

State of U.P.

Vs

Vinod Kumar (Dead) and Udai Bhan Singh

Criminal Appeal No. 443 of 1980

(S. R. Pandian, M. Fathima Beevi, Yogeshwar Dayal JJ)

12.03.1992

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. The above appeal is preferred by the State of Uttar Pradesh challenging the correctness of the judgment dated 27-8-79 rendered by the Allahabad High Court in Criminal Appeals Nos. 1799 and 1800 of 1979 along with Referred Case No. 13 of 1979 allowing the appeal preferred by both the respondents and rejecting the reference made under Section 363 of the Code of Criminal Procedure for confirmation of the sentence of death imposed on the respondents. At the outset, it may be mentioned that the first respondent, namely, Vinod Kumar alias Channi is admittedly stated to have died. During the pendency of this appeal, none of the relatives of the deceased, Vinod Kumar has applied for leave to continue the appeal within 30 days of the death of Vinod Kumar as contemplated under Section 394 of the Code of Criminal Procedure. Hence the appeal as against Vinod Kumar abates. Therefore, we are now called upon to decide this appeal only with reference to the second, respondent, namely Udai Bhan Singh.

2. The allegations on the basis of which both the respondents took their trial are that on 25th April 1978 at about 9.15 p. m. in front of the shop under the name and style ' Mahesh Dairy ' situated in House No. 128/63, 'C' Block, Kidwai Nagar within the limits of Babu Purwa Police Station, Kanpur these two respondents along with Darshan Singh (since acquitted by the trial Court which acquittal was not challenged before the High Court) and Asha Khatik (who has been absconding) in furtherance of common intention caused the death of Suresh Nath Mehrotra and Bhola Nath, in that Vinod Kumar fired at the deceased Bhola Nath and Suresh Nath and Udai Bhan Singh fired at Suresh Nath with their respective pistols as a result of which both the deceased died. The brief facts of the case which led to the filing of this appeal can be stated as follows:

3. The deceased Bhola Nath was the father of the deceased Suresh Nath and PW 1, Naresh Nath and PW 4, Dina Nath. They had a shop known as 'Mahesh Dairy'. The place where the shop was situated was in a fairly congested locality of Kanpur. Both the deceased, PWs 1 and 4 were living in the same colony. On the ill-fated day, while PWs 1 and 4 were transacting business at their shop, the deceased were sitting in front of the shop listening to a transistor radio. The respondent Udai Bhan Singh accompanied by a stranger came there and asked for a bottle of Gold Spot. The other man who accompanied him took two bottles of Gold Spot and both of them started drinking the same. By that time, the respondent Vinod Kumar who came there accompanied by Darshan Singh exhorted that Suresh Nath should be finished since he got Vinod Kumar implicated in a criminal case and

also appeared as a witness in that case. At this exhortation, all the four pulled out their country made pistols. Respondent, Udai Bhan Singh fired at Suresh Nath. Thereupon, Bhola Nath pounced upon the companion of Udai Bhan and caught hold of the barrel of the pistol. No sooner Bhola Nath did so, Vinod Kumar fired at Bhola Nath killing him on the spot. The injured Suresh Nath started running away by pressing his wound inflicted on his abdomen to save himself. By the time he reached in front of the nearby firewood shop of one Babu Lal all the four assailants got hold of him. Thereupon both the respondents fired one shot each at Suresh Nath who on receipt of the gun shot injuries succumbed to the injuries and fell down on the ground. A number of persons rushed to the scene of occurrence. All the four assailants in order to scare away the witnesses fired some more shots in the air and went back towards 'Mahesh Dairy'. One of the accused who came with Udai Bhan Singh brought a tempo parked nearby and all the four made good their escape by getting into the tempo. All the shopkeepers got panicky and closed their shops. According to prosecution, there was sufficient light in the scene of occurrence, shed from the street lights as well as electric lights fitted in the nearby houses. The eye-witnesses to the occurrence are PWs 1 & 4.

