

SUPREME COURT OF INDIA

Satbir Singh

Vs.

State of Uttar Pradesh

CrI.A.No. 951 of 2005

(S.B. Sinha and Dr. Mukundakam Sharma JJ)

25.02.2009

JUDGMENT

S.B. SINHA, J.

1. Appellants are before us questioning the correctness of a judgment and order of a Division Bench of the High Court of Judicature at Allahabad dated 4th April, 2005 affirming a judgment and order dated 23rd December, 1997 passed by the 1st Additional Sessions Judge, Meerut convicting the appellants herein under Sections 302 read with Section 149 of the Indian Penal Code and Sections 148 and 323/149 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for life, rigorous imprisonment for two years and rigorous imprisonment for three months respectively. The sentences were, however, directed to run concurrently.

2. Appellants, the deceased and the prosecution witnesses are agnates being descendants of one Badan Singh.

3. The genealogical chart of the family is as under :- Badan Singh ! -----

----- !! Ratiram Kallu !! -----
----- !!!!! Khajan Lalsingh Mulchand Shadi Ramasrey !!!!! -----
!!!!!!!! Hemraj Atarsingh !!!!! ----- !!!!! Sachida-nand Jagbandhan
! Randhir (Deceased) Raghunath! Sukh-bir (deceased) !!!!! ----- ! -----
----- !!!!! Arun Anirudh ! Nem Singh Sat-kumar ! (R-5) (R-6) !!!!! -----
--- !!!!! Dhumsingh Kaleyram Mittan ! (now dead) ! (Injured) !!! (PW5 now dead) ! Virender
Pal !!!!! ----- !!!!! Abhimanu Satyapal
Jasvir Suresh-chand Janmejai ! (Complai- ! nant) !! -----
----- !!!!! Dattu Neki Baljit Hukma Lax-manTilakram ! (A-1, now dead) -----
----- !!!!! Vedu Harvir Jagemeg ----- !!!!! Dansahai (A-6) Dalbir
(A-5) !!! ----- !!!!! Satbir Vakil (A-2)
Lekhpal (A-3) Brahmpal Rajpal (A-4)

4. Enmity between the two parties was a long standing one. It started with murder of one Laxman brother of Tilak Ram (A-1) and father of Dalbir (A-6) as well as Danaahai (A-5). Jagbandhan (deceased No.1), father of Arun and Anirudh alongwith 10 other persons were prosecuted therefor. Jagbandhan (deceased No.1), Dhum Singh (PW-7) and Gandhari wife of Ajab Singh (PW-6) were convicted, but others were acquitted in that case. However, the High Court on an appeal preferred by the said four persons acquitted them. Proceedings under Sections 107/117 of the Code of Criminal Procedure had also been initiated by and against both the parties.

5. The incident in question took place on 27th November, 1997 at about 11.00 a.m. According to the first information report which was lodged by Suresh Chandra (PW-1), at about 10.00 a.m. he alongwith his cousin Jagbandhan (deceased No.1) and brother-in-law Ajab Singh were working in their fields. Tilak Ram, Satbir, Vakil and Lekhpal were also ploughing their field. At that time, they started cutting soil from the ridge of their field to which Jagbandhan objected. To this the accused persons started abusing him. Randhir (deceased No.2) intervened. Tilak Ram (A-1) and his three sons Satbir (A-4); Valil (A-2) and Lekhpal (A-3) left the field extending threats. They returned with Dalbir (A-5) ; Dansahai (A-6) and Harvir (A- 7).

6. Accused Tilak Ram, Dalbir and Harvir were armed with ballam ; Vakil and Lekhpal were armed with Balkari and Satbir and Dansahai were armed with Bhala. Deceased No.1 Jagnandhan was smoking a 'Hukka' at that time. He was assaulted by the accused persons in presence of Suresh Chandra (PW-1), Mithan (PW-5) and Ajab Singh (PW-6). PW-5, Mithan is also an injured eye witness.

