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Court : Allahabad

Decided On : Feb-17-2012

Reported in : 2012CrLJ3283

Judge : Dharnidhar Jha &Amp; Ashok Srivastava

Appeal No. : Criminal Appeal No. 1734 of 1983

Appellant : Mahabeer Singh and Others

Respondent : State of U.P.

Judgement :

1. The present appeal arises out of judgement dated 28.07.1983 passed by learned Sessions Judge Mathura in Session Trial No. 239 of 1982 by which the six appellants were held guilty of committing offence under Section 302/149 I.P.C. and each of them was directed to suffer rigorous imprisonment for life. There were individual orders of conviction also, like, appellant Mahabir Singh and Phal Singh were held guilty also under Section 148 I.P.C. and each of them was directed to suffer rigorous imprisonment for two years. Likewise, appellant Jaipal Singh was held guilty of committing offences under Sections 147 and 379 I.P.C. and was directed to suffer rigorous imprisonment for one year and two years on the two respective counts. The remaining appellants, namely, Om Prakash, Raj Pal and Satya Pal were also held guilty of committing the offence under Section 147 I.P.C. and each of them was also directed to suffer similar term of imprisonment like

Jaipal Singh.

2. The prosecution case is contained in Ext. Ka.- 1, the written report of Kalyan Singh (P.W.-1), who happened to be the father of deceased Mohan Singh. It was stated that Brijendra Singh son of acquitted accused Har Charan, who had also been put on trial with appellants, had been murdered some 14-15 years back and the deceased Mohan Singh had been arrayed as an accused in that murder trial. Gopi Chand, father of appellants Mahabir Singh, Phal Singh and Jaipal Singh had deposed in support of the prosecution in that murder trial against the accused persons. But, in spite of that, the deceased Mohan Singh was acquitted. The second incident of murder of Boga Jatav had taken place in which, appellants Mahabir Singh, Phal Singh, Jai Pal Singh and Gopi Chand, the father of appellants Mahabir Singh, Phal Singh and Jai Pal Singh, had been arrayed as accused and in that trial the deceased had deposed in support of the prosecution and appellant Mahabir Singh had been convicted. These are the reasons, due to which the appellants, as per allegation, were treating the deceased as their staunch enemy. Besides, one further reason was assigned that acquitted accused Har Charan had contested the election of Pradhanship of the village. His candidature was opposed by Mohan Singh (the deceased) who also contested the said election. Har Charnan lost in that election.

3. In the above background of enmity and ill-will, Kalyan Singh (P.W.-1) was stating that on 26.06.1982, at about 8.00 a.m., the deceased after having taken his bath at the tube-well, picked up his licenced gun and the cartridge strip and was coming from his tube-well to his house situate in the village. Appellants Phal Singh and Mahabir Singh alongwith appellants Om Prakash and Gopi Chand, were clearing the irrigation channel of their field, whereas appellant Raj Pal and Satya Pal were scraping grass in their respective neighbouring fields. Jaipal Singh appellant was plucking the Moong pods from his field. Om Prakash was also engaged in plucking of the same pods. When deceased Mohand Singh reached on the ridge of the field of appellants Om prakash and Gopi Chand, i.e., the field of the father of Mahabir Singh, Phal Singh and Jaipal Singh, it is alleged, both appellants Jaipal Singh and Om Prakash caught him by his hands whereas appellant Om Prakash came into his back and put his arm around him and put him

down on the ground. Appellants Jaipal Singh and Om Prakash caught each of the hands of the deceased while appellants Raj Pal and Satya Pal, who were scraping grass in the nearby filed, came running and caught hold of each of the legs of the deceased Mohan Singh. Appellant Raj Pal Singh, thereafter, dealt a Bhala blow to Mohan Singh whereas appellants Phal Singh and Mahabir Singh gave blows with Phawara on the neck of the deceased to severe it from the trunk.