4. PW 1 got a report written by one Shambhoo Nath Tandon at the scene of incident and lodged the same at the police station at about 10. 12 p. m. The investigation was taken up by PW 6 who was then the Sub-Inspector in charge of Babu Purwa Police Station. PW 6 went to the scene spot, inspected the scene, held inquest over the dead bodies of the deceased which were lying near the Mahesh Dairy as well as the firewood shop, prepared the inquest reports, took photographs of the scene of occurrence and thereafter sent the dead bodies for postmortem examination.

5. PW 6 recovered the barrel of the pistol (Exh. G-19) from the scene of occurrence and three empty cartridges (Exhs. G-20, G-21 and G-22). He also seized two empty bottles of Gold Spot which were lying on the footpath in front of Mahesh Dairy and those bottles are marked as Exhs. G-4 and G-5. He recovered the blood stained earth and the sample earth.

6. PW 2, the medical officer attached to the Ursala Hospital conducted the postmortem examination on the dead body of Suresh Nath and found seven gun-shot wounds and one abrasion as noted by him in his report. Ex.Ka-3. He recovered a number of pellets from the body of the deceased. On the same day, he conducted, postmortem examination on the dead body of the deceased, Bhola Nath and found two gun-shot wounds and three contusions. From this dead body also, he recovered some pellets. The postmortem report relating to the deceased, Bhola Nath is marked as Exh. Ka-4. The subsequent investigation was taken up by PW 7, the Inspector of Police. PW 7 searched for the respondents and other accused but they were not available. Udai Bhan Singh surrendered before the Court on 3rd May 1978. On 6-5-78, PW 7 arrested Darshan Singh. The tempo by which the culprits escaped had been seized. The fourth accused, according to PW 7, was not available and he was absconding till his examination in Court. Vinod Kumar surrendered before the Court on 16-5-78. After completing the investigation, PW 7 laid the charge-sheet on 30-6-78. PW 8, the Additional City Magistrate IV Kanpur conducted the identification parade on 15-7-78 in respect of the acquitted accused Darshan Singh who was identified by the witnesses 1 and 4. The defence of both the respondents was one of denial. Added to that, the first respondent, Vinod Kumar has pleaded alibi. The first respondent, Vinod Kumar examined DWs 2 and 3 and the acquitted Darshan Singh examined DW 1 in support of the defence. The trial court though discarded the evidence of PW 3, on the basis of evidence of PWs 1 and 4 corroborated by the medical evidence held thus:

"There is nothing else to cast any doubt on the testimony of Naresh Nath and Dina Nath PWs. 1 accept their evidence as worthy of full reliance with regard to the main occurrence so far as it relates to Udai Bhan and Vinod Kumar accused."

7. Based on the above finding, the trial Court convicted Vinod Kumar under Section 302, IPC (two counts) for causing the death of Bhola Singh and Udai Bhan Singh under Section 302 for causing the death of Suresh Nath and under Section 302 read with Section 34, I.P.C. for sharing the common intention for causing the death of Bhola Singh. However, the trial Court acquitted Darshan Singh holding that the evidence was not sufficient. Aggrieved by the judgment of the trial Court, both the respondents preferred separate appeals and the referred case was registered for the confirmation of the death sentence as contemplated under Section 363 of the Code of Criminal Procedure. The High Court allowed both the appeals preferred by the respondents and rejected the reference case. The reasons given by the High Court for interfering and reversing the findings of the trial Court are:

1. There was strong and deep-rooted animosity between the prosecution party and the respondents due to various criminal proceedings.
2. The evidence of PWs 1 and 4 who are none other than the brothers, being the sons of the deceased Bhola Nath and brother of the deceased Suresh Nath, is highly tainted with interestedness.
3. The evidence of PWs 1 and 4 is not corroborated by the medical evidence but on the other hand is inconsistent with the medical testimony.
4. The evidence of PWs 1 and 4 is incredible and unworthy of acceptance and as such the trial Court ought not to have placed reliance on their testimony for holding the respondents guilty of the offence with which they stood convicted.

