

# SUPREME COURT OF INDIA

Kirpal Singh

Vs.

State of U.P.

Crl.A.No.235 of 2006

(B. Sudershan Reddy and J.M. Panchal JJ.)

23.02.2010

## JUDGEMENT

### **J.M. Panchal, J.**

1. This appeal, by special leave, is directed against judgment dated July 11, 2005, rendered by the High Court of Judicature at Allahabad in Criminal Appeal No. 2402 of 1985 by which the conviction of the appellant recorded under Section 302 IPC and imposition of sentence of life imprisonment on him by learned V Additional Sessions Judge, Moradabad in ST No. 622 of 1983, is confirmed

2. The facts emerging from the record of the case are as under: - Deceased Ram Kumar Singh was resident of village Dudaila, District Muradabad. Some six months prior to the incident in question, some dispute had taken place between Ram Kumar Singh who lost his life in the incident and Kallu Singh, i.e. original accused No.3 over the question of digging and lifting of the earth from the land of accused No.3 for the purpose of raising of level of a village pathway which was decided to be constructed by village people at a Shramdan Yojna held in the village. Ever since the said dispute, the parties were not on the talking terms with each other. On May 30, 1983 at about 2.00 pm, some quarrel had taken place between the grandsons of original accused No. 3, i.e., Kallu Singh and children of Ram Kumar Singh. The appellant, i.e., Kirpal Singh who was original accused No.1, Vijay Pal Singh, who was original accused No. 2 and Devender Kumar, who was original accused No. 4, are sons of original accused No. 3, i.e., Kallu Singh.

“Ram Kumar Singh went to the house of original accused No. 3, i.e., Kallu Singh for getting the quarrel settled but Kallu Singh and his sons not only abused him but were found to be ready to assault him. At that point of time Ram Swarup and others, who were present there, intervened. At about 7.00 pm on the same day, Ram Kumar Singh, his wife Mrs. Jishna and his son Rupender Kumar were returning home from the jungle.

Ram Kumar Singh was slightly ahead of his wife and son. When they reached near the house of the accused, who were standing in front of their house, Kallu Singh is said to have exhorted his sons to kill Ram Kumar Singh and finish the dispute for ever, whereupon the appellant fired a shot from his gun at Ram Kumar Singh which hit his chest. On sustaining the gunshot injury, Ram Kumar Singh tumbled down on the road. On hearing the cries of Mrs. Jishna, wife of Ram Kumar Singh and noise of the gun shot, Hari Raj Singh, Rattu Singh and others reached the place of incident. Another shot at Ram Kumar Singh was fired by original accused No. 2, i.e., Vijay Pal Singh from his country made pistol, which hit Mrs. Shanti Devi, wife of Nathu Singh. As the people gathered at the place of incident, Kallu Singh and his sons made their escape good. Ram Kumar Singh, who had sustained fire arm injuries, was removed to Government Hospital, Kanth in a tractor, which was arranged by his wife Mrs. Jishna. Injured Ram Kumar Singh succumbed to his injuries at the hospital and was declared dead by the Medical Officer at about 10.15 pm.

Mrs. Jishna thereafter got a report scribed through one Anand Kumar in the hospital premises and lodged the same at the police outpost Kanth, at 10.50 pm. On the basis of the First Information Report, offences punishable under Sections 302 and 307 read with Section 34 of the Indian Penal Code were registered against the four accused. After necessary investigation, charge-sheet was submitted in the court of learned Chief Judicial Magistrate, Moradabad. As the offences punishable under Sections 302 and 307 are exclusively triable by a court of Sessions, the case was committed to the Court of learned V Additional Sessions Judge, Moradabad for trial.”

3. The learned Judge framed charge against the appellant under Section 302 of Indian Penal Code whereas other accused were charged under Section 302 read with Section 34 of Indian Penal Code. All the four accused, including the appellant, were also charged under Section 307 read with Section 34 of the Indian Penal Code. The Charge was read over and explained to the accused, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined witnesses and also produced documentary evidence in support of its case against the appellant and others. After recording of evidence of prosecution witness was over, the learned Judge explained to the accused the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure. In the further statement the case of the appellant and others was that they were implicated falsely in the case due to enmity. On behalf of the accused witness Pooran Singh was examined as DW-1, whereas Mr. Harish Chander, a fire arm dealer, was examined as DW-2 and Mr. Nihal Chand, arms clerk, was examined as DW-3.

