

State of U.P. Vs. Mahtab Singh, S/O Shanker Singh and Jaipal Singh, Son of Mahtab Singh

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Overruled by : [Mahtab Singh and Anr. Vs. State of U.P.](#)

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Court : Allahabad

Decided On : May-27-2005

Judge : M.C. Jain; M. Chaudhary, JJ.

Acts : Arms Act - Section 4, Arms Act - Section 25; Indian Penal Code (IPC) - Section 34, Indian Penal Code (IPC) - Section 302

Appeal No. : Government Appeal No. 1219 of 2001

Appellant : State of U.P.

Respondent : Mahtab Singh, S/O Shanker Singh and Jaipal Singh, Son of Mahtab Singh

Advocate for Pet/Ap. : R.P. Dubey, A.G.A. and N.A. Moonis, A.G.A. and A.G.A.

Disposition : Appeal allowed

Judgement :

M.C. Jain, J.

1. Mahtab Singh and his son Jai Pal Singh were tried before IV Additional Sessions Judge, Farrukhabad who has recorded their acquittal through judgement dated 20.12.2000 in question. The charge against both of them was of Section 302 read with Section 34 I.P.C. Mahtab Singh was also charged under Section 4/25 of Arms Act.

2. The murder of one Ganga Singh took place in this incident which occurred on 28.9.1990 at about 9.00 P.M. in Mohalla Gandhi Nagar in the town of Kampil, Police Station Kampil, District Farrukhabad. The report was lodged the same day at 9.55 P.M. by an eyewitness Vinod brother of the deceased. The deceased was returning after taking bin from the betel shop of Rajpher. Mahtab Singh and his son Jai Pal Singh were in the way. The deceased Ganga Singh demanded his outstanding dues from Mahtab Singh. Instead of paying the same, he started hurling abuses. When Ganga Singh objected to it, he (Mahtab Singh) commanded his son Jai Pal Singh to catch hold of Ganga Singh and he himself (Mahtab Singh) gave vicious knife jab to him. On receiving the injury, Ganga Singh fell down at the triangle. The incident was witnessed by the informant and Rati Ram who were sitting in the Chhappar of the Chakki as also by Ashrfi Lal. The accused then ran away. The injured was sent to Kaimganj hospital through Asharfi Lal, Balbir Singh and Shyam Singh and report was lodged by the complainant. By the time he could be reached to Community Health Centre at Kaimganj, he had already died. Dr. G.K. Singh PW 5 of Community Health Centre, Kaimganj sent a memo (Ext. Ka-3) in this behalf to S.H.O., Police Station Kayamganj, District Farrukhabad at 10.10 P.M. on 28.9.1990 The investigation was started by S.I. R.B. Singh and taken over by S.O. Ram Pati Ram w.e.f. 29.9.1990. Post mortem over the dead body of the deceased was conducted on 29.9.1990 at 3.45 P.M. by Dr. Manohar Singhal PW 4, The deceased was aged about 35 years and about % day i had passed since he died. The following ante-mortem injury was; found on his person:-

Stab wound 3 cm x 1.5 cm chest cavity deep over left side of neck, 7 cm below and medial to interior angle of left scapula and 8 cm outer to the mid line. Obliquely placed. Upper angle sharp. Margins clean cut and inverted.

3. The deceased had died due to shock and hemorrhage as a result of ante-mortem injury sustained by him.
4. On 29.9.1990, the accused Mahtab Singh was arrested by the Investigating Officer Ram Pati Ram PW 6 and he led to the recovery of the blood-stained knife(weapon of offence) as also of his own blood-stained shirt and baniyan (that he was putting on at the time of the incident) from his house. S.I. Laxmi Prasad PW 3 had also accompanied Ram Pati Ram PW 6. at the time of such recovery having been made at the instance of the accused Mahtab Singh. Dafedar Singh PW 7 was another public witness of the factum of such recovery. S.I. P.O. Chaudhary PW 8 investigated the case of Arms Act against the accused Mahtab Singh.
5. The defence was of denial
6. At the trial, the prosecution examined ten witnesses including two eyewitnesses Vinod PW 1 and Rati Ram PW 2 as also others referred to above.
7. The trial Judge, however, acquitted the accused disbelieving the prosecution case.
8. We have heard Miss N.A. Moohis, A.G.A. from the side of the State and Sri P.N. Misra, learned counsel for the accused-respondents. The record has been summoned which has been carefully perused by us.
9. The submission from the side of the State is that the order of acquittal has been passed on conjectures and surmises, ignoring the trustworthy evidence of two eyewitnesses on the point of the murder of the victim by the two accused which was in conformity with medical evidence. The trial judge, the State Counsel argued, was also not justified in discarding the evidence relating to the recovery of knife at the instance of the accused Mahtab Singh and 61 her evidence which clinchingly proved the case under Arms Act against him according to evidential standard.
10. On the other hand, the counsel for the accused-respondents tried to support the acquittal on the ground that eyewitnesses were close relatives of the deceased and were thus interested and that the alleged recovery of knife at the instance of

Mahtab Singh was not established. According to him, the source of light at the spot was also doubtful. We propose to examine the worth of these submissions.