8. Mr. Pramod Swarup, the learned counsel for the appellant after taking us through the evidence of all the witnesses and the judgments of the Courts below vehemently urged that the High Court was not at all justified in reversing the well-reasoned and well-considered judgment of the trial Court and the reasons assigned by the High Court are neither sound nor specific and decipherable. According to him, there is no compelling reason to doubt the presence of PWs 1 and 4 at their 'Mahesh Dairy' at the time of the occurrence but on the other hand it was natural and probable that both the witnesses would have been at their shop looking after their business especially when their house was near to the shop. He further submits that these two respondents who according to the trial Court were potential murderers have resorted in committing this gruesome double murder in the presence of PWs 1 and 4 and therefore, they cannot escape from the criminal liability. The very fact that the first information was written by PW 1 at the police station within an hour lends assurance to the credibility of the prosecution version. The above submissions, advanced on behalf of the appellant were seriously challenged by Mr. Manoj Swarup, the learned counsel appearing for the respondents, submitting, that the evidence of PWs 1 and 4 who are closely related to the deceased and inimically disposed towards the respondents have been rightly rejected by the High Court, and that when these witnesses have gone to the extent of introducing a false witness that is PW 3 whose evidence has been discarded by both the Courts below and further implicating a false accused, Darshan Singh who has been acquitted by the trial Court, their evidence in other respect also has to be thrown over board. Though it is stated that a crowd had collected on being attracted by the hue and cry of PWs 1 and 4, none has been examined by the prosecution. The non-examination of the scribe of the first report is fatal to the prosecution case. According to him, there was no sufficient light in the scene place and there was no proximate motive for the respondents to attack the deceased but on the other hand there was sufficient motive for PWs 1 and 4 to implicate the second respondent since he stood as a surety in a criminal case registered against the first respondent.

9. It is an appeal preferred by the State against the order of acquittal passed by the High Court by reversing the judgment of the trial Court. Therefore, it is incumbent on the part of this Court to assess and evaluate the evidence notwithstanding the findings of both the Courts below and the reasons assigned therefor.

10. This Court in *Rajendra Prasad v State of Bihar*, AIR 1977 SC 1059 : (1977) 3 ' SCR 68 has laid down the following dictum (Para 4 of AIR):

"Thus when two Courts, have come to a different conclusion on the same evidence, we had ourselves to go through the entire evidence carefully in order to see whether the appreciation of the evidence by the Sessions Judge was so unreasonable and unrealistic as to entitle the High Court to interfere with the same."

11. See also *Bhajan Singh v. State of Punjab*, (1978) 4 SCC 77 : (AIR 1978 SC 1759).

12. In the light of the principle of law laid down by this Court in the above two decisions, we shall now scrutinise the evidence placed before this Court and examine whether the High Court was justified in interfering and dislodging the judgment of the trial Court.

13. This is a very sordid and shocking incident of blood curdling assassination of a father and a son in a fairly congested street at about 9.15 p.m. on 25-4 -78. According to the prosecution , besides these two respondents one, Darshan Singh (since acquitted by the trial Court) and Asha Khartik (the absconding accused) also participated in the perpetration of the crime. The deceased are Bhola Nath, aged about 65 years and his son Suresh Nath, aged about 36 years. As we have pointed out earlier, PWs 1 and 4 are the sons of the deceased Bhola Nath. The other witness PW 3, Munni Lal though has supported the prosecution case in its entirety as a direct witness to the occurrence, however the trial Court was not inclined to accept his testimony mainly on the ground that his name does not find a place in Exh. Ka 1, that he was examined by the police only on the very next day i.e. on 26-4-78 and that he had not been taken to the test identification parade to identify Vinod Kumar alias Channi though according to the prosecution he was taken to the identification parade. In this connection, it may be noted that PW 8, the Additional City Magistrate who conducted the identification parade of Darshan Singh has not stated that PW 3 was one of the witnesses who attended the identification parade. Be that as it may, we shall examine the prosecution case on the basis of the evidence of the two ocular witnesses, namely, PWs 1 and 4 and see whether the prosecution has satisfactorily established the charge as against both the respondents.

