- each and two years R.I. under section 25 of the Arms Act and fines of Rs. 2000/- each. In default of payment of fine regarding the sentence under section 302 IPC, the appellants will have to undergo three years' simple imprisonment. For default of payment of fine under section 201 IPC one year's simple imprisonment, for the sentence under section 147 IPC, three months' simple imprisonment and for default of fine under section 25 Arms Act six months' simple imprisonment have been awarded. All the sentences were to run concurrently.

3. We have heard Sri P.N. Misra, Senior Advocate assisted by Sri Devendra Kumar Srivastava for the appellants and Km. Usha Kiran, learned A.G.A. for the State.

4. The informant Raj Kumar Tiwari, P.W.1 has lodged a report at P.S. Koraon on 24.12.2002 alleging that he had lodged a report regarding missing of his brother Kaushal Kishore Tiwari, Pradhan, gram panchayat Chapar on 19.12.2002. He had learnt from informed sources that his brother had been murdered in the "Arhar" field of Laxmi Narain Tiwari in village Hanumanganj. After that the body had been thrown into the Gorma river. On that information, the informant Raj Kumar Tiwari, his father Kamla Shankar and uncle Uma Shankar and Vidya Kant Tiwari, P.W. 2 and Dev Kant Tiwari @ Sharma and other villagers searched for the body on the banks of the river. When they reached Kau Ghat, P.S. Shahpur, in district Rewa, they recovered the dismembered corpse of Kaushal Kishore Tiwari from a plastic bag which also contained some stones. They gave information about these facts to Police Station Shahpur, district Rewa on 22.12.2002, where inquest was performed and post mortem was done. After the last rites, Raj Kumar Tiwari lodged a written F.I.R. on 24.12.2002 at 4.30 p.m. at P.S. Koraon on the basis of which a case was registered at Crime No. 298 of 2002 under sections 147, 302,

201, 506 IPC at P.S. Koraon, district Allahabad (Ext. Ka-1).

5. As per the post-mortem conducted at C.H.C., Hanumana, district Rewa by P.W. 8 Dr. Basant Lal on 22.12.2002 at 12.30 p.m. the dead body was lying flat on a platform surface. Foul smell was coming out. Multiple blisters were present. Some of them had been destroyed. Palms of both the hands which had remained in dirty water bore the look of a dhobi's hand. The body was putrefied. The head was missing. Both thighs were cut transversely, and the upper 1/3 rd portion of both thighs were missing and separated from the body. The Following ante-mortem injuries were seen:-

1. Head was amputated transversely from back of neck behind thyroid.
2. Incised wound 6" x 2" x bone deep situate obliquely anterior aspect of left upper arm.
3. Incised wound 4" x 2 " x bone deep situate anterior aspect of of right upper arm obliquely.
4. Both thighs were cut transversely (slight obliquely in the upper 1/3 rd of arm muscle and bones were cut.

Cause of death was haemorrhage, because of cutting of the greater blood vessels of the neck and both thighs. The time of death was 8 to 10 days earlier.

6. The prosecution has examined 12 witnesses in this case. P.W. 1 Raj Kumar Tiawari, who was the informant and brother of the deceased. P.W. 2 Vidya Kant Tiwari, who was a witness of the recovery of the dead body. P.W. 3 SurendraPrasad Misra, who was the witness of recovery of blood near the "arhar" field of Laxmi Narain Tiwari on 24.12.2002. P.W. 4 Suresh Kumar Tiwari, P.W. 5 Kamleshwar Prasad, P.W. 6 Ram Awadh, P.W. 7 K.K. Pandey, P.W. 8 Dr. Basant Lal, P.W. 9 Anil Kumar Singh, P.W. 10 Constable Sant Ram Yadav, P.W. 11 S.I. Kedar Nath Singh, P.W. 12 S.I. Gulam Nizamuddin.