4. There was a hue and cry raised by Mohan Singh during that course and that attracted Bani Singh (P.W.-2) who was at his tube-well and Laxman Singh (not examine) who ran towards the deceased to save him. The daughter of the deceased, namely, Lajjawati also raised her cries, but the accused persons in order to scaring away the witnesses and also with an intent to kill the informant picked up the gun and cartridges of the deceased and started firing blank. The acquitted appellant Har Charan also fired from his own licenced gun as a result of which the informant and other witnesses did not proceed further to intervene into the occurrence.

5. It was lastly, stated by the informant that after having committed the murder of Mohan Singh in the manner as just narrated, the accused persons attempted to take the dead body away and dragged it for that purpose for some distance, but by that time the villagers had converged upon the place of occurrence and, as such, the accused persons made good their escape. But, while so doing, they took away the gun and cartridge strip of the deceased.

6. On the basis of Ext. Ka.-1, the F.I.R. of the case was drawn up by head constable Jiya Ul Hasan (P.W.-7) who was posted in police station, Sadabad. P.W.-7 had stated that he made entries in the general diary and created the copies of the F.I.R. on that date. In spite of the above, he had further stated that on 27.06.1982 at about 8.50 p.m. constable Raj Pal brought a bundle of cloths which was handed over to him and that were the cloths which were found by the doctor on the dead body and he, accordingly, made the relevant entries in the general diary. P.W.-7 had further stated that the station officer was very much present at the police station and he went to place of occurrence accompanied by the informant.

7. During his cross-examination P.W. -7, Jiya Ul Hassan, was pointing out that he could not say as to when the copy of the special report, i.e., copy of the F.I.R. was dispatched to the Magistrate and when it was received in the office of the Magistrate, which is available in Paragraphs 5 of P.W.-7. But, he also stated in paragraph 6 that he dispatched the report on 27th of June, 1982 at 5.00 AM. While admitting that the copy of the report was not dispatched on 26.06.1982, he had been given some reason, like, the shortage of constables at the police station or the other police officer being engaged in other duties. We are likely to check up the effect of non-dispatch of the copy of the report to the nearest magistrate at some relevant part of the present judgement.

8. As may appear from the evidence of P.W.-8, he was the officer, who was accompanying the station officer to the place of occurrence-village and he stated that at the order of the investigation officer P.W.-9 Amar Das Sharma, he started the inquest proceedings and prepared the inquest report. He also prepared the sketch of the dead body besides preparing the dead body challan. During his examination-in- chief as also in cross-examination what P.W.-8 was stating that there was no time mentioned in the relevant column as to when the inquest proceedings were started nor any date or time was mentioned in the relevant column as to when the inquest proceeding ended. The witness was candid in admitting that those necessary details were left out to be put in at relevant places at the direction of Investigating Officer P.W. 9 who told him that those details would be supplied on to the document sometimes later on.

9. At any rate, what appears further from the evidence of P.W.-9 is that, he came to the place of occurrence and visited it to find the dead body lying there. Accordingly, the inquest was held by S.I. Hakim Singh, P.W.-8, and the dead body was dispatched for post mortem examination by the government jeep. He prepared the sketch map of the place of occurrence which had been brought on record as Ext. Ka. 10 and recorded the statements of witnesses. He further stated that he had deputed S.I. Hakim Singh P.W.-8 to arrest accused Har Charan and he was brought under arrest and produced before him at 6.00 p.m. He was questioned by him when that acquitted accused Har Charan, first, gave the information that he should be leading the police to the place where the Fawara

which was used by appellants Phal Singh and Mahabir Singh in killing the deceased had been concealed. That information was not recorded as per P.W.-9 on a separate piece of paper in pursuance to the information being given, rather the statement was recorded in the case diary and it may further appear from the evidence of P.W. -9 that he was taken to a place which was used for storing fodder and from there a Fawara was brought ought which was seized and the same had been marked as material Ext. Ka.-II.

