

# SUPREME COURT OF INDIA

State of M.P.

Vs.

Kalyan Singh

CrI.A.No.1062 of 2003

(R. V. Raveendran and P. Sathasivam JJ.)

26.07.2008

## ORDER

1. This is a State appeal by special leave against the judgment dated 20.3.2001 of Madhya Pradesh High Court in Criminal Appeal No.447 of 1988 acquitting the respondent Kalyan Singh (Accused No.1) by giving him the benefit of doubt.

2. The prosecution case in brief is that there was enmity between Balbir Singh, father of respondent and Jagdish (PW12) on account of Jagdish defeating Balbir Singh in the Sarpanch elections. On 18.3.1984, a day after the Holi festival, Jagdish as Sarpanch, invited the villagers for playing Faag at Panchayat Bhawan. One Barar, a member of Jagdish's group, was playing Dholak. Balbir Singh came there and tried to snatch the Dholak from Barar. Jagdish objected to Balbir trying to play Dholak at Faag function organized by him and tried to pull the Dholak. In the meanwhile, Kalyan Singh, son of Balbir came there armed with a gun. Balbir exhorted him to kill Jagdish.

“Kalyan Singh fired at Jagdish causing injury on the hip of Jagdish. Jagdish fired back with his pistol and Balbir collapsed and died. Thereafter, Kalyan Singh took another shot at Jagdish. The shot hit Bhajju who fell down and died. Gajraj (PW8), who was standing nearby, also received pellet injuries.

When Kalyan Singh again tried to shoot, Banmali (PW1) snatched the gun and ran. Sovran (A2) and Ghanshyam (A4) beat Banmali. Banmali fell down. Gajraj took the gun from Banmali and kept it in the shop of Jagdish.”

3. On receipt of the information, police visited the place of incident and on the Dehati Nalshi of given by PW7 Sita Ram, (Ex.P7), FIR was registered. Jagdish (PW12), Gajraj (PW8) and Banmali (PW1) who sustained injuries in the incident were medically examined. After investigation police submitted a charge-sheet against the respondent Kalyan Singh (A1) for the offence under section 302 IPC for causing the death of Bhajju, for the offence under section 307 IPC for attempting to murder Jagdish and for offences under sections 25 and 27 of Arms Act, for using the gun without a licence. The charge-sheet was also filed against

Accused Nos.2 to 6 for offences under section 201 IPC, alleging that they had filed a false report with the police with the purpose of concealing the murder of Bhajju.

4. The defence was that Jagdish (PW12) and his party came to the house of Balbir Singh and called him. When Balbir came out, Jagdish (PW12) shot him and Balbir died. Then, Bhajju nephew of Balbir Singh came running to the place of incident. One Hari Gupta belonging to the group of Jagdish shot him and Bhajju died. The accused relied on the reports Ex.D4 and Ex.D9 and the evidence of DW1 to DW4 who narrated the defence version. It is stated that DW4 was the father and DW3 was the brother of deceased Bhajju.

5. The police however on investigation was of the view that Hari Gupta did not shoot Bhajju and they accepted the version of Jagdish and his party.

“The Trial Court by its judgment dated 12.4.1988 acquitted Accused 2 to 6 as prosecution was not able to prove the offence under section 201 IPC against them. In so far as Kalyan Singh (A1) was concerned, the Trial Court held that prosecution had proved the offences under sections 302 and 307 IPC and sections 25 and 27 of Arms Act. It sentenced the first respondent to undergo RI for life, three years, one year and three years respectively for the offences under sections 302 IPC, 307 IPC, sections 25 and 27 of Arms Act.”

6. Feeling aggrieved, Kalyan Singh filed an appeal. The Madhya Pradesh High Court by its judgment dated 20.3.2001 allowed the appeal and set aside the conviction and sentence against Kalyan Singh. It gave him the benefit of doubt for the following four reasons:

“(i) Though the occurrence took place on 18.3.1984, the statements of three eye-witnesses, namely, Banmali (PW1), Dhani Ram (PW3) and Michhua (PW4) were recorded only on 6.4.1984 and the evidence of two other eye-witnesses - Pholua (PW5) and Sita Ram (PW7) were recorded on 7.4.1984 and there was no explanation for the delay of three weeks in recording their statements;

(ii) Sita Ram (PW7) categorically stated that he had lodged the report at police station, but the prosecution case was that Dehati Nalsi (Ex.P7) was recorded at the spot.

(iii) There was non-compliance with the provision of section 157 Cr.PC as the report was not sent to the nearest Magistrate.

