

**SUPREME COURT OF INDIA**

State of U.P.

Vs.

Gobardhan

Crl.A.No.824 of 2007

(Dr.B.S.Chauhan and Dipak Misra JJ.)

01.07.2013

**JUDGMENT**

**Dr. B.S.CHAUHAN, J.**

1. This appeal has been filed by the State of U.P. against the judgment and order dated 29.8.2003, passed by the High Court of Allahabad in Criminal Appeal No. 1919 of 1981, reversing the judgment dated 24.8.1981, passed by the Additional Sessions Judge, Badaun, in Sessions Trial No. 251 of 1979 (Crime Case No. 10 of Police Station: Binawar, District: Badaun), whereby the trial court had convicted and sentenced the respondents to life imprisonment under Section 302, read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

2. Facts and circumstances giving rise to this appeal are that:

A. On 7.1.1979 at about 8.45 P.M., respondents Munshi and Gobardhan had created a small drainage through the fields belonging to Rameshwar and Kandhari of their village. Rameshwar and Kandhari had come there and objected to the same. A scuffle broke out between them, and at that time, Jagan (since deceased) happened to pass through the said area, riding on the back of a horse. He had then intervened in the matter and asked both the parties not to fight. All of them had then proceeded towards the village. The accused Munshi and Gobardhan had also gone to the village hurriedly, abusing Rameshwar and Kandhari all along the way. Thereafter, it was in front of the house of one Phool Singh, situated in the village, that all the four

accused had started beating up Jagan with lathis and Kanta (Farsa). The accused Munshi and Gobardhan had possessed lathis, the accused Collector Singh had been in possession of a gun, and the accused Afsar Singh had been in possession of the Kanta (Farsa).

B. Jagan (deceased), in order to save himself, had run inside the house of Phool Singh. All the accused had followed him and continued to beat him up inside the said house. The accused had then carried Jagan from the house of Phool Singh to the Baithak of the accused Munshi and Gobardhan, which was located alongside their house. They had kept Jagan inside the Baithak. The accused Collector Singh had then fired at Jagan twice and killed him. They had thereafter, bolted the Baithak from the outside before going away.

C. The village Chowkidar had furnished information pertaining to the said incident to the police, on the basis of which, a case had then been registered, and investigation had commenced in relation to the murder of Jagan by the accused, i.e. by Munshi, Gobardhan, etc.

D. During the course of the investigation, the dead body of Jagan was recovered from the house belonging to Munshi and Gobardhan. A 12 bore country made pistol, 3 live cartridges, and 2 paper tiklies of a 12 bore pistol were also recovered from there. A seizure memo was then prepared for the same. Samples of blood stained earth were also taken from the spot. The dead body of Jagan was sealed and was thereafter, sent for postmortem examination.

E. After the completion of the investigation, a chargesheet was submitted against all the accused persons. The case was then committed to the Sessions Court for trial vide order dated 10.2.1979. All the accused denied the charges levelled against them, and pleaded not guilty.

F. After the conclusion of the trial, the learned Sessions Judge vide judgment and order dated 24.8.1981, held the accused Munshi, Gobardhan, Collector Singh and Afsar Singh guilty for offences under Sections 302/34 IPC, and sentenced them to undergo life imprisonment.

G. Aggrieved, the said convicts filed an appeal before the High Court, which was allowed by it, vide its impugned judgment and order. Hence, this appeal.

3. Shri Amit Singh, learned standing counsel appearing on behalf of the State, has submitted that respondent no. 1 Munshi has died, and that thus, the appeal against him stands abated. His name may be deleted from the array of respondents, and the same is accordingly, deleted. Hence, the appeal is limited to respondent nos. 2, 3 and 4.

It has further been submitted that there is sufficient evidence on record to show that the three respondents had, in fact, committed the offence punishable under Sections 302/34 IPC, and had alongwith Munshi (since dead), committed the murder of Jagan, intentionally in furtherance of their common intention. The trial court has rejected their contention that they had falsely been implicated in the case. The accused Gobardhan is the real brother of the accused Munshi (since dead). Accused Collector Singh and Afsar Singh are also real brothers. Even otherwise, all the said accused belong to the same family. Thus, their participation in the crime is most certainly, not unintentional. A large number of injuries were found on the body of Jagan (deceased) which support the case of the prosecution to the extent that all the accused had, in fact, been involved in the incident. The High Court has not decided the case in correct perspective. The appeal, thus, deserves to be allowed.

4. Per contra, Shri Pradeep Gupta, learned counsel appearing on behalf of the respondents, has opposed the appeal contending that the High Court has rightly acquitted the respondents. A cross case has been filed and is pending as regards the large number of injuries were found on the person of the accused. The said injuries have all been examined and proved. The injuries suffered by the accused were of a grievous nature. Even otherwise, the case put up by the respondents in defence, is highly probable, that there had been a dispute between Rameshwar and Kandhari on one hand, and the accused on the other hand. There was no motive whatsoever, to cause any kind of injuries to the deceased. Jagan (deceased), had only intervened at the time of scuffle between the parties, which was related to taking water to their own fields, through the land of the accused. Thus, the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties, and perused the record.

6. The dead body of Jagan was subjected to postmortem, and the following injuries were found on his person:

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[1]. An oblique incised wound 7Cm x 3Cm x brain deep on the right side of forehead just above the right eye brow. Fracture of right frontal bone seen.