7. Ajab Singh (PW-6), Sachitanand and Janmajay, upon hearing the cries, ran towards the scene of occurrence. Accsued Satbir, Vakil and Lekhpal chased them. They fled and took shelter in the field of Bakhty. Mithan (PW-5), who was working in his field was also attracted by the noise. They intercepted him. Satbir assaulted him with Bhala. Meanwhile Tilak Ram reached there and asked the accused persons to leave him and proceed to the village to do away with Randhir. Accused persons

thereafter went towards the Village. Randhir was sitting on his cot in his 'gher'. His wife Kishan Devi (PW-4) was cleaning the buffalo. On seeing the accused, Randhir (deceased No.2) tried to run away to save his life but was chased, surrounded and assaulted by the accused persons. He died on the spot. Upon being informed by Mithan (PW-5) that accused had gone towards the village to do away with Randhir they rushed towards the 'gher' of Randhir where they were told about the occurrence.

8. We may place on record that accused Tilak Ram (A-1) has since died.

9. Prosecution examined five eye witnesses i.e. PWs. 1, 5 and 6 in relation to the first incident i.e. murder of Jagbandhan (deceased No.1) and PW-4 and PW-7 in relation to the second incident i.e. murder of Randhir (deceased No.2). Sachitanand and Janmajay were, however, not examined.

10. Police station Dodhar is situated at a distance of about 2 miles from the place of occurrence. First information report was lodged at about 1.15 p.m.

11. Postmortem report shows that Jagbandhan suffered nine ante mortem injuries which are as under :-

"1. Incised wound 13 cm x 1/2 cm x brain deep on the right side of scalp, 10 cm from right ear and

1/4 cm. from root of the nose. Dark clotted blood was present and brain matter had come out from the wound.

2. Five punctured wound on right cheek of average size 1 cm x 1.5 cm x thickening of cheek, fracture of right mandible in the area of 9 cm x 3 cm.

3. Incised wound with margins clean cut on right side back of scalp, 3 cm x 1 cm x bone deep, oblique in direction, 3 cm behind right ear.

4. Incised wound with clean cut margins on right side neck back, 4 cm x 1.5 cm x muscle deep, 3 cm below injury No. 3.

5. incised wound with clean cut margins on right shoulder upper and anterior side, 6 cm x 3 cm, extending upto; the outer part of right clavicle bone

6. Incised wound with clean cut margins, 6 cm x 2-1/2 cm x 2 cm on right shoulder just behind injury No. 5

7. Contusion 6 cm on the right arm anterior side 6 cm below injury No. 5. 8. Punctured wound 1-1/2 cm x 1/2 cm x 3 cm on the back of left forearm.

9. Abrasion 3 cm x 1/2 cm on the back of right hand. 4 cm below right wrist joint." Deceased Randhir suffered nineteen anti mortem injuries which are as under:-

"1. Incised wound with clean cut margins 14 cm x 3 cm x brain on the right side scalp from back of right ear. The brain mater had come out.

2. Incised wound with clean cut margins, 7 cm x 2 cm x bone deep on right side scalp extending upto the upper right ear.

3. Semi-circular incised wound with clean cut margins 4 cm x 2 cm x bone deep on left upper part of scalp 9 cm above left ear and 19 cm from left eye brow.

4. Incised wound with clean cut margins 6 cm x 1/2 cm x bone deep 2-1/2 cm above and behind left ear.

5. Deep incised wound with clean cut margins 13 cm x 4 cm x bone deep on right side face from right eye inner side cutting the nose on right side and upper lip on right side. The under lying bone and teeth were visible.

6. Incised wound with clean cut margins 2 cm x 1/2 cm x bone deep on right side cheek just below the right eye.

7. Incised wound with clean cut margins 3 cm x 1 cm x bone deep on right side inner part of eye brow.

8. Clean cut incised wound on the right side on chin 5 cm x 1 cm x bone deep with fracture of mandible right side. 9. Abrasion on left side chest 1-1/2 cm x 1 cm x 5 cm above and inner to left nipple.