11. Going through the judgement of the lower court, we find that acquittal has been recorded on the premise that the two eyewitnesses, namely, Vinod PW 1 and Rati Ram PW 2 were interested witnesses being closely related to the deceased and there was contradiction in their deposition as to whether Mahtab Singh had knifed the deceased from the front side or back side. He also referred to this aspect of the matter that the witnesses spoke to have seen the incident in the light of lantern, electricity and moonlight whereas in the F.I.R. the only source of light mentioned was that of a lantern glowing at the shop of Balbir Singh. He doubted the recovery of blood-stained knife and Mahtab Singh's blood-stained cloths too at his instance.

12. True, Vinod PW 1 is the brother of the deceased and Rati Ram PW 2 is the Sarhu of the deceased Ganga Singh and as such they are closely related to the deceased. But the factum of their close relationship with the deceased could not and did not justify the rejection of their testimony. The only requirement was to have scrutinized their testimony with great caution. The Supreme Court has held in the case of Angnool v. State of U.P. A.I.R. 1971 SC 296 that if witness is brother of the deceased, the fact of his relationship would add to the worth of his evidence because he would be interested in getting the real culprit, rather than innocent person, punished. In another case of Piara Singh and Ors. v. State of Punjab AIR 1977 SC 2274, the apex court again reiterated that the evidence of interested or inimical witnesses has to be scrutinized with care but cannot be rejected merely on the ground of being a partisan evidence. If on perusal of the evidence the Court is satisfied that the evidence is creditworthy, there is no bar to the court relying on the said evidence. Yet in another case of State of U.P. v. Suresh alias Chhavan and Ors., AIR 1982 SC 1076, it has been ruled that the statement of a family member of the deceased cannot be rejected on the ground that he is related to the victim. What is required is that the statement is to be scrutinized with care.

13. In the case at hand, Vinod PW 1 was even the maker of the F.I.R. lodged without loss of time. Rati Ram PW 2 was also mentioned as an eyewitness in the

F.I.R. lodged barely 45 minutes after the incident, the distance of the Police Station being one furlong from the place of the incident. The F.I.R. mentioned this fact too that seriously injured Ganga Singh had been sent to Kaimganj hospital through Asharfi Lal, Balbir, Shyam Singh and others. He himself (Vinod) went to the police station and lodged the F.I.R. after getting it scribed by Charan Singh. It is there in the testimony of Dr. G.K. Singh PW 5 Medical Superintendent of Community Health Centre, Kaimganj that at 10.10 P.M. on 28.9.1990, Ganga Singh had been taken to C.H.C. Kaimganj by Asharfi Lal son of Guljari Lal but he had died by then. Both the eyewitnesses well explained as to how they happened to see the incident.

14. Both of them were sitting under the Chhappar at the Chakki of Ganga Singh deceased. It came down from the statement of Vinod PW 1 that he and his brother Ganga Singh used to live in commensality at the relevant time. Chakki in question belonged to him and Ganga Singh. Ganga Singh had gone to nearby Rajbhers shop to purchase biri and was returning therefrom. He (Ganga Singh) demanded his outstanding dubs from Mahtab Singh present at the triangle with his son Jaipal Singh. Dues were outstanding against Mahtab Singh in connection of grinding of the foodgrains at the Chakki of Ganga Singh. An altercation took place between Mahtab Singh and Ganga Singh and at the call of Mahtab Singh, his son Jaipal Singh caught hold of Ganga Singh. Mahtab Singh himself gave a knife blow to him. In the site-plan, the distance between the Chhappar of the Chakki from the triangle has been shown as 38 paces only. It was quite probable that Vinod PW 1 was present under the Chhappar of the Chakki at that time. Rati Ram PW 2 (sarhu of the deceased) belonged to adjoining village Kullu Nagla and had come to the Chakki in connection with grinding of his foodgrains. There was no hindrance between the triangle and the Chhappar. A lighted lantern was there at the shop of Balbir just in the north of the place of incident. In the site plan, the distance between the shop of Balbir and the place of incident has been shown as 8 paces only. The witnesses knew the accused from before. Sufficient light was available. There was no hindrance between the Chhappar of the Chakki and the place of the incident, distance between these two spots being only 38 paces. There had been an altercation between Ganga Singh and Mahtab Singh which further lent certainty to the identity of the accused-respondents. In other words, there was no possibility

whatsoever of mistaken identity. The light of lantern alone was sufficient and as stated by the witnesses, it was also moonlit night. The F.I.R. is not an encyclopaedia of every minute detail. It did not adversely affect the prosecution case that the factum of it being moonlit night and availability of the electricity was not mentioned by the informant in the F.I.R. Rather it showed spontaneity of the F.I.R. that it had been lodged without any consultation or deliberation whatsoever.