10. P.W.-9 found blood copiously fallen at the place of occurrence and, accordingly, he seized the same by preparing the seizure memo Ext. Ka. -12. He dispatched the blood stained earth and the clothes which were found on the dead body along with a pair of shoes and the Fawara for serological test to the chemical examiner and those reports are available to us in the form of Exts. Ka. 15 and 16, respectively, as per which, blood was found on cloths, and the earth etc. After having completed of the investigation P.W.-9 sent up the accused person for trial which ended in the impugned judgment.

11. The defence of the appellants was of the same facts which were alleged by the prosecution as the motive for commission of offence. Besides, it was suggested by cross-examining the witnesses specially P.W.-1 that the deceased was bearing a criminal antecedent and he had fired at many persons especially at one Bashira and he was himself frightened at his activities so much so that he used to retire to his house which was situated at the very tube-well before sun set. It was, thus, suggested that the deceased could have been targeted by any of his enemies and could have been killed. But, on account of suspecting the appellants to have committed the offence, they were implicated in the occurrence. This appears more prominently appearing from the trend of cross-examining of different witnesses especially, P.W.-1.

12. In order to bring whom the charge, the prosecution examined as many as 9 witnesses out of whom P.W.-1 Kalyan Singh, the informant and father of the deceased, Bani Singh (P.W.-2) the first cousin of the deceased on account of being the son of the full brother of the informant and about 9 year old daughter of the deceased named Lajjawati (P.W.-5) were coming out as eye witnesses. Post

mortem examination was held by Dr. K.C. Jain, P.W.-4 who besides finding three ante-mortem injuries, was also finding as many number of post mortem injuries on the dead body of deceased Mohan Singh. The remaining witnesses were police personnel, like, P.W.-3 Bhudeo who was the witness to the recovery of the blood stained Fawara from the fodder store. P.W.-6 Bal Kishan was the constable who had accompanied the dead body up to the mortuary and we have already stated that P.Ws. 7, 8 and 9 had drawn up the F.I.R., prepared the inquest report and had investigated the case, respectively.

13. The defence had also examined two witnesses. D.W.-1 A. K. Shukla, who was a clerk in the Civil Court and during the relevant time, he was posted as an office clerk in the office of the Magistrate authorised to receive the copy of the first information report. He stated that entry in respect of the receipt of the copy of the F.I.R. of the present case was dated 10.08.1982. Thus, it was stated by D.W.-1 that the copy of the F.I.R. was received in the office of the Magistrate after about one and a half months of the incident. D.W.-2 Sri Krishan Chandra, was also an employee in the office of the District Magistrate concerned and he had produced the relevant register showing the receipt of the copy of the special report in the office of the District Magistrate.

14. We were taken through the evidence of witnesses, it was submitted by making reference to the evidence of P.W.-1 and P.W.-5, i.e., the informant and Lajjawati besides the evidence of P.W.-2 Bani Singh that the reason for which they claimed the deceased to be passing through the place of occurrence, firstly, was not acceptable as the informant and his family members, like, the deceased had put on a prohibition on themselves not to pass through the fields of the accused persons, their enemies. It was further submitted that the reason for which the deceased or P.W.-5 was said to be going from their house at the tube-well to the village-home appears completely unacceptable and as such, eye witness account of P.W.-5 is not fit to be accepted. It was next contended that the F.I.R. was fabricated and that was dictated by persons who had never seen the occurrence and, as such, the very foundation of the prosecution case was a fabricated, imaginary story and that was the reason that the witnesses were fabricating facts in making narration of what they had seen while the occurrence had taken place.

The contention also was that the fabrication was not only of written report rather the same was more seriously carried out by the investigating officer in collusion with P.W.-8 S.I. Hakim Singh and that particular evidence of P.W. -8 raises an inference, as if the whole police establishment was bent upon antedating documents so as to creating evidence in order to obtaining a judgment of conviction against the appellants. It was contended, as such, that the very basis of the prosecution being a fabricated story and the documents connected there with, it was a case in which the appellants deserved to be acquitted as there was every chance of their false implication.