7. P.W. 1 Raj Kumar Tiwari, is the informant of this case and brother of the deceased Kaushal Kishore Tiwari. In his evidence in court he has reiterated his

version in his F.I.R. lodged on 24.12.2002. He has deposed that his brother was the pradhan of village Chapar. On 13.2.2002 his brother, had gone to the Tehsil to collect the pensions of the old age pensioners. As he did not return that day, the informant and other villagers searched for him for 4 or 5 days. Then they lodged his missing report on 19.12.2002, and kept searching for him. During the course of search they learnt that the appellants Dev Sharan, Raj Narain Singh, Ram Narayan Singh @ Daroga, Baj Bahadur, Kamlakar Singh, Prabhakar Singh, Diwakar Singh, Narendra Singh had murdered the deceased in Dr. Laxmi Narain's Arhar field. and cut his body into pieces, put the pieces in a sack and thrown it in the Gorma river at P.S. Shahpur, district Rewa. Then they made a search in the field of Laxmi Narain Tiwari, where they saw some blood stains. Thereafter they searched on the banks of the Gorma river and at Kau Ghat they spotted some blood stains. Then some persons entered the Gorma river, where they retrieved the dismembered corpse , whose head and both legs were missing, which was kept in a plastic bag. Due information was given at P.S. Hahpur on 22.12.02, in which jurisdiction inquest and post mortem was performed. After post mortem they were given the dead body for cremation. Thereafter the FIR was lodged on 24.12.02 at P.S. Koraon.

8. P.W. 4 Suresh Kumar Tiwari is the eye witness in this case.He states that on 13.12.2002 this witness and one Vijay Shankar (who was not examined) were returning after meeting Ram Gopal Shukla resident of village Hardaun.

9. When they reached near Laxmi Narain Tiwari's "arhar" field at about 6.30 p.m. they saw a drain and they stopped there to ease themselves. A large number of persons including the appellants Prabhakar Singh, Kamlakar Singh, Diwakar Singh, Narendra Singh, Devsaran, Ram Saran, Raj Narain and Baj Bahadur Singh were present there with lathis, dandas, and sharp edged weapons. They were still sitting there when at about 7.30 pm they saw the deceased Kaushal Kishore Tiwari, the village pradhan passing the Arhar field, and Prabhakar Singh and Kamlakar Singh assaulting the deceased Kaushal Kishore the Pradhan with hammers. As a result of the hammer injuries, the deceased fell down, whereupon all the 8 accused persons are said to have assaulted him with various weapons and to have cut his body into pieces. Thereafter Baj Bahadur Singh brought two

sacks and lathis from appellant Devsaran's house. They put cut body of the deceased into two sacks. They hung the first sack on to a lathi, which Kamlakar Singh, Prabhakar Singh and Narendra Singh carried in the western direction.

10. The second sack was carried in the southern direction by Baj Bahadur Singh, Devsaran Singh, Ram Narain and Ram Saran. He, however, did not disclose the incident to any one as he was afraid, but he revealed this fact after 5 or 6 days to Kamla Shankar Tiwari, father of Kaushal Kishore. Later, he learnt that Kaushal Kishore's corpse was found in the Gorma river. He disclosed this fact before the appellants went to jail, when they were absconding.

11. P.W. 5 Kamleshwar Prasad Tiwari deposes that on 13.12.2002 when he was returning from the jungle and after he crossed Hanumanganj village, then he saw Raj Narain, Devsaran Singh, Prabhakar Singh, Diwakar Singh carrying some thing tied to a sack on a lathi at about 9.30-10 p.m.

12. There was moon light. He disclosed this fact to Raj Kumar Tiwari next morning. He then took Raj Kumar to the spot where he had seen the appellants carrying a sack on a lathi. They saw blood stains on the ground. After one week on 21.12.2002 when Kaushal Kishore body was not recovered, they came to the spot again and followed the trail of blood. They proceeded about 6 kms. at the bank of Gorma river in M.P., where they saw some blood marks. With the help of 10 to 20 co-villagers, they entered the river. In the river, they found a sack tied with a rope. In the sack there was a headless dead body, which they identified to be that of the deceased Kaushal Kishore Tiwari @ Bhuwar.