14. The first respondent, Vinod Kumar alias Channi is admittedly stated to be dead. Therefore, we are now concerned only with the case of the second respondent, Udai Bhan Singh as indicated supra. However, when we deal with the case, we have to examine the available evidence against both the respondents for rendering a decision as to whether Vinod Kumar (now dead) and Udai Bhan Singh were responsible for the commission of the offence.

Motive for the Occurrence:

15. It transpires from the evidence of PW 1 that both the respondents are residents of his mohalla (colony) and both of them were very intimate friends. The deceased Suresh Nath was a gun licensee. Vinod Kumar asked the deceased Suresh Nath on several occasions to give him live cartridges. But Suresh Nath did not pay heed to the request of Vinod Kumar. Secondly, as Vinod Kumar did not make payments on several occasions for the sweets eaten by him at the shop, Suresh

Nath told Vinod Kumar that he could not get sweet or any other article without payment. On account of this, Vinod Kumar felt dishonoured. Sometimes latter, Vinod Kumar came to the shop of the deceased, wielded a pistol and warned Suresh Nath that only one bullet was required for him, thereby threatening that he would finish his life. Suresh Nath made a complaint about this incident to the Inspector of Police. Even thereafter Vinod Kumar came to the shop of Suresh Nath and again made the same threat by showing a pistol. On a second complaint made by Suresh Nath, the police arrested Vinod Kumar and recovered a country made pistol from his possession and prosecuted him for offence under Sections 307, I.P.C. and 25 of the Arms Act. Vinod Kumar was acquitted of the offence under Section 307, I.P.C. but was convicted for the offence under the Arms Act and sentenced to pay a fine of Rs. 500/-. Even after this criminal case, Vinod Kumar tried to hold up Suresh Nath near the bus stop about which the latter lodged a police report at the police station. The prosecution has filed the document Exh. Ka 26 dated 18-7-77 to prove the lodging of the report against Vinod Kumar and two others alleging that he was waylaid and threatened. In fact, these details are mentioned even in Exh. Ka 1. On account of the above incidents, Suresh Nath on the one hand and Vinod Kumar on the other had developed bad blood. According to the prosecution, on account of this ill-feeling, Vinod Kumar in order to ventilate his grievance as he was having grudge against Suresh Nath and to settle his personal scores against him, had gone to the 'Mahesh Dairy' owned by both the deceased and PWs 1 and 4 along with his close associate Udai Bhan Singh and two others and ruthlessly attacked the deceased. The motive for the occurrence is established not only by the oral testimony of PWs 1 and 4 but also by the documentary evidence Exhs. Ka 1 and Ka 26.

Scene of Occurrence

16. The occurrence was almost opposite the 'Mahesh Dairy' situated in a fairly to congested street in which various shops are situated. PW 6, the Sub-Inspector of Police who after the registration of the case, went to the spot and found the dead body of Bhola Nath lying on the footpath opposite Mahesh Dairy and the dead body of Suresh Nath lying nearby the Tal (firewood shop) of Babu Lal. According to PW 6, there was electric light in the Mahesh Dairy, Tal of Babu Lal and the road. The trial Court with reference to the evidence as regards the sufficiency of light at the time of the occurrence near the scene, enabling the witnesses to identify the assailants has observed in paragraph 6 of its judgment thus:

"There was adequate electric light at the scene of occurrence."

17. The High Court also recorded its finding on this point as follows:

"Though all shops besides those of eatables were closed, it being a Tuesday there was sufficient light from street lamps, electric lights in nearby houses and the shop of Mahesh Dairy itself to enable the witnesses to witness the incident and see clearly the faces of the assailants."