4. On appreciation of evidence adduced by the parties the learned Judge held that it was proved satisfactorily by the prosecution that deceased Ram Kumar Singh died a homicidal death and Mrs. Shanti Devi was injured in the incident. The learned Judge noticed that both, i.e., Kallu Singh, original accused No. 3 and Ram Kumar Singh, the deceased, were brothers-in-law and wives of both of them were cousins. The learned Judge found that accused

Devendra Kumar had not committed any offence and was entitled to be acquitted. On scrutiny of evidence the learned Judge found that the evidence tendered by Mrs. Jishna, widow of Ram Kumar Singh, was trustworthy as well as reliable and the same was corroborated by her complaint, which was neither ante-dated nor delayed and was filed promptly. Similarly, the learned Judge found that the testimony of Rupender Kumar, son of the deceased, was trustworthy and reliable. After placing reliance on the evidence of these two witnesses, the learned Judge held that it was established that the appellant had fired a shot at the deceased because of which the deceased had fallen down and ultimately died. After analysis of evidence of PW-3 Mishri Singh, the learned Judge held that the motive, which prompted the appellant to kill the deceased was dispute between the deceased and original accused No.3 relating to the digging and lifting of the earth from the field of original accused No.3 for the purpose of raising level of the road to be constructed for people of the village and quarrel which took place between the grandsons of the deceased and accused No.3 on the date of the incident. On assessment of evidence of DW-1, DW-2 and DW-3, the learned Judge found that the defence that the accused were falsely implicated in the case due to enmity, was not probablized at all.

“By judgment dated September 9, 1985 the learned Judge convicted the appellant under Section 302 of Indian Penal Code whereas accused Kallu Singh and accused Vijay Pal Singh were convicted under Section 302 with the aid of Section 34 of Indian Penal Code and accused Vijay Pal Singh was also convicted under Section 323 of the Indian Penal Code for causing injuries to Mrs. Shanti Devi.

Thereafter, learned counsel on behalf of the accused and the learned Additional Public Prosecutor were heard by the learned Judge with reference to the sentence to be imposed on the accused and by order dated September 9, 1985 the appellant was sentenced to R.I. for life for commission of offence punishable under Section 302 of Indian Penal Code whereas accused Kallu Singh and Vijay Pal Singh were sentenced to life imprisonment for commission of offence punishable under Section 302 read with Section 34 of Indian Penal Code. Further, accused Vijay Pal Singh was sentenced to R.I. for six months for commission of offence punishable under Section 323 of Indian Penal Code.”

5. Feeling aggrieved, the accused preferred Criminal Appeal No. 2402 of 1985 in the High Court of Judicature at Allahabad. The High Court noticed that Kallu Singh, who was rightly convicted under Section 302 read with Section 34 of the Indian Penal Code, had expired during the pendency of the appeal and, therefore, the appeal by him had abated whereas there was no evidence to establish that accused Vijay Pal Singh had committed offence punishable under Section 302 read with Section 34 of Indian Penal Code, but his conviction under Section 323 of the Indian Penal Code was eminently just. The High Court, therefore, by judgment dated July 11, 1985, dismissed the appeal filed by the appellant and partly allowed the appeal filed by Vijay Pal Singh, which has given rise to the instant appeal.

6. This Court has heard the learned counsel for the parties at length and considered the documents forming part of the appeal.

7. The fact, that deceased Ram Kumar Singh died a homicidal death, is not disputed before this Court by the learned counsel for the appellant. The said fact amply stands approved by the testimony of Dr. D.N. Sharma, who was examined by the prosecution as Prosecution Witness No. 7. The injuries, which were noticed by the Medical Officer while performing autopsy on the dead body of the deceased, have been mentioned by him in his substantive evidence before the court. The injuries are also mentioned by him in the post mortem notes prepared by him. It is nobody's case that the deceased died an accidental death or natural death or had committed suicide. Therefore, the finding recorded by the Sessions Court and the High Court that the deceased had died a homicidal death deserves to be upheld and is hereby upheld.

8. Mrs. Jishna, who is the first informant, was examined as PW-1. She asserted in her sworn testimony that on the date of incident at about 2.00 pm a quarrel had ensued between children of the two families and, therefore, Ram Kumar Singh had gone to the house of Kallu Singh with a view to get the matter reconciled amicably but the deceased was abused. It is further asserted by her that at about 7.00 pm on May 30, 1983, when she along with her deceased husband and son Rupender Kumar was returning from jungle, they were accosted near the house of Kallu Singh, who with his sons, was standing on the road in front of his house and that the appellant, who was having a gun, had fired a shot at the deceased as a result of which the deceased had fallen down on the road.