10. Punctured wound on right anterior side of chest 1/2 cm x 1 cm 11-1/2 cm below the right nipple.

11. Contusion cm x 1/2 cm on the right arm upper part 9 cm below right shoulder joint.

12. Lacerated wound 2 cm x 1 cm x 1/2 cm on the right arm lower part anterior side just above the right elbow joint.

13. Abrasion 1/2 cm x 1/2 cm on the back right arm 8 cm above the right elbow joint.

14. Lacerated wound 3 cm x 1/2 cm x skin deep on inner part of right index finger near base.

15. Clean cut incised wound 3 cm x 1/2 cm x skin deep on back of left forearm 7 cm above left wrist joint 8

16. Two incised wound of average size x 1/2 cm x skin deep on the left palm inner side near left wrist Joint

17. Lacerated wound 2 cm x 1/2 cm x skin deep on the outer side of right leg, 10 cm above right ankle joint.

18. Incised wound 2 cm x 1/2 cm x skin deep on the outer side of right leg 10 cm above right ankle joint

19. Punctured wound 1/2 cm x 1/2 cm x 1 cm on the back side of right leg above ankle joint."

12. Whereas other appellants raised a plea of denial of occurrence Harveer; A-7 raised the plea of alibi. In order to prove the same two defence witnesses were examined to show that on the date of occurrence he had gone to Budhana in the morning at 7.00 a.m. to encash a `parchi' issued by Sugar Mill towards the supply of sugarcane. According to him the said `parchi' was not encashed on that day and he returned to the village at about 5.30 p.m. D.W.1 Omkar Singh was examined to prove the said fact. D.W.2 Kuldeep Chand is Cane Accountant at Khatauli Sugar Mill. According to the said witness in the sugar Mill's register payment made to Pitam Singh was recorded.

13. The first part of the prosecution case leading to the murder of Jagbandhan was proved by Suresh Chand (PW-1) ; Mithan (PW-5) and Ajab Singh (PW-6). The second part of the occurrence resulting in death of Randhir was proved by his widow Kishan Devi (PW-4) and Dhum Singh (PW-7).

14. Both the learned trial judge as also the High Court totally relied upon their testimonies. The learned trial court as also the High Court disbelieved the plea of alibi of Harveer, accused No.7.

15. Before the High Court as also before us it was contended:- (a) Prosecution having not examined any independent witness, the judgment of conviction cannot be sustained. (b) In view of the statement made by PW-4 that Randhir had taken meal at about 12.00 - 1.00 noon and thereafter went towards fields and the autopsy surgeon having found 300 gms. of semi digested food, the prosecution story that the occurrence took place at about 11.00 a.m. should not be believed as ocular evidence runs contrary to the medical evidence.(c) No overt act on the part of Dan Sahai, Dalbir and Harveer, A-5 to A-7 having been alleged in respect of both parts of the incident, the prosecution cannot be said to have proved existence of common object amongst the accused persons so as to invoke Section 149 of the Indian Penal Code.

16. Mr. Sushil Kumar, learned senior counsel appearing on behalf of the appellants, would furthermore draw our attention to some subsequent events. According to learned counsel on or about 8th July, 2000 at about 8.00 a.m. Jagmeg, brother of Harveer (A-7) was murdered. In connection with the said case Jagmeg son of Kaley Ram (brother of PW-1, Suresh Chand, Anirudh and Arun, both sons of Jagbandhan-deceased and other members of their family were made accused. The First Information Report lodged in connection with the said incident was registered as FIR No.138/2000 under Sections 147, 302, 149 of the Indian Penal Code. The other villagers attempted reconciliation between the parties. A Panchayat was convened on 21st March, 2005 and allegedly a compromise/ settlement has been arrived at amongst the parties, pursuant whereto or in furtherance whereof the accused did not support the prosecution case and all the accused named in the said FIR 138/2000 giving rise to Session Trial No.38 of 2002 (prosecution witnesses herein) were acquitted.