18. PW 6 on the spot held the inquest on the dead bodies of the deceased and prepared the inquest reports Exhs. Ka 7 and Ka 12 and also caused certain photographs of the scene to be taken as evident from Exhs. Ka 89, Ka 13 and Ka 14. PW 6 seized the blood stained earth, a pair of chappal, two spectacles, a barrel of pistol (Exh. G 19), one empty cartridge and two other empty cartridges on the road marked as Exhs. G-20, G-21 and G-22 and two empty bottles of Gold Spot lying on the footpath in front of Mahesh Dairy. They are marked as Exhs. G4 and G5. In the cross-examination, the following evidence was brought on record from PW 6 which reads:

"Naresh Nath met me at the spot. At that time a radio was lying at the foot-path ; I did not consider it necessary to take that into possession. I mentioned about that in the case diary."

19. Thus the prosecution has established the scene of offence and also the sufficiency of light at the scene. The recoveries made by PW 6 at the scene spot also go a long way in not only establishing the case of the prosecution as to how the occurrence originated but also amply corroborating testimony of PWs 1 and 4.

Ocular Testimony:

20. The prosecution has examined PWs, 1, 3 and 4 to speak about the actual occurrence in question of whom as earlier pointed out, the trial Court has eschewed the evidence of PW 3 from consideration. Therefore, the prosecution has to rest its case only on the testimony of PWs 1 and 4 who are the sons of the deceased Bhola Nath and brother of the deceased Suresh Nath. No doubt that the evidence of these two witnesses is interested one. This Court on several occasions through its decided cases has ruled that mere interestedness by itself is not a valid ground for discarding or rejecting the sworn testimony nor can it be laid down as an invariable rule that interested evidence can never form the basis of conviction. What all that is necessary is that the evidence of interested or related witnesses should be subjected to a very careful scrutiny with extreme care and caution and if on such scrutiny the testimony is found to be intrinsically reliable then that evidence may be relied upon in the circumstances of the particular case to base a conviction thereon. Bearing the above principle in mind, now let us analyse the evidence of these two witnesses very carefully and see whether the findings of the trial Court was so unreasonable warranting an interference by the High Court and whether the interference of the high Court by reversing the findings of the trial Court was justified. According to PW 1, while he and his brother PW 4 were present at the counter of their shop, the two deceased were sitting on the chairs in front of their shop and listening to their transistor radio. At that time, the respondent Udai Bhan came and took a bottle of aerated water namely Gold Spot. A little later, a companion of Udai Bhan came and he also demanded a bottle of Gold Spot which was given to him. When both began to take the drinks, Vinod Kumar accompanied by one more person (Darshan Singh) arrived at the spot. On seeing Suresh Nath, Vinod Kumar said that Suresh Nath should be killed as he had appeared as a witness against him. At this instigation, all the four took their country made pistols. Udai Bhan fired the first shot which hit Suresh Nath in his abdomen. Bhola Nath suddenly pounced upon the companion of Udai Bhan and caught hold of the barrel of his pistol. Suddenly at this point of time, Vinod Kumar fired a shot at Bhola Nath who on receipt of the injury fell down. The barrel of the pistol of the companion of Udai Bhan broken down. Suresh Nath pressing his wound ran towards the firewood shop of Babu Lal. All the four persons chased Suresh Nath like hunters chasing a fleeing beast, got hold of him near the firewood shop and then both Vinod Kumar and Udai Bhan fired one shot each on Suresh Nath who as a result of which fell down dead. PWs 1 and 4 made a hue and cry which attracted a number of people from the neighbourhood. All the four assailants fired some more shots in the air to create scare and made good their escape by using a tempo brought by Darshan Singh. After the accused had left the scene, PW 1 got a report written by one Shamboo Nath Tandon and handed over the same to PW 6 at about 10. 12 p.m. PW 4 fully corroborates the testimony of PW 1 in all its material particulars, by giving similar evidence. The testimony of these two witnesses is fully corroborated by a number of circumstantial evidence.