“Though this witness was cross-examined searchingly, nothing could be elicited to establish that the appellant and others were falsely implicated in the case because of enmity. Her testimony gets complete corroboration from the contents of FIR lodged by her. The courts below, on appreciation of evidence, have held that the FIR was neither ante-timed nor delayed and that the same was filed promptly. It is well settled that when soon after the occurrence the FIR is lodged at the police station, false story being cooked up and/or false implication of accused stands ruled out. The testimony of wife of the deceased also gets complete corroboration from the testimony of witness Rupender Kumar, who is son of the deceased and examined as PW-2. Witness Rupender Kumar has also stated that the appellant had fired a shot from his gun at the deceased as a result of which the deceased had died. Though this witness was cross-examined at length, no dent could be made in the assertion made by him that the deceased had died because of the gun shot fired by the appellant. It is well to remember that Mrs. Jishna PW-1 is the wife of the deceased whereas Rupender Kumar, examined as PW-2, is the son of the deceased. They, being the close relatives of the deceased, would not allow the real culprits to go scot free and implicate the appellant falsely in the case. As noticed by the High Court, Kallu Singh was brother-in-law, i.e., husband of the sister of Mrs. Jishna. Therefore, she would never make an attempt to implicate the appellant falsely in the case, as the appellant is closely related to her. It was easy for her to mention in her FIR and before the court that the shot was

fired either by Kallu Singh, i.e., her brother-in-law or by Vijay Pal Singh or by Devender Kumar. But she has not made any such attempt and attributed the firing of the shot only to the appellant. The trial court, which had advantage of observing demeanour of the witnesses, has rightly placed reliance on the testimony of Mrs. Jishna and Rupender Kumar for the purpose of coming to the conclusion that the appellant had fired a shot at the deceased due to which the deceased lost his life. The appreciation of evidence by the trial court and the High Court is neither perverse nor unreasonable. It could not be pointed out by the learned counsel for the appellant that any material piece of evidence on record was ignored either by the trial court or by the High Court before coming to the conclusion that the appellant was guilty under Section 302 of the Indian Penal Code. Therefore, the finding that the appellant caused death of the deceased deserves to be upheld.”

9. The contention, that after drawing adverse inference against the prosecution for not examining injured witness Mrs. Shanti Devi, the prosecution story should have been disbelieved as improbable has no substance. As observed earlier, the prosecution has satisfactorily established that a quarrel between the children of the two families, i.e., family of the deceased and the family of Kallu Singh, had ensued on the day of the incident at about 2.00 pm and, therefore, in order to see that the disputes were settled amicably, the deceased had gone to the house of Kallu Singh, but he was humiliated by Kallu Singh and his sons and invectives were hurled at him and, therefore, he had to come back. The evidence further shows that the accused had decided to liquidate Ram Kumar Singh and were, therefore, standing in the front of their house with weapons and the appellant had killed the deceased by firing shot from the gun at him. The eye witnesses, i.e., Mrs. Jishna and Rupender Kumar, have narrated the whole incident before the court on oath in a simple manner without any material improvement. The testimony tendered by the eye witnesses was subjected to great care, caution and circumspection by the High Court as well as by the trial court because the eye witnesses were found to be closely related to the deceased as well as the accused. No major discrepancy could be brought to the notice of the court by the learned counsel for the appellant, which would make the testimony of the eye witnesses unreliable. The finding recorded by the trial court as well as by the High Court on 16 the question of motive could not be successfully assailed by the learned counsel for the appellant.

“Though the defence had examined three witnesses, the evidence of none of them was of any assistance for establishing the innocence of the appellant.

DW-1 Pooran Singh had tried to suggest that there was no way for coming to the house of the deceased from his chak, but to a court question he had to admit that the deceased Ram Kumar Singh was going to his field from his open land, which was situated in the front of house of the appellant.

Similarly, the evidence of DW-2 Harish Chander was of little assistance to the defence. The evidence tendered by DW-3 Nihal Chand that the deceased was also having a gun licence has no consequence whatsoever because it is nobody's case that

the appellant had fired a shot from the gun belonging to the deceased. Thus, the examination of defence witnesses was futile and could not probablize the defence of the accused that they were innocent and were falsely 17 implicated.”

10. On the facts and in the circumstances of the case, this Court finds that the conviction of the appellant under Section 302 of Indian Penal Code as well as imposition of sentence of life imprisonment is well-founded and no case is made out by the learned counsel for the appellant to interfere with the same. The appeal, which lacks merit, deserves to be dismissed.

11. For the foregoing reasons the appeal fails and is dismissed.