

Meharaj Singh (L/Nk.)

Vs

State of U. P.

With

Kalu

Vs

State of U. P. and Others

Criminal Appeal Nos. 386 of 1993 and 288 of 1994

(Dr. A. S. Anand, Faizanuddin JJ)

21.04.1994

JUDGMENT

DR. ANAND, J.

1. These two appeals under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, are directed against the judgment of the Allahabad High Court allowing the appeal of the respondent State and setting aside the acquittal of the appellants in both these appeals. Since, the appeals arise out of the common judgment, these are being disposed of by this common judgment.

2. Kalu, Neelu, Meharaj Singh and Babu were challaned by the police for an occurrence which took place on 3-11-1977 at 11.00 or 11.15 a.m. at Village Dhanju in which one Laxman Singh was murdered. The trial court acquitted all the accused, against which order the State went up in appeal to the High Court. Neelu died during the pendency of the appeal in the High Court and, therefore, appeal against him abated. The High Court maintained the acquittal of Babu who is the sister's son of Kalu and Neelu, the two brothers, while convicting Kalu and Meharaj Singh for various offences. The State has no filed and appeal against acquittal of Babu. Kalu and Meharaj Singh have filed two separate appeals, as noticed earlier.

3. According to the prosecution case, on account of some pending criminal litigation against the deceased, his father and some other members of his faction for causing injuries to Neelu and Kalu and their father, the relations between the parties were strained and both sides were hostile to each other. On 3-11-1977 at about 11.00 a.m. when deceased Laxman Singh along with his wife Smt. Kamlesh PW 2, were loading jawar in their cart, kept at the chak road, accused persons armed with gun, country-made pistol and knife attacked him. Neelu and Kalu are alleged to have shot at the deceased from their respective weapons, Meharaj Singh, appellant, is alleged to have caused injuries with a knife to the deceased after he had fallen down.

4. The first information report was lodged by Makhar Singh, father of deceased on 3-11-1977, at

about 12.45 p.m. at Police Station Daurala at a distance of 4 kms from the place of occurrence. The investigation of the case was conducted by Sub-Inspector Sultan Singh PW 8 at the initial stage and was then taken over by PW 9 Laxman Singh Sub-Inspector. Sultan Singh PW 8, according to the prosecution version, reached the scene of occurrence at 2.00 p.m. and prepared the inquest report of deceased Laxman Singh whose dead body was found at a distance of about 21 steps from the khajoor tree which stood on the dividing line between the fields of Balbir Singh and Ganga Saran. The investigating officer noticed presence of the cart of the deceased at a distance of five steps from the khajoor tree. The dead body of the deceased was sent for post-mortem examination which was conducted by Dr. N. K. Pande PW 10, who found a number of gunshot wound on the deceased besides eight incised wounds. Dr. Pande also found that the stomach contained partially digested food material weighing about 150 gms. 18 big shots and 80 pellets, along with wadding pieces, were recovered from different parts of the body of the deceased during the post-mortem of the deceased.

5. The trial court, after appreciating the evidence on the record, opined that the first information report was ante-timed and that the ocular testimony was contradicted by medical evidence. The trial court also found the evidence of the alleged eyewitnesses PWs 2, 3, 4 and 5 as unreliable not only on account of the fact that they were all interested in the prosecution but also because their conduct was found to be unnatural. The trial court found merit in the case up by Neelu, deceased and Babu, the acquitted accused. Their case was that it was a blind murder and since none of the alleged eyewitnesses had actually seen the occurrence, they had roped in the accused persons only on account of the previous enmity on mere suspicion. The High Court agreed with the trial court except insofar as the complicity of the two appellants is concerned and set aside the order of acquittal recorded against them. We shall refer to relevant portions of the evidence during the course of discussion and do not consider it necessary to reproduce the entire evidence, which has been extracted by both the courts below extensively.