15. Sri A. N. Mulla, learned A.G.A was appearing for the State while Sri G. S. Hajela was appearing on behalf of the informant. Sri Mulla was justifying the prosecution claim that everything was in order and no fabrication or antedating could be inferred from the evidence either of the prosecution or of the defence. He was very empathic in submitting that that evidence of D.W.-2 could not raise an inference that the report was belatedly dispatched and received and, as such, it could be aiding the defence in its submission in that behalf. He was further contending that of the witnesses, P.W.-5 was inspiring confidence as she did not had any grudge against any one on account of being a child who could be away from worldly frailties and on that particular evidence itself the judgment of conviction was to be sustained.

16. The learned counsel appearing for the informant was almost arguing on the same line, but in some different mode, especially, when we were asking him as to who could have authored the written report. The learned counsel was asking us to conjucturise by assuming and imagining a situation where many minds could be coming in help of a distressed person, like, the father of the deceased to set the facts right. The learned counsel was also submitting that of all the witnesses, P.W.-5 could not be faulted to bear any grudge or ill-will against any person on account of being of an adolescent who had not been colluted by worldly affairs and frailties.

17. Credence to evidence of a witness is granted on many parameters, one of such parameters is the claim of the witnesses and the confidence of the court in

that claim that the witness could be present at the scene of occurrence. We had a deeper view of the evidence of the witnesses and we find that the witnesses were not only making false statements on the most material parts of the prosecution case but were definitely making statements which could not be acceptable to a reasonable person. The very claim of the witnesses that the deceased and his daughter P.W.-5 Lajjawati were going to their house situated in the north of the village for any particular reason did not carry weight with us. Evidence of P.W.-1 father of the deceased is very clear as appears from paragraph 17 of P.W. -1 that the tube-well was situated far away from the village almost on the southern side amidst the fields. There was full-fledged establishment created for the deceased Mohan Singh at that particular place, so much so that a house had also been constructed there where the deceased Mohan Singh was residing with his wife and children. He might not be separate in business, but he was definitely separate in mess as his father was pointing out to the court that his meals were also cooked in that very house which was constructed for him separately at the tube-well itself. His occupation of the house was so complete that he was living there with his gun and had come in the evidence of the same witness P.W.-1, his father in paragraph 20 that before it was sun set Mohan Singh used to retire to that particular house situated at the tube-well and that was on account of some fear. We were making the guess work as to why the deceased was fearful so much so that he was forced to retire to his separate citadel before it was sun set. It was not for nothing. The evidence has come from the very informant his father that he had earned enmities from many persons. This evidence has come in paragraphs 6 and 7 of Kalyan Singh (P.W.-1) as also in paragraph 51. In paragraph 6 the details is of the murder trial which was taken up for the murder of the son of acquitted accused Har Charan in which Gopi Chand the father of appellants Mahabir Singh, Phal Singh and Jaipal Singh deposed against the deceased. The other enmity was in respect of the murder of the son of one Goga Jatav.But, these two cases relate to two parties who are presently arrayed in the present appeal also. However, the third incident which has been referred to by P.W.-1 in paragraph-51 relates to firing shots by the deceased at one Bashira and also having one Moti Lai arrested by the police. Not only that there was a suggestion in the same paragraph 51 that the deceased was used to lend his gun to criminals also. There is no evidence in that

behalf. But, it is admitted by P.W.-1 that whenever he was out of the house he was occupying at the tube-well, he always carried his gun and his cartridge-strip with him. On that particular day of incident also, Mohan Singh had carried the gun and the cartridge-strip when, allegedly, he was going to his house situated in the village. The evidence of P.W. -1 itself indicates that the tube-well was situated to the east of the place where Mohan Singh had been murdered and it was more than 500 yards away from that filed where the deceased was killed. The village was situated in the north and there could be straight pathway for accessing the village from the tube-well. P.W.-1 had also stated that animosity between the appellants and the informant were so deep that they had put on a restriction upon themselves not to trespass or pass through the fields of their opponents.