[2]. An incised wound 2Cm x 1/2Cm x bone deep on the right side of the forehead 1 Cm above the injury no. 1. Bone has been cut.

[3]. A lacerated wound 3Cm x 1-1/2Cm x bone deep on the right side of forehead lateral side 4 Cm. Above the lateral edge of the right eye.

[4]. Four gun shot wound of entry on the right side of mandible including upper part of neck in the area of 14Cm x 4Cm. There is blackening of skin around the wound involving right side neck in the area of 18Cm x 12Cm. Hair near the right of neck is burnt. One wound on the neck is measuring 1¼ x 1 Cm. And remaining 3 wounds are 1 Cm x 3/4Cm in size.

[5]. An incised wound 13Cm x 4Cm x bone deep on the post aspect of left forearm 3 Cm, below the left elbow joint.

[6]. A Contusion 4 Cm x 1/2 Cm on the ulna border left forearm 2 Cm., above the left wrist joint.

[7]. An incised wound 1 ½ Cm x ½ Cm x muscle deep on the medial aspect of the right leg 6 Cm, below the right knee joint.

[8]. A gunshot wound of entry 2 Cm x 1 ½ Cm on the back in the midline 1 Cm. Right to midline at the level of T-10. Blackening present around the wound in the area of 5 Cm x 4 Cm. Fracture of the left ulna in lower part seen.

7. The accused Gobardhan was also medically examined on 8.1.1979 at 11 A.M., and the following injuries were found on his body: ?

[1]. Contusion 6 Cm x 1 Cm on the back of left forearm starting just below left elbow to downwards vertically, on the forearm.

[2]. Abraded contusion on outer aspect of left thigh 3 Cm x 2 Cm., in size and 4 Cm. Above and to the left from upper border of Lt. Patella reddish in colour blood scab present in the abraded area of the injury.

[3]. Tenderness present on the dorsum of Lt. foot near metatarsus phalangeal joint of Jt. Big toe and 2 Lt. toe.

8. The accused Munshi (dead), was also medically examined on the same day at 11.15 A.M., and the following injuries were found on his body:

[1]. Contusion on posterior lateral surface of left leg 7 Cm x 1 Cm in size. Transversely present 25 Cm above it.

[2]. Tenderness present in the area of Lt. lateral malleolus of Lt. ankle.

[3]. Complaint of pain in the right side of the head.

9. The High Court has re-appreciated the entire evidence and recorded the following findings of fact:

I) The first information report has not been registered at the time and in the manner as it ought to have been written.

II) The counter FIR lodged by the respondents herein was written by Munshi (dead) on the dictation given by the Inspector of Police and not in accordance with the version given by the informant- respondent.

III) The report (Ex.P-13), which ought to have been lodged at the behest of the respondents herein, revealed that the respondents herein had used the lathis and a country-made pistol in self- defence.

IV) There had been material discrepancies/contradictions/ inconsistencies in regard to the lodging of FIR and investigation so far as the statements of Pratap Singh, Head Constable and R.D. Yadav, S.O., and the entries made in

the Rojnamcha. The cumulative effect of all the same creates a doubt in the prosecution story.

V) The FIR in the instant case against the respondents herein had been lodged by Pyare Chowkidar as directed by one Bilal Miyan who had informed him that Jagan had been killed by the party of Munshi and others. The said Bilal Miyan was neither an eye-witness, nor has been examined by the prosecution.

VI) Bilal Miyan had been informed by Ram Bharose about the murder of Jagan but who had not disclosed as who had killed Jagan. Thus, it was not clear as who had killed Jagan and the prosecution could not get any support whatsoever from the FIR.

VII) The evidence led by the prosecution shows that the offence was committed inside the house. Ram Bharose, witness, had seen it from Gallery. No such Gallery had been shown in the site plan. VIII) The evidence had been that the rifle which was allegedly used in the murder was a single barrel gun but the empty cartridges used in the shooting were not recovered from the spot. No explanation had been furnished as what had happened to those empty cartridges.

IX) As per the prosecution, 3 live cartridges and one country-made pistol were found at the spot, though as per Ram Bharose, witness, the shot was fired from a single barrel gun. X) The aforesaid contradictions led to the inference that Jagan had been murdered at some other place and in some other manner which was not brought on record by the prosecution.

XI) It was nobody's case that Collector Singh had fired two shots upon Jagan and even according to the postmortem report, there was no injury caused by the country-made pistol. XII) There had been material contradictions regarding locking of the place where Jagan was detained and no explanation was there as who had opened that lock.

XIII) Ram Bharose and Rameshwar had been interested witnesses and their statements were full of discrepancies and contrary to the prosecution case. In view of the fact that no eye-witness was examined, the said material contradictions become most material.

XIV) The prosecution failed to explain the grievous injuries found on the person of Gobardhan and Munshi – accused herein.

10. This Court has laid down sufficient guidelines for interference by the superior court against the order of acquittal. In exceptional cases where there are compelling circumstances to interfere and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference.

11. We have considered and examined the matter most minutely. Applying the parameters of interference against the order of acquittal, we are of the considered opinion that no interference is called for. This appeal lacks merit and is, accordingly, dismissed.