13. P.W. 6 Ram Awadh has deposed that on 13.12.2002, the deceased Kaushal Kishore had returned to Hanumanganj at about 6.30-7 p.m. on the same Commander Jeep on which he was travelling. He was not carrying any bag at that time. Apart from the aforesaid witnesses of fact, P.W. 2, P.W. 3, P.W. 7, P.W. 8, P.W.9, P.W. 10, P.W.11 and P.W. 12 are the other formal witnesses in this case.

14. P.W. 2 Vidya Kant Tiwari is the private witness of recovery of the dead body. He deposes that on 13.12.2002 the deceased had gone to Devghat Tehsil to find out about the old age pension of co-villagers, after he did not return in the evening,

the father of the deceased Kamla Shankar and brother Raj Kumar searched for him amongst his relatives. When he was still not found, Raj Kumar gave information at P.S. Koraon and kept searching for the deceased. At the "arhar" field of Laxmi Narain Tiwari in Hanumanganj, they saw some blood stains, then their suspicion arose that the deceased had been murdered. The villagers and Koraon police reached the Gorma river, whilst searching for the deceased on the banks of the river, blood marks were seen on the way. They searched in the river, where they found the dead body lying in a sack. The sack was tied with a nylon rope. The head and both legs of the deceased were missing.

15. He was wearing a half vest and light blue underwear. Raj Kumar Tiwari gave information about the discovery of the corpse to P.S. Shahpur, district Rewa. He also signed on the recovery memo of the dead body. The recovery memo was marked as (Ext. Ka-3).

P.W. 3 Surendra Prasad Mishra has deposed that on 24.12.2002, the Investigating Officer collected the plain and blood stained mud from the field of Laxmi Narain Tiwari, which he kept in two separate boxes which he sealed.

16. P.W. 7 S.I. Krishna Kumar Pandey is the first Investigating Officer of this case. The F.I.R. was registered in his presence on 24.12.2002 at P.S. Koraon. On 15.1.2003 he also collected the earlier report No. 22 dated 19.12.2002 and the report dated 24.12.2002 and entered the same in his case diary. He inspected the spot on the pointing out of the informant, then proceeded to the 'arhar' field in village Hanumanganj, and collected plain and blood stained earth in two boxes. He got the thumb marks of the witnesses Raj Kumar, Surendra Prasad Mishra affixed on the recovery memo on 28.12.2002. He inspected the place, where the dead body was recovered and prepared the site plan of the said place at Kaughat, jungle Gauri beat, at the Gorma river and prepared the site plan on the pointing out of the informant (Ext. Ka-1). He also collected the papers relating to the post-mortem and inquest and other formalities from the M.P. Police.

17. He recorded the statement of the accused on 6.1.2003 in jail. He also recorded the statement of the eye witnesses Suresh Tiwari, Vijay Shankar and Kamleshwar Prasad and the other witnesses. On 14.12.03, this witness, Constable Anil Singh,

Sant Ram Yadav, Raj Ram Pandey, Constable Gyan Singh, Constable Ved Tiari and driver Shiv Kumar Mishra took the accused persons Raj Narain Singh, Ram Narain Singh, Narendra Pratap Singh, Prabhakar Singh, Diwarkar Singh, Baj Bahadur Singh and Devsaran on police remand from Naini jail. After getting their medical examination done they then reached the Belan river. The appellants Raj Narain Singh, Narendra Pratap Singh got down the Jeep and after removing some mud in the Belan river, Raj Narain Singh took out a gandasa, Narendra Pratap Singh took out a banka from near by. The accused claimed to have thrown the severed neck of the deceased, which they had amputated it into the river, but the said portion of the body could not be recovered, in spite of search. Then they came along with the accused persons to village Hardaun. Appellants Prabhkar Singh got down from the Jeep and took out a hammer and a knife from the front of his roof over a dhanni. After that appellant Baj Bahadur Singh took them to the wheat field in front of his house, from where he got recovered a banka. The appellant Devsaran got a banka recovered from the garden in front of his house. Then appellant Diwakar got a knife recovered after digging the earth near a mango tree. The appellant Ram Narain Singh got a knife recovered from a "charahi" situate in front of his house. The accused persons admitted to the police to have committed the murder of Kaushal Kishore with these weapons. He also submitted a report of a case under section 25 of the Arms Act against the appellants on the basis of these recoveries. From appellant Kamlakar Singh a knife was got recovered on 28.1.2003. P.W. 8 Dr. Basant Lal has conducted the post-mortem as detailed above.