6. The manner of occurrence was deposed to at the trial by Smt. Kamlesh PW 3, widow of the deceased. She stated that when she along with her husband were bringing the second bundles of jawar, after having placed the first two bundles in the cart earlier, all of a sudden a shot was fired at her husband on receipt of which the bundle of jawar fell down. She deposed that Neelu accused armed with a gun, Kalu and Babu accused each carrying a pistol and Meharaj Singh armed with a knife were seen present near about, at a distance of about 1/2 hath from her husband. She went on to add that her husband went towards the cart, but could hardly reach the boundary of the field of Balbir Singh, when Neelu, Kalu and Babu again fired at him. He fell down and, thereafter, Meharaj Singh came there and inflicted injuries on him with the knife. According to her testimony Neelu had fired about 6-7 shots. She raised an alarm which attracted Balbir PW 2, Shiv Charan PW 4, Satkari PW 5 and others. They also witnessed the occurrence. She went on to add that Neelu, Kalu and Babu each had reloaded their firearms during the incident once and they had fired at the deceased twice. The assault with the knife by Meharaj Singh continued for about half a minute to one minute and that the deceased was lying on his right side when he breathed his last. During her cross-examination she admitted that she took no steps to save her husband by either falling on her husband or taking the assault on herself. She admitted that she did not even receive a scratch during the entire occurrence and her clothes neither got torn not even got stained with blood. Balbir Singh PW 2, Shiv Charan PW 4 and Satkari PW 5 have generally supported her testimony. Balbir Singh PW 2 admitted in the cross-examination that he arrived at the scene after he heard the sound of firing and also of weeping but still went on to say that he had seen all the accused firing at the deceased twice after reloading their firearms. According to him the repeated firing had taken place from a distance of 3-4 steps from the deceased. He further deposed that he had conveyed the details of the incident to Makhar Singh father of the deceased, who had also reached the scene of occurrence. In his own

showing, his statement was recorded by the investigating officer in the presence of SHO and about 25 other persons in his village in the evening and not at the spot, though the investigating officer had arrived at the spot while he was still there.

7. Shiv Charan PW 4 deposed about the weapons which each of the accused was armed with at the time of the occurrence as well as the manner of assault on Laxman deceased. He admitted that he did not make any attempt to save Laxman and went on to add that he did not do so because he had been terrorised by the accused with their firearms. He also narrated the occurrence to Makhar Singh after the latter arrived at the scene. In the cross-examination he admitted that he was a witness for Neelu in a criminal case which he had instituted against the deceased Laxman and others but that he had not been examined till then in the case against Laxman and others and added that in that case it was only Laxman deceased who had caused injuries to Neelu, Kalu and Sri Ram by lathis. He admitted that on the date of the incident he could not go to his field to see whether it was fit for being ploughed or not and that he went there only the next morning. He also admitted that he himself is an accused in a case relating to the murder of a lawyer, by name Vinod, which case was still pending. He pleaded ignorance whether Neelu accused is a witness against him in that murder case. He admitted that Yad Ram and Makhar Singh had stood surety for him in the said murder case against him. According to him the present occurrence was also witnessed by Resham and Jog Raj. Prosecution has, however, not examined them as witnesses at the trial. Satkari PW 5 also generally supported the version given by Kamlesh PW 3 and Balbir Singh PW 2. He denied that he was a servant of Makhar Singh. He also named Resham as an eyewitness. After having noticed the substratum of the ocular testimony, we shall now deal with the medical evidence.