18. In the above background, the further evidence is that the deceased was going to the village so as to picking up his bicycle to go to village Kanjoli Ki Nagaria for attending a marriage ceremony with his daughter P.W. -5. P.W.-1 was cross-examined as was P.W.-5 on the above facts and it is admitted that the bicycle used to be kept in the house situated at the tube-well itself, but in the previous evening, the Sala of Mohan Singh had come and he had gone to the house situated in the village of the deceased by that particular bicycle and, as such, the need of Mohan Singh to go to that particular place. But, when we looked to the evidence of P.W. -5 in paragraph 22 it is indicated, as if the Sala of the deceased or the Mama of P.W.-5 were not there in the village in the morning in which the occurrence had occurred. There is no evidence on the record that that particular man had gone away from the village. When the cycle was being regularly kept at the house which was situated at the tube-well then it was very difficult for us to accept the explanation for the deceased to go to his village house. Likewise, the reason for Lajjawati for going to the house situated in the village was that because she was also to accompany the deceased for attending to the marriage at village Kanjoli Ki Nagariya, she had to pick up her cloths.

19. The learned counsel appearing for the informant was specially arguing that it can be a very sound reason for the girl as the most dear dress of the small ones may be lying in the safe custody of her other relatives at her village house. That submission was not going down well with us for the simple reason that as for a

lady or a child is concerned, they are always found extremely possessive of their belongings. A child is not expected to leave away her most valued possession like a good dress in that nascent world of his or her. More-over it did not come to a reason and did not also appear logical as to why the dress of a child, who was living with her parents at a different establishment, could be kept by someone else who was living at a very different establishment. In our opinion the explanation given by the prosecution was bogus and that could simply not be acceptable to us. Thus, what basic defect we find in the present case is that the very reasons for the deceased and his nine-year-old daughter, P.W.-5, for going to their house at the village appears an after thought or a story which was probably spun out to fabricate a further story regarding the participation of the appellants in commission of the offence.

20. The above finding of ours is not baseless. We have some very strong reason to support the above findings which could also be in acceptance of the submission of the learned counsel for the defence that the very report and subsequently the connected documents appear fabricated by the prosecution. It is not that we could be inferring something, like, the above from any evidence, it is coming directly from the evidence of P.W.-2 who was none else than the first cousin of the deceased being the son of the full brother of P.W.-1 Kalyan Singh. P.W.-2 stated in paragraph 31 that he remained at the place of occurrence, near the dead body in spite of the occurrence being over and the report was dictated to Lal Singh, the scribe, in his presence. He had very candidly accepted that some part of the report was dictated by him, some part by Kalyan Singh and the other part by Laxman and some more part by the villagers. The learned counsel appearing for the informant was requesting us to conjecturise that in such a situation people come around to help a distressed mind in putting the narration in a cohesive and consistent manner. We are not ready to accept that submission. We, instead, in the backdrop of serious enmity which was of two murder trials and the deceased being prosecuted or the deceased prosecuting the other are simply to appreciate the bare facts which have been stated by P.W. -2 in paragraph 31. The narration is tainted, we could infer from other circumstances also some of which we have just narrated while considering the reason assigned by the prosecution for making the deceased to move from the tube-well to the village home and the reason for PW.-5

to accompanying him. Besides, while we were considering the evidence of P.W.-2, we found that he was adding in some part of story which was never the part of the main story. He was stating that as soon as Mohan Singh was felled on the ground by the accused persons, it was Jaypal Singh who picked up his gun and his cartridge-strip and had fired three consecutive shots. If we remember the facts of the case then the story of firing shots which was the part of the written report and the evidence given by P.W.-1, had occurred only when the main occurrence of beheading the deceased had been completed. Not only that, the story of beheading of Mohan Singh had also been improved in a very special manner by P.W.-2 in paragraph 6 when he stated that Mahabir Singh and Phal Singh dealt blows with Farsa on the neck of the deceased, but the head was not beheaded when the appellant Phal Singh asked Mahabir Singh to get away from there and he finally severed the head. These were the statements which were introduced into the prosecution story by P.W.-2 in examination-in-chief. If these were so important parts of the manner of occurrence then it was expected from P.W.-1 also that he had stated these facts while he was deposing in Court. The contradictory statements and absence of atleast these parts of the story from the evidence of P.W.-1 as also from the evidence of P.W.-5 had cautioned us to consider the evidence of inimical, interested witnesses with care and caution and this is the reason that we have gone deeper in analysing the evidence on all its part. In addition to the above, what surprised us, the most was that three shots were fired as per P.W.-1 by Jaipal Singh and many shots were fired blank by acquitted accused Har Charan, but none of the police officers, like, P.Ws. 8 and 9 was to find a single pillet or wad at place of occurrence, least an empty cartridge.