18. P.w. 9 Constable Anil Kumar Singh who is also one of the witnesses has deposed about the recovery of the knife on 28.1.2003 at the instance of appellant Kamlakar, who was also taken into custody from jail on a police remand. He got the knife recovered from the Belan river.

19. P.W.10 Constable Sant Ram Yadav is also an eye witness of recovery of weapons from various accused on 15.1.2003 after the accused persons were taken on police remand as already described in the evidence of P.W. 7 S.I. Krishna Kant Pandey.

20. P.W. 11, Kedar Nath Singh is the second I.O. in this case, who assumed investigation of this case after the transfer of S.O. K.K. Pandey. On 7.2.2003 he submitted the chargesheet (Ext. Ka-28) after perusal of the earlier papers prepared by the first Investigating Officer.

21. P.W. 12 S.I. Gulam Nizamuddin has deposed that on 16.1.2003 he registered a case under sections 25/4 Arms Act at Crime Nos. 11, 12, 13, 14, 15, 16 and 17 of 2003. He entered the statements of the accused in the case diary and also prepared the recovery memos and site plans of the recoveries. He conducted the investigation and also submitted charge sheets under section 25/4 of the Arms Act against all the accused persons.

22. It was submitted by Sri P.N. Misra that there is no reliable evidence to connect the appellants with this offence. Even though, the solitary eye witness PW 4, Suresh Kumar Tiwari and other witnesses of fact claim to have seen the murder, or the accused carrying away some thing in a sack and also there was evidence that the deceased was travelling along with the witness (P.W.6 Ram Awadh) in a Commander Jeep on 13.12.2002, yet in the missing report, which was lodged on 19.12.2002 at P.S. Koraon it was mentioned that some unknown persons had committed the crime. Even in the information that was given at P.S. Shahpur, district Rewa, M.P., on 22.12.2002 after the amputated corpse was recovered in a sack from the Gorma river, at Kaughat, M.P., it was mentioned that some unknown persons had committed the crime. This is admitted in the cross examination of the I.O., PW 7 K.K. Pandey.

23. There was no mention about the source of the names of the accused persons, even in the F.I.R., which was registered on 24.12.2002 at 4.30 p.m. at P.S. Koraon. The person, who had informed the informant about the participation of the appellants, was not mentioned, but simply their involvement was alleged. No blood was seen on the weapons, which were said to have been recovered. There is also no confirmatory Serologist report. So far as the alleged confessions before the police are concerned, they are not admissible in evidence. The disclosure by the alleged eye witnesses and other witnesses of fact was highly delayed, which casts doubt as to their reliability. The witnesses P.W. 4 and 5 were relative and chance

witnesses. The witness P.W. 4 claims to be easing himself in the darkness. There was no mention of any torch light etc.

24. Learned A.G.A. Km. Usha Kiran argued that this was a ghastly murder, where the body of the deceased was cut into pieces and carried away in a sack and thrown in the Gorma river and there was an eyewitness account.

25. Considering the terror that must have been generated in this incident, the non disclosure of the incident by the witnesses was very natural. The statement of P.W. 4, the eye witness was also a natural statement and he gave a good explanation for his presence at the spot.

26. We have carefully gone through the record of this case and judgment and submissions of the learned counsel for parties.

27. In our view, if P.W. 4 Suresh Kumar Tiwari, the star eyewitness had reached the spot at the time of incident and was present at the spot for easing himself, and the incident had taken place in his presence as detailed above, his non disclosure of the incident to any other person immediately after the incident casts a grave doubt as to his reliability. As the other allegedly accompanying person, Vijay has not even been examined, this witness would be the solitary eye witness in this case, and hence his evidence needs to be examined with great care and circumspection.