17. Before us an application being I.A. No.6979 of 2005 for impleading Suresh Chand (PW-1), Sat Kumar and Nem Singh, sons of deceased Randhir and Arun & Anirudh sons of deceased Jagbandhan has been filed.

18. Another application being I.A. No.4945 of 2005 has also been filed purported to be in terms of Order 47 Rules 1 & 6 of the Supreme Court Rules for acceptance of the said settlement between the parties.

19. Mr. R.K. Dass, learned senior counsel appearing on behalf of the State, on the other hand, would support the judgment.

20. Before advert to the maintainability of the said two interlocutory applications, we may advert to the merit of the matter.

21. The fact that the parties are related is not in dispute. The homicidal nature of death of Jagbandhan and Randhir is also not in dispute. The occurrence started as the accused were said to be cutting soil from the ridge of their field to which deceased No.1, Jagbandhan, objected. The deceased Randhir also intervened. All the accused persons then went to the village and came variously armed. They not only assaulted Jagbandhan but after his death they went back to the village and done away with Randhir. Evidence of the informant, PW-1, Suresh Chand, was supported in material particulars by PW-5, Mithan, who is an injured eye witness. He was taken to the primary hospital. He was given treatment there.

22. It was urged that Dr. R.K. Sharma, who examined himself as PW-9 in cross-examination stated that injury on the person of Mithan (PW-5) can be a self-inflicted one. We may notice that Mithan (PW-5) was examined on 28th January, 1977. According to the said doctor the injury on his person could possibly be caused on 26th January, 1977 with a sharp ballam stating :-

"3. Scratch can be superficial also and it can be skin deep also. If it is skin deep then it is called wound. I cannot tell corectly the thickness of skin of wrist joint. I cannot tell if thickness can be 1/10 (illegible). The witness said again that it cannot be so les. If any heavy weapon rubs off then such injury can be caused. If edge of ballam rubs off then such injury can be caused., tattooing can be caused. This injury could be caused with any sharp weapon. It could be self-inflicted. In my estimation of period of injury, it could be 3-4 hours more or less. This is wrong this difference could be 10-12 hours." We do not see any reason to disbelieve the medical evidence that (PW-5) Mithan suffered an injury. If he was an injured witness his presence at the place of occurrence cannot be

doubted. Even otherwise his evidence inspires confidence and has rightly been accepted by both the courts below. Similarly evidence of Ajab Singh (PW-6) also is reliable. Opinion of the doctor that the injury may be a self inflicted one is not of much significance.

23. The second part of the prosecution case has been proved by Dhum Singh (PW-7) and Kishan Devi (PW-4) widow of Randhir. PW-7 was sitting on the roof of his house. According to him, seeing the accused persons Randhir tried to run away but was surrounded by the accused persons and was murdered. He furthermore stated that the widow of deceased Kishan Devi and Harbai were present there. Presence of Kishan Devi at the place of occurrence was natural. That Dhum Singh (PW-7) had been living near the gher of the deceased is neither denied nor disputed. He otherwise is an independent witness.

24. The long standing enmity between two branches of the same family stands admitted. It is, therefore, unlikely that other villagers would come to depose in favour of one of the parties or the other.

25. It is now a well settled principle of law that only because the witnesses are not independent ones may not by itself be a ground to discard the prosecution case. If the prosecution case has been supported by the witnesses and no cogent reason has been shown to discredit their statements, a judgment of conviction can certainly be based thereupon.

26. Furthermore, as noticed hereinbefore, at least Dhum Singh (PW-7) is an independent witness. He had no animus against the accused. False implication of the accused at his hand had not been suggested, far less established.