8. Dr. N. K. Pande, PW 10 conducted the post-mortem examination of the deceased. The details of the injuries have been given in the judgment of the High Court as well as in the judgment of the learned Sessions Judge. We need not, therefore, reproduce the same. He had found gunshot wounds as well as incised wounds on the deceased. Out of the injuries noted by Dr. Pande, injuries 1-7, 9 and 13 were gunshot wounds of entry on different parts of the body of the deceased. The High Court observed that injuries 1, 2, and 3 had been caused by one shot; 4-6 and 13 by second shot, 7 and 8 by the third shot while 9 and 10 by the fourth shot. This, however, is the observation of the High Court and not the opinion of the doctor because no elucidation was sought from the doctor in this behalf. Looking to the injuries from the post-mortem report, it is obvious that injury 4 consists of nine gunshot wounds in an area of 7 x 5 cms. This could most probably be the result of one shot only as the direction is towards the back. The direction of injuries 5 and 6 is from below upwards and, therefore it is possible that injuries 9 and 13 could have been caused with the same shot. The High Court divided the injuries, without any basis and ignored certain vital aspects like the factum that injury 13 consists of three wounds on the right arm upper part which is at quite a distance from injury 4. There is no evidence, direct or indirect, about the height or health of the deceased but nonetheless the High Court attempted to explain the direction of injuries 5 and 6 by observing that the deceased was well-built and so would be presumed to be taller than the accused assailants. This is a purely conjectural finding based on surmises and not on any evidence on the record. That he was well-built is deposed to by the eyewitnesses also but no question was asked about his height from anyone. The High Court also, within any evidence, observed that the level of the pathway is normally slightly higher than the field with a view to explain the direction of the injury as from upwards. In doing so the High Court ignored, the evidence of PW 3 to the effect that the level of path was only about six fingers. According to the ocular testimony of PWs 2-5, the first shot was fired by Neelu from a close range of about 2 paces and the others were fired by him from a distance of about 6 and 7 paces. There was blackening and tattooing around injuries 1, 2, 7, 9 and 10. The presence of blackening and tattooing would show that the shots had been fired from a closer range.

No explanation was offered by the prosecution and the High Court also did not properly appreciate this aspect of the case. The finding of the High Court regarding the incised wounds found on the dead body of the deceased is even more conjectural which is neither supported by the medical data nor by the medical opinion. Dr. Pande pointed out the difference in width of various incised wounds according to which it is obvious that more than one sharp-edged weapons had been used on the deceased. Yet the eyewitnesses have attributed the knife blows to only one of the appellants, Meharaj Singh, and that too by one knife only. Injury 11 on the deceased was found to be L shaped while injury 18 has been found to be semi-circular. The other incised injuries were also of different dimensions. The trial court noticed these discrepancies and gave benefit of doubt to the accused by holding that the prosecution had not been able to establish the case against them beyond a reasonable doubt. The High Court discarded the reasons of the trial court but without seeking any explanation from the doctor regarding the number of sharp-edged weapons which might have been used, were on to surmise that since the injuries were in some cases on the fleshy part of the body and some on the bony part, the difference in the width was bound to occur. We are conscious of the fact that the medical evidence is only an evidence of opinion and is not conclusive but then the High Court can also decide the case on the basis of the evidence led and not on what ought to have been led. No explanation from the medical witness was sought about the reason for three types of incised injuries found on the deceased and whether the same could have been caused by one weapon alone. According to Dr. Pande, the presence of Semi-digested food would show that if the deceased had taken his food at about 7.00 a.m., his death could have taken place between 9.00 and 9.30 a.m. It would imply that the occurrence took place much earlier than is alleged by the prosecution. These aspects were not considered in their proper perspective by the High Court. We are constrained to observe that the approach of the High Court in dealing with the medical evidence, in our opinion, was not proper and satisfactory and on the other hand the learned First Additional Sessions Judge, Meerut dealt with the same in an appropriate manner.

9. We find force in the submission of Mr. Tewatia, the learned Senior Counsel appearing for the appellant that the FIR had been ante-timed and thus the investigation was tainted.

10. According to the testimony of PW 8 Sultan Singh sub-Inspector, he reached the place of occurrence at about 2.00 p.m. on 3-11-77. The dead body of Laxman was lying at the place of occurrence. He prepared the sketch of the dead body. Before coming to the place of occurrence, the FIR had already been lodged at the police station in his presence and he had commenced the investigation thereafter. After preparing the inquest report at the spot, he sent the dead body for post-mortem examination along with Constables Mahabir Singh and Sikhbir Singh. He further deposed that he had found blood at the place of occurrence and had collected samples of bloodstained soil. He admitted that he recorded the statements of the witnesses Kamlesh and Shiv Charan at the spot while that of Balbir Singh in his village and that when he recorded the statement of Balbir Singh, other witnesses were not present in the village. In the cross-examination the witness stated that he did not find any trailing of blood from the field of Kirpal Singh to the place where the dead body was actually found nor any blood in the field of Kirpal Singh. He also did not show in the site plan the portion of the field of Kirpal Singh. He also did not show in the site plan the portion of the field from where the fodder had been cut. On being recalled, the witness stated that Balbir had not stated before him that Makhar had reached the place of occurrence and that he had disclosed the incident to him. The investigating officer, however, offered no explanation as to why he had not recorded the statement of Balbir Singh, if as deposed to by Balbir Singh, he was present at the site when the investigating officer came there. The trial court had found that the FIR had been ante-timed but the High Court discredited that finding of the trial court and came to the conclusion that the FIR had been recorded at the time as alleged by the prosecution and that there was no unfairness