(iv) According to the evidences of Dhani Ram (PW3) and Michhua (PW4), Kalyan Singh fired from a distance but the Doctor found blackening on the body of the deceased Bhajju and that did not fit in with the case of the prosecution.

The High Court accepted the contention of the defence that the prosecution case was shrouded in mystery and full of inconsistencies and infirmities, creating a doubt about the prosecution case.”

7. The said acquittal is challenged by the State in this appeal by special leave. Learned counsel for the State submitted that each of the four reasons mentioned by the High Court were not material, nor sufficient to dislodge the effect of the clear evidence of the injured witnesses PWs 1, 8 and 12 and the other eye-witnesses PWs.3, 4, 5, and 7. The question that therefore falls for our consideration is whether the circumstances referred to by the High Court are so insignificant and irrelevant, so as to require interference with the judgment of the High Court.

8. The fact that the incident occurred on 18.3.1984 and the statements of PWs.1, 3 and 4 were recorded only on 6.4.1984 and the statements of PWs. 5 and 7 were recorded only on 7.4.1984 nearly three weeks later is not in dispute. When this fact is looked at proper perspective, we find that High Court was justified in accepting this as a relevant circumstance. The prosecution case is virtually the version put-forth by Jagdish and his party.

“According to the prosecution witnesses (Jagdish and his group), Balbir exhorted his son Kalyan Singh to kill him (Jagdish) and Kalyan Singh accordingly fired two shots - one of which hit Jagdish on his hip and the second missed Jagdish but hit Bhajju and killed him. It is also the case of the prosecution that after Kalyan Singh shot Jagdish, Jagdish retaliated by firing at Balbir and consequently Balbir Singh died. But the evidence of PWs. 1, 3 and 5 is significant. They stated that Jagdish did not fire back after being hit. Their version is that on being hit by the bullet fired by Kalyan Singh, Jagdish fell down and his gun was accidentally triggered and consequently Balbir Singh was hit. But this was different from the case of the prosecution that when Kalyan Singh fired at Jagdish, Jagdish fired back hitting Balbir Singh. We are referring to this aspect to show that PWs.1, 3 and 5 are clearly Jagdish's men trying to exonerate Jagdish and implicate Kalyan Singh and their belated statements are apparently an attempt to create a story favouring Jagdish and implicating Kalyan Singh. If PWs.1, 3, 4, 5 and 7 were all present at the time of the incident, there is no explanation why their statements were not recorded for three weeks. One explanation is that they were not eye-witnesses and another is that they did not immediately come forward to tell the truth but came forward belatedly with a fabricated version. It is apparent that there was a clash between two groups of Jagdish and Balbir. The two persons who died belonged to the group of accused, namely, Balbir, father of the accused no.1 and Bhajju, cousin of accused no.1. But Kalyan Singh is implicated for the murder of Bhajju by these alleged eye-witnesses by belatedly coming forward and countering the defence version that Hari Gupta of Jagdish's group shot Bhajju. Therefore the delay in recording the statements of PWs.1, 3, 4, 5 and 7 had a material bearing on the case.”

9. Similarly, the question whether Dehati Nalsi was recorded at site or not also assumes relevance. Dehati Nalshi is based on Sita Ram's statement which in fact is the prosecution case. This is completely at variance from the reports Ex.D4 and D9 which are the reports of the incident from the side of the accused alleging that Jagdish with his party came to Balbir's house, called him out and shot him and that another person belonging to Jagdish group (Hari

Gupta) shot Bhajju. Where and when Dehati nalshi was recorded therefore assumes relevance and significance.

10. In so far as the failure to send the report to the nearest Magistrate, learned counsel for the appellant drew our attention to Regulation 710 of the Madhya Pradesh Police Regulations which stated that the FIR given to the Officer-in-Charge of the police station, will be recorded in duplicate and a copy will be sent to the Sub-Divisional Magistrate or the Magistrate having jurisdiction. It is therefore submitted that in Madhya Pradesh, the report was not being sent to Magistrate as required by section 157 Cr.PC but to Sub- Divisional Magistrate or District Magistrate. He relied on the copy of the report dated 18.4.1984 which had been filed with a supplementary affidavit to show that a copy was sent to the District Magistrate, Tikamgarh. The fact that it was not sent to the nearest Magistrate, is not however disputed. Regulation 710 does not override section 157 Cr.PC nor does it give a choice to Police not to send the report to the Magistrate.

11. In regard to the fourth circumstance, suffice it to point out that its correctness is not even disputed in the special leave petition.

12. We are of the view that the circumstances relied on by the High Court to give benefit of doubt to the respondent, are relevant and material. Taken together, they rightly give room for doubt about the prosecution case and the guilt of the respondent. The appeal has no merit and is dismissed accordingly.