27. We may now examine the question as to whether the ocular evidence is in variance with the medical evidence as stomach of the deceased contained undigested food. The materials brought on record by the prosecution shows that deceased Randhir had taken his food at about 10.00 a.m. The occurrence took place at about 11.30 a.m Digestive process, as is well known, depends upon the nature of the food. This Court in Shivappa and Ors. v. State of Karnataka, [(2008) 11 SCC 337] while dealing with a similar contention, held as under :-

"13. The High Court, however, opined that in view of the evidence of the doctor that the death occurred within 24 hours of the time of the post- mortem, the variation between the medical evidence and the testimony of the eye witnesses is not such which would lead to a conclusion that the prosecution case was not correct. We agree with the said view. In Modi's Medical Jurisprudence, p. 185, it is stated that so far as the food contents are concerned, they remain for long hours in the stomach and duration thereof depends upon various factors.

14. In *Main Pal and Anr. v. State of Haryana and Ors.* (2004) 10 SCC 692, this Court held: If the eyewitnesses' version, even though of the relatives, is found to be truthful and credible after deep scrutiny the opinionative evidence of the doctor cannot wipe out the effect of eyewitnesses' evidence. The opinion of the doctor cannot have any binding force and cannot be said to be the last word on what he deposes or meant for implicit acceptance. On the other hand, his evidence is liable to be sifted, analysed and tested, in the same manner as that of any other witness, keeping in view only the fact that he has some experience and training in the nature of the functions discharged by him.

15. Indisputably, a large number of factors are responsible for drawing an inference with regard to digestion of food. It may be difficult if not impossible to state exactly the time which would be taken for the purpose of digestion.

28. Evidence of Kishan Devi (PW-4) that her husband had taken his meal at 12.00 - 1.00 noon must be considered having regard to the fact that she is an illiterate woman. Her deposition to that effect must be considered upon taking a holistic view of the matter.

29. The distance between the place of occurrence and the police station is said to be two miles. Two deaths had taken place. There was an injured person. First information report was lodged at 1.15 p.m. If the first information report could be lodged at 1.15 p.m., the occurrence could not be said to have taken place after 1.00 p.m.

30. The entire incident took place in three phases, namely -(a) quarrel at the field ; (b) accused persons going to the village, coming back to the field and killing Jagbandhan and injuring Mithan ; and (c) going back to the village and assaulting Randhir. It must have consumed some time.

31. We must also bear in the mind the number of injuries found on the persons of both the deceased. Jagbandhan had nine injuries on his person whereas the number of injuries on the person of Randhir were nineteen.. The first information report having been lodged almost immediately after the occurrence, we do not think that the prosecution case is tainted with falsehood. It would be almost well nigh impossible to implicate so many persons falsely and that to attribute specific overt acts on the part of each of the accused. Contention of Mr. Sushil Kuamr that the Investigating officer did not examine some of the witnesses on 27th January, 1997 cannot be accepted for more than one reason, firstly because the delay in the investigation itself may not benefit the accused ; secondly because the Investigating Officer (PW-8) in his deposition explained the reasons for delayed examination of the witnesses. According to him, after preparation of the inquest report he was busy in searching for the accused persons and thus could not record the statement of Dhum Singh. So far as non-examination of PW-5 is concerned, he stated :-

"13. The weapons used in the incident are not mentioned in inquest report. At the time of writing inquest report, I had come to know that Dhumsingh was eyewitness. Eyewitness can be witness of inquest report, therefore, I made him witness in inquest report. Dhumsingh was directed to remain in village because his statment was to be recorded.

14. Statement of witness Mitthan was not recorded by me at the field because Panchyatnam of Randhir was to be prepared and search of accused persons was to be conducted. After preparing site plan I went to village immediately. I did not give any instruction to Mitthan that he should remain in the village as his statement is to be recorded. The entry regarding injury on his arm was recorded in case diary at the field itself. He sustained wound. It is incorrect to state that he had sustained little abrasion. I did not send him for medical examination from the field because I had few accused persons and I could not find him." This Court in Ranbir v. State of Punjab, [(1973) 2 SCC 444] repelled a similar contention stating :-