28. PW 4 appears to be a chance witness as he resides in village Devghat which was 10 kms away. He explains his presence at the spot by saying that he had gone to visit Ram Gopal Shukla, who was a resident of village Hardaun and he was sitting at that spot from 6.30 p.m. till 7.30 p.m., simply for easing himself. He admits in his evidence in his cross examination that his house is 10 kms. from the place of incident. Ram Gopal's house was 1 km. away in the south westerly direction. There is an Amedkar road, which is 2 Kms. from Ram Gopal's house and he could have proceeded directly to reach the said road, without making a detour to the place of incident, where he went to ease himself which was 400 meters away from the passage of the road. He also admits that the villagers of Ram Gopal Shukla's village used to ease themselves in the same village, but he

states that he did not ease himself in Ram Gopal Shukla's village, because he was not feeling the need to ease himself there. He, therefore, happened to ease himself at the spot as a chance witness, who actually did not appear to have any good reason to be present there.

29. PW 4 further admits that the uncle of the informant and deceased Uma Shankar Tiwari was his own maternal uncle, therefore, there was a close relationship of the informant's family and this witness. He further admits that from the field of Laxmi Narain, the house of Raj Kumar was only 400 meters away. In spite of the fact that he was closely related to Raj Kumar, he did not even go the distance of 400 meters to inform Raj Kumar about this incident, which casts a grave doubt about his presence at the spot.

30. P.W. 4 also mentioned that he had disclosed about this incident after 5 or 6 days to Kamla Shankar Tiwari, father of Kaushal Kishore. In spite of this disclosure, in the gumsudagi report, which was lodged on 19.12.2002, it was claimed by Raj Kumar Tiwari, the son of Kamla Shankar Tiwari and another brother of the deceased that some unknown persons had committed the crime, As admitted by the I.O., PW 7 K.K. Pandey, in the information given by the informant Raj Kumar Tiwari at P.S. Shahpur, district Rewa, M.P., after the discovery of the hacked corpse from a sack in the Gorma river at Kaughat, M.P., it was mentioned that unknown persons had committed the crime. These facts are wholly inconsistent with the alleged disclosure by this witness after 5 or 6 days of the incident to Kamla Shankar Tiwari father of PW 1 Raj Kumar Tiwari, the informant and the deceased Kaushal Kishore Tiwari.

31. He further states that he had arrived in Ram Gopal's house at 10 a.m. and had no good reason for his remaining there till evening. He simply states that he had gone to meet Ram Gopal, even though a lot of agricultural operations were needed in the fields such as weeding, irrigation etc., at that time. His ostensible reason given in Court for going to Ram Gopal's place simply to meet Ram Gopal's son, appears unworthy of credence.

32. He did not show the spot, where he was easing himself to the Investigating Officer.

33. He further admits that one hour before the incident, the sun had set and they had no torch or other source of light. The lamps had burnt in the houses about 1 hour earlier.

34. Therefore, there was absence of light at the place of incident. His case that he saw Kamlakar Singh assaulting the deceased with a hammer on his head was not mentioned to the Investigating Officer. He claims to have given his statement to the Investigating Officer 5 or 6 days after this incident, that would be by 18 or 19 th December, 2002. However according to the Investigating Officer, PW 7 K.K. Pandey, his statement was only recorded as late as on 23 rd January, 2003 and the witness had never contacted the Investigating Officer for a period of one month and 10 days after the incident, although, the witness claims that he was in the village, when the police had come to the "arhar" field of Laxmi Narain, that would be on 24.12.2002.

35. He is unable to state as to which accused was carrying what weapon.

36. For all these reasons the testimony of this witness is highly suspect and it would hazardous for the Court to rely on the testimony of this solitary eye witness.

37. So far as the evidence in this case regarding the recovery of the dead body of the deceased from the Gorma river after some blood stains were seen at Kaughat in M.P, the said body not having been retrieved at the instance of the accused persons, the retrieval of the body also does not provide any corroborative evidence of the complicity of the accused in this case. P.W. 1, the informant Raj Kumar Tiwari has also not been able to advance the case of the prosecution. Even though he had learnt about the names of the appellants' parents after 4 or 5 days of the incident, which took place on 13.12.2002, in the gumsudagi (missing report) which was lodged on 19.12.2002, the accused were described as unknown persons. Also even in the application, which was given on 22.12.2002 at P.S. Shahpur, district Rewa, it was claimed that some unknown persons had murdered his brother Kaushal Kishore alias Bhunwar by cutting his neck and legs in the field of Laxmi Narain in village Hanumanganj and had thrown the amputated dead body into the Gorma river after putting a stone in the sack containing the amputated corpse. Although Suresh Tiwari and another were present, when the body was

recovered, yet in the application dated 22.12.2002, given at P.S. Shahpur, it was claimed that the murder had been committed by unknown persons.