or taint in the investigation. For the reasons which we shall presently demonstrate, we are of the opinion, that the FIR in the case was not recorded at the time as alleged by the prosecution.

11. According to PW 3 Kamlesh, the deceased had left the house at 7.00 a. m. He would, therefore, have taken his food before leaving the house because it is not the prosecution case that food was served to him while he was in the fields. Death, according to the medical witness, could have occurred within about 2 or 2 1/2 hours from the time the deceased had taken food on account of the presence of 150 gms of semi-digested food in the stomach of the deceased. According to PW 3, however the occurrence took place at about 11.30 a. m. which would imply that the deceased took his food later and did not leave his house at 7.00 a. m. but at about 9.30 a. m. That is nobody's case. The effort on the part of Kamlesh PW 3 to show that the occurrence took place at 11.30 a. m. appears to have been made because she wanted to back up the prosecution story by stating that the FIR had been lodged promptly at 12.45 p. m. by Makhar Singh and that she had seen the occurrence. According to the prosecution case PW 8, the investigating officer, left for the place of occurrence after the case had been registered at the police station but we find that in the inquest report which was prepared by PW 8 Sultan Singh, the investigating officer at the spot, the number of the FIR or the Crime No. has not been given. Even the heading of the case, does not find mention in the inquest report. No explanation has been furnished for the omission of these vital matters from the inquest report. Was it because no FIR had actually been registered at the time as alleged by the prosecution and PW 8 had reached the spot and, after, some consultations and deliberations it came into existence ? In this connection it is also relevant to note that copy of the FIR was not even sent to the medical officer along with the inquest report and the dead body for post-mortem. The explanation of PW 8 for not sending the copy of the FIR or mentioning the name of the case or the crime No. in the inquest report is wholly unacceptable and the High Court erred in accepting the ipse dixit of Sultan Singh PW 8. It deserves to be noticed that in the inquest report even the name of the accused has not been mentioned. It also does not contain the names of the eyewitnesses or the gist of the statement of the eyewitnesses. It does not reveal as to how many shots had been fired or how many weapons had been used. The inquest report is not signed by any of the eyewitnesses, although the investigating officer has categorically asserted that Kamlesh and Shiv Charan were present at the place of occurrence when he visited and he recorded their statements. If he had actually recorded their statements, there is no reason why the details which we have found missing from the inquest report should not have been there. There is yet another factor which is very relevant. The prosecution led no evidence to show as to when did the copy of the FIR, special report, which was required to be despatched under the statutory provisions of Section 154 Cr. PC read with Section 157 CrPC promptly, to the Magistrate was actually despatched. There is no evidence either to show as to when the copy of the FIR was received by the Magistrate. PW 8 has remained singularly silent on this aspect of the case. According to PW 3, the Police Inspector had taken her thumb impression at the site, but the prosecution has withheld that document from scrutiny of the courts, for reasons best known to it. The argument of Mr. Tewatia, the learned Senior Counsel that since no FIR had been registered till the investigating officer arrived at the spot and conducted the inquest proceedings, the thumb impression of PW 3 was taken by the police on a document which was required to be used as an FIR, cannot be said to be without any merit. It was the duty of PW 8 to explain as to on which document he had obtained the thumb impression of the widow of the deceased at the spot and produce that document for scrutiny of the courts. He did not do so.

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the

crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.