".....The fact of delayed examination of Tota Ram should, in our opinion, have been put to the investigating officer so as to enable him to explain the undue delay, if any, in examining Tota Ram. The question of delay in examining a witness during investigation is material only if it is indicative and suggestive of some unfair practice by the investigating agency for the purpose of introducing a got-up witness to falsely support the prosecution case." Yet again in Bodhraj v. State of J&K,[(2002) 8 SCC 45] it was held :-

"33. Another point which was urged was the alleged delayed examination of the witnesses. Here again, it was explained as to why there was delay. Important witnesses were examined immediately. Further statements were recorded subsequently. Reasons necessitating such examination were indicated. It was urged that the same was to rope in the accused persons. This aspect has also been considered by the trial court and the High Court. It has been recorded that there was a valid reason for the subsequent and/or delayed examination. Such conclusion has been arrived at after analysing the explanation offered. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion."

32. We may place on record that in regard to the purported delay of examination of PW-6, no question was put to the Investigating Officer.

33. Mr. Sushil Kumar would urge that in the inquest report the name of the accused persons had not been mentioned. In our opinion that in law it was not necessary to do so. The inquest report is

prepared for the purposes mentioned in 174 of the Code of Criminal Procedure and not for corroborating the prosecution case. In *Pedda Narayana v. State of A.P.*, [(1975) 4 SCC 153] this Court has held :

"11. A perusal of this provision would clearly show that the object of the proceedings under Section 174 is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted appears to us to be foreign to the ambit and scope of the proceedings under Section 174." Yet again in *George v. State of Kerala*, [(1998) 4 SCC 605] it was held :-

"31. The whole purpose of preparing an inquest report under Section 174(1) Cr PC is to investigate into and draw up a report of the apparent cause of death, describing such wounds as may be found on the body of the deceased and stating in what manner, or by what weapon or instrument, if any, such wounds appear to have been inflicted. In other words, for the purpose of holding the inquest it is neither necessary nor obligatory on the part of the Investigating Officer to investigate into or ascertain who were the persons responsible for the death."

34. If all the witnesses could not attribute specific roles to each of the accused, the same in our considered view, is natural. If seven persons armed with various weapons attack a person, the witnesses who were standing at some distance may not be able to attribute specific role to each of the accused persons.

35. Mr. Sushil Kmar would urge that whereas Satbir, Vakil and Lekhpal, appellant Nos. 1 to 3, may be placed in one group and Dan Sahai and Dalbir sons of Lakshman and Harveer (appellant Nos.4 to 7) on the other, the members of the second group did not show any common object with the members of the first group. It may be that they were not the persons who had committed overt acts when Jagbandhan objected to the factum of cutting of the ridge. But each one of them came back with the other accused. They were armed with deadly weapons. They were present, even though might not have actually assaulted Jagbandhan. They left the place stating that they would kill Randhir. Both PW-4 and PW-7 stated that all the accused had taken part in assaulting Randhir. Their statements are credit- worthy as Randhir suffered as many as 19 injuries. Randhir was chased and surrounded before he was assaulted.

36. We, therefore, are of the opinion that the prosecution has been able to establish the existence of common object amongst all the accused persons.

37. So far as the interlocutory applications are concerned, suffice it to point out that having regard

to the provisions contained in Sections 320 and 321 of the Code of Criminal Procedure, 1973, an offence under Section 302 of the Indian Penal Code is not compoundable. Appellants were prosecuted for committing two murders and injuring one. Maintenance of rule of law is the prime duty of the State. In violation of the statutory provisions, except in some marginal cases, the court shall not allow composition of offence. If parties have settled their disputes they may live in peace in future but the same by itself cannot be a ground to pass a judgment of acquittal.

38. We, therefore, do not find any reason to allow the applications for impleading of Suresh Chand and others for the purpose of recording the compromise/settlement in exercise of our jurisdiction under Order 47 Rules 1 and 6 of the Supreme Court Rules, which in our opinion, has no application to the present case. The applications are accordingly dismissed.

39. In the result this appeal fails and is dismissed.