21. In the chain of above fabrication and addition what we have found was that the evidence of P.W.8. S. I. Har Pal Singh was very tale-tell. It was pointed out by P.W.-8 that he was asked to hold inquest by P.W.-9, the investigation officer and, accordingly, he started the proceedings of inquest on 26.06.1982. However, he admitted that there was no time given in the relevant column as to when the proceedings had been initiated and again there was no time given as to on which date and at what time the proceedings was winded up and in the column of winding up the proceeding, it was mentioned by him, as per P.W. -8 at the direction of P.W.-9,that he should write that the inquisition was still continuing. We

could simply not persuade ourselves to accept this particular evidence of P.W. -8 on observing propriety in holding inquest and preparing the document. P.W. 8 had very categorically stated that the station officer, i.e., P.W.-9 was telling him when he was enquiring of him as to what date and time he should put on the document, shall be given later on. It could be legitimately inferred that the attempt was clear to antedate the document and fabricate it.

22. Antedating was not confined to the inquest report only, we are of the view that as per the evidence of P.W.-8 as also from the evidence of P.W.-1 there could be an inference that the copy of the report which as per Section 157 Cr.P.C. had to be dispatched to the nearest magistrate forthwith, was not dispatched that way. P.W.-8 had stated that he did not dispatch the report on 26.06.1982 and might have dispatched the document on 27.06.1982. We are aware that there was no documentary evidence produced from the police station as to what was the date of dispatch of the copy of the report to the Magistrate but we do have the evidence of D.W.-1 the employee in the court of the Magistrate who was ordained to acknowledge the receipt and make the relevant entry in that regard in the relevant register. As per his evidence, the relevant entries were made as late as on 10.08.1982. It appears that in cross-examination D.W.-1 was attempting to mellow down the effect of his examination-in-chief evidence, but still an inference remained to be raised from his evidence that the dispatch and receipt of the copy of the report was quite belatedly made.

23. The manner of occurrence as narrated by the witnesses speaks of giving blows with Fawara so as to severing the head of the deceased from the trunk. But, what appears from the evidence of P.W. 4 which had of course been rejected by learned trial judge is that there were three ante-mortem injuries, out of whom two was lacerated and that particular injuries which was in respect of beheading the head was lacerated. We could reconcile the evidence with the main allegation by noting that it was not a solitary blow rather the blows were multiple and when the deceased was being given those blows he could have also struggled to evade them and in that process irregular falling of the blow on his neck might have caused the lacerated appearances of the wound. However, that particular inference of ours is not going to justify the judgement of conviction, especially

when we have serious doubt that the witnesses had indeed been present at the scene of occurrence and had seen the occurrence. We, in fact, had inkling in our mind that the deceased was murdered at a time, when no one could have probably seen him being murdered and as was stated by P.W.-2, many minds came together to create a story as to how the occurrence could have taken place by dictating some part or other part of the written report. When it came to supporting that created story by oral evidence, the z witnesses were giving flimsy reasons for their presence as also for P.W.-5 accompanying the deceased going to his village-house.

24. These are some of the reasons upon which we find that the judgment of conviction could not have been legitimately passed. It was a case in which the appellants also deserved to be acquitted after being given benefit of doubt. We, accordingly, extend that benefit to the appellants by allowing the appeal. The appellants are acquitted of the charges of which they had been found guilty and for which they had been punished. The appellants are on bail. Each of them shall stand discharged from the liabilities of their respective bonds.

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