13. It appears that it was a blind murder and none of the eyewitnesses were actually present at the scene. The ante-timing of the FIR was obviously made to introduced eyewitnesses to support the prosecution case. We may demonstrate this by noticing that though PW 3 Smt. Kamlesh the widow of the deceased claimed that she was present with her husband at the time of the occurrence, her conduct was so unnatural that not only she did not try to save her husband by trying to provide a cover but even after her husband fell down and was inflicted repeated injuries with the knife by the appelland Meharaj Singh, she did not even try to go anywhere near her husband and even later on hold his head in her lap and try to provide some comfort to him. This becomes obvious from the absence of any bloodstains on her clothes. She admitted that she had not even received a scratch during the occurrence. In a situation like this, the normal conduct of any wife would be firstly to make an effort to save her husband even by taking the blow on herself and if that is not possible then at least to go so close to his person, at least after the assailants had left there would be no escape from the blood oozing out of the injuries of the deceased to come on to her clothes. Similar criticism is also available against Balbir PW 2, Shiv Charan PW 4 and Satkari PW 5. It is not the case of the prosecution that the clothes of any of them had got bloodstained. The very fact that none of these witnesses went to lodge a report and instead left it to the father of the deceased to lodge the FIR would also go to show that the witnesses in all probability were not present at the spot. The absence of any blood in the field of Kirpal Singh as also the absence of blood trail from the field of Kirpal Singh to the place where the dead body was found, as admitted by PW 8, also suggests that the occurrence did not take place in the manner suggested by the prosecution and that the genesis of the fight has been suppressed from the court. The evidence of Dr. Pande who conducted the post-mortem examination showing that the stomach contained partially digested food material weighting about 150 gms and concluding therefrom that the occurrence must have taken place between 9.00 and 9.30 a. m. if the deceased had taken his food at 7.00 a. m. would also throw a doubt on the correctness of the prosecution version which alleged time of occurrence as 11.30 a. m., presumably to lend an assurance that PWs 2, 3, 4 and 5 were present in the field at that time. The evidence of

Dr. Pande also to the effect that he had found incised injuries on the deceased including a L shaped injury (injury 11) and a semi-circular injury (injury 18) is indicative of the fact that these two injuries were caused with different weapons and looking to the nature of the other incised wounds present on the deceased, the possibility that three types of sharp-edged weapons were used cannot be ruled out. That being the position, it is obvious that the ocular testimony does not fit in with the medical evidence and instead it contradicts it.

14. It is interesting in this connection also to note that Satkari PW 5 named Resham also as an eyewitness. The High Court rightly held Satkari to be a chance witness also but the prosecution has not explained as to why Resham who was alleged to be an eyewitness has not been examined. According to Balbir PW 2, Jog Raj was also an eyewitness. He too has not been examined. Shiv Charan PW 4, also named Resham and Jog Raj as eyewitnesses. Thus, it appears to us that a concerted effort was made by the prosecution witnesses to introduce Resham and Jog Raj as false eyewitnesses in the case but since they have not been examined, it would be fair to draw a presumption, that they perhaps were not prepared to support the false case. The High Court while setting aside the order of acquittal did not deal with these various infirmities.

15. The alleged eyewitnesses are undoubtedly deeply interested in the prosecution but that by itself cannot be a ground to discard their testimony. It, however, certainly puts this Court on its guard to scrutinise their evidence more carefully and keeping in view their unnatural conduct, as noticed above, it appears to us that none of the alleged eyewitnesses had actually seen the occurrence and they were introduced as eyewitnesses after thoughtful deliberations and consultations. It appears, that since it was a blind murder, the appellants have been roped in on account of misguided suspicion because of the previous enmity. Our independent analysis of the evidence on the record coupled with the infirmities which we have noticed above has created an impression on our minds, that the prosecution has not been able to bring home guilt to either of the appellants beyond a reasonable doubt. That trial court was, therefore, right in acquitting them and the High Court even after noticing the infirmities, in our opinion, fell in error in convicting the appellants. The reasons given by the High Court, to set aside the order of acquittal to not commend to us. They are neither sufficient nor adequate or cogent much less compelling.

16. As a result of our above discussion, we hold that the case against both the appellants has not been proved beyond a reasonable doubt and that they are entitled to benefit of doubt. Their appeals consequently succeed and are allowed. The conviction and sentence recorded against them by the High Court are set aside. The appellants shall be set at liberty forthwith, if not required in any other case.

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