38. It was alleged that there was a dispute of the informant Raj Kumar Tiwari and others with the appellants over gram sabha land as the appellants had earlier been given a lease by Sita Devi, the earlier Pradhan. But after the deceased became Pradhan, he wanted them to return the land and he had even approached the Civil Court in this regard. But he was unable to mention the year, when the patta was given by Sita Devi in favour of the appellants. Subsequently, he admits that Sita Devi had not given any lease in favour of the appellant Devsaran and others. He also admits that he had no knowledge whether the deceased had initiated any civil proceedings against the appellants for return of the land. Thus, he gives up even the weak motive earlier set up by him in his further cross examination. In the examination-in-chief, as noted above, no motive for the crime was mentioned.

39. He also admits that 15 or 16 persons had fought the Village Pradhani election against his brother Kaushal Kishore and some of the appellants, Baj Bahadur, Dev Saran, Kamalakar Singh and Prabhakar Singh had supported Kaushal Kishore Tiwari, the deceased, in the Pradhani elections. If that was the case, then there would have been some inter se dispute between the appellants, and all the 8 appellants were unlikely to have come together for committing this crime. Also the accused who supported the deceased during the elections would not have a motive for committing his murder. P.W. 5 Kamleshwar Prasad Tiwari, claims to have seen the appellants Raj Narain, Dev Saran Singh, Prabhakar Singh, Diwakar Singh carrying a sack tied to a lathi on 13.12.2002 at 9.30-10 p.m, only because he claims to be returning from the jungle at that time. He, therefore, claims to have given information of this fact to Raj Kumar Tiwari the next morning and to have shown him the spot, where the blood marks were seen on the way. On 21.12.2002 they again went to the spot where the blood stains were seen. They proceeded for a distance of 2, 5 or 6 kms., till they reached the banks of Gorma river, where with the help of 10-20 persons, who entered the river, they retrieved the sack contained the dead body and some boulders. If PW 5 Kamleshwar Prasad Tiwari was speaking the truth when he deposed that he had seen the appellants Raj Narain,

Dev Saran Singh, Prabhakar Singh, Diwakar Singh carrying a sack on a lathi near the place of incident on 13.12.02, about which he informed PW1, Raj Kumar Tiwari the informant the next morning, there was no reason for them not following the trail of blood the next morning itself to reach the banks of the Gorma river at Kaughat on 14.12.02 itself, but to have conducted this exercise only on 21.12.02. The absence of these facts in the gumsudagi report dated 19.12.2002, and in the application given at P.S. Shahpur on 22.12.2002 and also in the F.I.R. dated 24.12.2002 gives a lie to the claim of this witness to have seen the aforesaid appellants carrying a sack tied to alathi in the night of 13.12.2002. This witness also claims that the informant was the son of his elder grand father. His closeness with the informant is also clear from his admission that both Raj Kumar Tiwari and his father were in jail at the time of cross examination in connection with Sukh Ram Kol's murder, although he denied the suggestion that his father and Raj Kumar Tiwari were in jail for the murder of Sukh Ram @ Ukua Kol.

40. It is also doubtful whether he could have seen the accused carrying a sack on a lathi from the pahari from a distance of 90 metres from where he was coming. There is a conflict in his testimony as he had told the I.O. that he had been coming from Arvind Shukla's house, but in Court he stated that he was coming from the pahari.

41. His version of having seen some of the appellants carrying a sack on a lathi is absent in the three applications dated 19.12.2002, 22.12.2002 and 24.12.2002. He also seems to have no good reason to be present at the spot at 9.30 or 10 p.m. and his plea that he was returning from the pahari at that time, does not seem too credible. For all these reasons we think that this witness is also a got up witness.