21. The fact that both the deceased died on account of gun shot injuries cannot be disputed and in fact there is none. PW 2, the medical officer who conducted the postmortem on the dead bodies of

the deceased found the gun shot injuries on the persons of the deceased and had also recovered number of pellets from the bodies. PW 6 who went to the scene spot and prepared a visual site plan of the spot has testified to the fact that he recovered a number of material objects from the scene place. The dead body of Bhola Nath was in front of the Mahesh Dairy and the dead body of Suresh Nath was near the firewood shop at some distance from the Mahesh Dairy. The recovery of spent cartridges from the scene disclose the firing of more than two shots. The recovery of the empty bottles of Gold Spot indicate that two bottles of Gold Spots were taken by the assailants and left at the scene corroborating the testimony of the eye-witnesses that Udai Bhan and his companion took two Gold Spot bottles of aerated water from the shop. In the cross-examination of PW 6, it has been brought on evidence that PW 6 saw the transistor radio at the spot which he claims to have mentioned in the case diary. The presence of a transistor at the scene is an authentic support and assurance that the two deceased were listening to a transistor. The observation of the High Court that "the transistor which was with the deceased also was found missing and only its case was found lying at the scene of the occurrence" is quite contrary to the evidence of PW 6. The recovery of the barrel of the pistol from the scene lends support to the evidence of PWs 1 and 4. Thus, we find that the testimony of these two witnesses is amply corroborated by the various recoveries made from the scene.

22. The first information Exh. Ka 1 which came into existence within an hour after the occurrence contains the names of these two accused besides the mentioning of two unknown persons who participated in the occurrence with the respondents. Though the scribe has not been examined, it is not the case wherein PW 1 has suppressed the name of the scribe but on the other hand he has specifically given the name of the scribe as Shamboo Nath Tandon. The non-examination of the scribe does not in any way affect prosecution case. The two eye witnesses describe the occurrence in a highly convincing and straightforward manner.

23. The medical evidence given by PW 2 amply corroborates the oral testimony of PWs 1 and 4. The contention of the defence counsel that the medical evidence is irreconcilably in conflict with the oral evidence cannot be countenanced.

24. The learned defence counsel after pointing out that the respondent Udai Bhan was a Government servant, stated that question No. 7 put by the Court under Section 313 of the Criminal Procedure Code asking him as to why he has been implicated in this prosecution case, shows that the trial Court has not only failed to take note of the fact that he was a Government servant but also has proceeded on a wrong conception that the investigating officer did not have any animosity against him to falsely implicate him in the case. It appears that Udai Bhan was working in the office of "Weight and Measurement". What was the nature of the work, there is absolutely no evidence. He has pleaded false implication stating that since he stood as a surety for Vinod Kumar in one or two criminal cases filed against him, the Sub-Inspector has harboured enmity towards him and falsely implicated in this case. This submission of the learned counsel as well as the reason given by Udai Bhan Singh for his replication has to be mentioned to be simply rejected.

25. In spite of incisive and searching cross-examination, the credibility of the evidence of the prosecution witnesses 1 and 4 was not even slightly shaken or impaired and impeached. The observation of the High Court that the evidence of these two witnesses falls short of reliability and acceptability is not based on sound reasoning. In our considered opinion, the prosecution has adduced inviolable and impregnable evidence through the two direct witnesses supported by the circumstantial pieces of evidence and medical evidence connecting the two respondents with the crime. We, after giving our anxious and earnest consideration to the rival submissions and perusing

the entire records, are of the firm view that their evidence cannot be rejected as tainted and uncanny evidence. When we plunge more and more deeply to the galaxy of facts, we have no reservation in coming to the conclusion that the finding of the trial Court is a reasonable one and the findings of the High Court in a very summary manner on insignificant and flimsy reasons ignoring the abundant materials produced by the prosecution, are not sustainable. In the result, we set aside the judgment of the High Court and restore the judgment of the trial Court upholding the conviction of respondent No. 2, Udai Bhan Singh both under Section 302 (simpliciter) and Sec. 302 read with Sec. 34, I.P.C.

26. But coming to the question of sentence, we feel that the extreme penalty of law imposed by the trial Court is not called for at this length of time. It would suffice if the sentence of imprisonment for life is imposed. Accordingly while retaining the conviction as recorded by the trial Court, we impose the sentence of imprisonment for life on both the counts with the direction that the sentences will merge with each other. Bail bonds are cancelled.

27. The appeal is allowed accordingly. Appeal allowed.

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