15. The so-called contradiction as to whether Mahtab Singh gave a blow to the deceased from the front side or back side, it was wholly inconsequential, A look at the post mortem would show that he sustained stab wound cavity deep over left side of the neck below and medial to the interior angle of left scapula. No doubt, Vinod PW 1 stated that Mahtab Singh had knifed Ganga Singh from the back side whereas Rati Ram PW 2 stated that he had stabbed him from the front side. But it has to be kept in mind that when many persons look at an event, they have their own power of expression and selection of words. Viewing the seat of the injury of the deceased as mentioned above, one perceived and described it having been caused from front side and the other from backside. But the substratum of their testimony unerringly was that at the call of Mahtab Singh, his son Jaipal Singh had caught hold of the victim Ganga Ram and he himself (Mahtab Singh) had given him the fatal knife blow. The testimony of Vinod PW 1 and Rati Ram PW 2 could not be thrown away on the basis of the insignificant contradiction in their testimony as to from which side Mahtab Singh had stabbed the victim, regard being had to the seat of the injury.

16. There could not be the slightest doubt that Jaipal Singh had caught hold of the victim sealing is escape, as otherwise Ganga Singh would have managed to make his escape good. He was a young man of about 35 years. He was virtually rendered immobile by the act of Jaipal Singh in catching hold of him facilitating fatal knifing by his father. So, Jaipal Singh, sharing the common intention of his father played a potent role in the commission of this crime and the principle of vicarious liability is very well attracted against him.

17. The learned counsel for the accused respondents also criticized the prosecution case on the ground that another eyewitness Ashaifi Lal was not

produced. He invited our attention to the statement of Vinod PW 1 that Asharfi Lal is the son of Guljari Lai-real brother of Ram Lal (father of Vinod and Ganga Singh). Learned counsel for the accused-respondents urged that own family member of the deceased did not come to support the prosecution case. We find that the argument has no force. Vinod PW 1 explained that Asharfi Lal had crossed over to the side of the accused, In the present materialistic world, subornation of the witnesses is quite common. Justice cannot be defeated if one of the witnesses has crossed over to the side of the accused for any reason whatsoever. The case is required to be decided on the strength of the evidence adduced on record and not importing conjectures from the non-production of a particular witness. Vinod PW 1 and Rati Ram PW 2 withstood the test of cross-examination firmly and their testimony clinchingly established that Mahtab Singh knifed the victim to death on the given date, time and place when on his exhortation his son Jaipal Singh had caught hold of the victim.

18. The trial judge was also not justified in holding that the recovery of the bloodstained knife and Mahtab Singh's blood-stained shirt and Banyan at his instance was doubtful. There was a public witness, namely, Dafedar Singh PW 7 also to prove the same, who corroborated the statement of recovering S.I. Rampati Ram PW 6. There is yet another important piece of evidence i.e. Ext. Ka-22 which is the Chemical Examiner's report after scientific examination. Blood-stained knife and the blood-stained cloths (Mahtab Singh's shirt and Baniyan) got recovered by him were found to contain human blood. With a pedantic approach the trial judge unreasonably doubted everything including such recovery and recorded acquittal on flimsy grounds.

19. In view of the above discussion, we are in judgement that acquittal recorded by the trial judge is wholly illegal and perverse. The prosecution satisfactorily proved by clinching evidence that the accused Mahtab Singh committed an offence under Section 302 I.P.C. as also under Section 4/25 Arms Act and his son Jaipal Singh of Section 302 read with Section 34 I.P.C. They are liable to be convicted and sentenced accordingly with the grant of this government appeal.

20. This government appeal is allowed. The impugned judgement of acquittal is reversed. We find the accused-respondent Mahtab Singh guilty of offence under Section 302 I.P.C. and under Section 4/25 of Arms Act and we convict him accordingly. We also hold the accused-respondent Jaipal Singh to be guilty of offence under Section 302 read with Section 34 I.P.C. The accused Mahtab Singh is sentenced to life imprisonment under Section 302 I.P.C. and a sentence of six months' rigorous imprisonment for the offence under Section 4/25 of Arms Act. Both these sentences shall run concurrently. The accused-respondent Jaipal Singh is also sentenced to life imprisonment under Section 302 read with Section 34 I.P.C.

21. The two accused-respondents, Mahtab Singh and Jaipal Singh are on bail. The Chief Judicial Magistrate, Farrukhabad shall cause them to be arrested and lodged in jail to serve out the sentences passed against them. He shall report compliance within two months from the date of receipt of a copy of this judgement which shall be sent by the office immediately.

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