42. The testimony of P.W. 6 Ram Awadh that on 13.12.2002 he was travelling on a Commander Jeep, on which KaushalKishore Tiwari, Pradhan was also sitting and had got off at Hanumanganj at about 6.30-7 p.m. was a neutral circumstance as the accused persons are not said to be present at that time There is also a suggestion that there was some enmity of Ram Gopal and the appellants as it was the ceiling surplus land of Ram Gopal which had been transferred to the appellants Dev Saran and others which Ram Gopal had tried to save from ceiling

proceedings by wrongfully transferring the same to his sons. An application against Ram Gopal disclosing this fact was given by Ram Saran, a relation of the appellants before the C.R.O. which was supported by the deceased. This was opposed by the appellant and therefore, Ram Gopal had a significant role in launching this false case for implicating the appellants.

43. There was a further suggestion that actually the informant has no idea, who had committed the crime. They were suspecting that Sukh Ram Kol had murdered Kaushal Kishore and that the informant and Uma Shankar Tiwari were under the impression that Sukh Ram Kol had committed his murder, and hence they had committed the murder of Sukh Ram Kol in retaliation. Although, he denies this fact too, he admits that they (i.e. Raj Kumar Tiwari, UmaShankar and Khooni Nai) were implicated for the murder of Sukh Ram Kol, but the report had been wrongly lodged. In this connection the trial judge has observed that Sukh Ram could not have committed this murder and taken the body all the way to the Gorma river alone, 6 kms from the field of Laxmi Narain Tiwari and thrown it there. The reasoning is faulty. The question for consideration is not whether Sukh Ram Kol or the appellants actually committed the murder of the deceased. But the suggestion is that initially the informant and others were suspecting that Sukh Ram Kol had committed the murder and not the appellants. Hence the retaliatory murder of Sukh Ram and the great delay before the names of the present appellants surfaced in the FIR dated 24.12.2002 and the unsatisfactory manner in which their complicity is mentioned in the FIR, without any disclosure as to who gave out their names.

44. So far as the alleged recoveries of different weapons from all the eight accused persons after they were taken on police remand from jail on 15.1.2003 and 28.1.03 (in the case of appellant Kamlakar Singh) by P.W. 7 S.I. Krishna Kumar Pandey and P.W. 10 Constable Sant Ram Yadav and PW 9 Constable Anil Kumar Singh are concerned, we think that the said recoveries of gandasas, bankas, hammers, knives etc., are too artificial to be believable. Moreover, on 15.1.2003 and 28.1.2003 at the instance of appellant Kamlakar Singh a knife was recovered, as deposed to by P.W. 9 Constable Anil Kumar Singh. But no blood etc., was seen on even one of the large number of weapons that were recovered from all the

accused, nor were they sent to Forensic Laboratory for confirmation of the presence of blood on them. The said weapons, therefore, appear to have been falsely planted for implicating the accused persons in a fruitless bid to create evidence because the other testimony collected in this case does not inspire much confidence. Furthermore, no public witnesses have been produced for supporting these recoveries.

45. It is true that the nature of this crime is heinous. The deceased appears to have been done to death and his body was hacked into pieces, placed in a sack and thrown into the Gorma river. But that is precisely the reason why we must be extra cautious in assessing the credibility of the evidence.

46. As held in *Kashmira Singh v. State of M.P.*, AIR 1952 SC 159 and *Ashish Botham V. State of M.P.*, (2002) SCC 317 hard cases should not make bad law. Extra caution is needed in handling such cases and the Courts are not to be carried away by the gravity of the allegations. For all the aforesaid reasons we are of the opinion that the prosecution has failed to establish the complicity of the appellants in the crimes for which they were charged. The judgement of the trial court dated 21.12.2009 convicting and sentencing the appellants under the various provisions mentioned above are set aside. The appellants are held not guilty of all of the offences for which they have been charged and acquitted. All the appellants are in jail. They may be released forthwith unless wanted in connection with some other case.

47. Accordingly, Capital case No. 59 of 2010 and the Criminal Appeal No. 298 of 2010 are allowed and the Reference No. 3 of 2010 is hereby rejected.

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