2022 INSC 874

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2224-2225 OF 2010

MUNUWA @ SATISH ETC. ...APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH ...RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. These appeals challenge the judgment of the High Court of Judicature at Allahabad in Criminal Appeal Nos. 290 and 587 of 1981 dated 10.02.2010, confirming the conviction and sentence passed by the Sessions Judge, Bareilly in S.T. No. 402 of 1979 dated 31.01.1981. By the said judgment, the Sessions Judge, Bareilly convicted all the accused under Section 302 and Section 307, each read with Section 34 of the Indian Penal Code, 1860, and sentenced them to life imprisonment and rigorous imprisonment for a period of four years, respectively.

2. ***The Prosecution Case:*** The case of the prosecution is that, on 24.08.1979, around 6:30 p.m., Shri Iqbal Bahadur Saxena, Principal of the Chandra Shekhar Azad Inter-College, Giani, Uttar Pradesh[1], since deceased was sitting with his family physician and private practitioner Dr. Asghar Ali[2] in the verandah outside his office, situated in the college campus. He sent his security guard Fazal Maseeh[3] to fetch an empty bottle of medicines from his residence, also within the college campus. As PW-1 was returning with the bottle, the three accused, Gullu @ Rajesh (A-1), Vimal Kumar @ Chunnoo (A-2), and Munuwa @ Satish (A-3), are alleged to have entered the verandah from the south, fired gunshots at the Deceased as well as at PW-6, and fled towards the north of the building. PW-6 went to his dispensary located nearby and sought the help of Mahendra Kumar, a compounder at his dispensary, to bring the Deceased who had become unconscious, to the dispensary on a cot for administering first-aid. After that, the Deceased was put on a bullock cart along with the cot to proceed

[1] hereinafter referred to as the 'Deceased'.
[2] hereinafter referred to as 'PW-6'.
[3] hereinafter referred to as 'PW-1'.

to Police Station Aliganj. PW-6 is supposed to have followed on another bullock cart.

3. Upon reaching the Police Station, the Deceased lodged an FIR at 8:30 p.m. for offence under Section 307 of the IPC, a translated version of which reads as follows: -

> "*I, Iqbal Bahadur Saxena S/o Pyare Lal Saxena (?) am the resident of Village Sarai Jatar, Ugait, District- Badaun. I am the Principal at Gaini Inter College. I was sitting in front of Giani School. Fazal and Asghar were sitting. At around 6.30 P.M. Gullu S/o Mukat, Vimal Kumar S/o Dataram, Munua S/o Chandra Sen of Gaini arrived and fired shots with the country made pistol for killing me. Asghar and I have been hit by the bullets. (I am?) witness in the case of Vimal Kumar, therefore it has been done.*"

4. The statement was entered into the General Diary by the Head Constable Raghunandan Lal[4], and after recording the statement, PW-4 sent the Deceased to Visharatganj Railway Station on a bullock cart for boarding the train to Bareilly for treatment at the Bareilly General Hospital. Constable Sohan Lal[5] is said to have accompanied him. As per the statement of PW-8, the Deceased

[4] hereinafter referred to as 'PW-4'.
[5] hereinafter referred to as 'PW-8'.

reached the railway station by 9:15 p.m. to board the train and finally reached the Bareilly General Hospital by 11:00 p.m., where Dr. J.N. Bhargava[6] examined him at 11:15 p.m. On the other hand, PW-6's bullock cart reached the railway station around 10:00 p.m., by which time the train carrying the Deceased had already left. Accordingly, PW-6 boarded the 12:00 a.m. train and reached the hospital by 2:00 a.m. on the next date, i.e., 25.08.1979.

5. At the hospital, the statement of the Deceased was recorded by the Tehsildar and Executive Magistrate Shri Subhash C. Rastogi[7], between 11:10 a.m. to 11:20 a.m. on 25.08.1979 after getting a certificate of medical fitness from Dr. P.K. Bass[8]. In this statement, the Deceased recounted events leading to the attack on him, with crucial differences in motive, place of occurrence, and the presence of other persons at such site, among others. On 27.08.1979 at 2:35 a.m. the Deceased passed away, and the post-mortem which was conducted on the same day recorded seven

[6] hereinafter referred to as 'PW-11'.
[7] hereinafter referred to as 'PW-5'.
[8] hereinafter referred to as 'PW-9'.

gunshot wounds, stitched wounds and abrasions, and noted that shock and hemorrhage due to injuries were the cause of death.

6. After the investigation and the arrest of the accused, the prosecution filed the charge-sheet against the accused, and the Sessions Judge framed charges under Sections 302 and 307, each read with Section 34, of the IPC. The prosecution examined 11 witnesses being PW-1 to PW-11, and marked around 28 documents.

7. ***Trial Court:*** The Trial Court, by its judgment dated 31.01.1981, considered and rejected the appellants' contention that the prosecution case was false. It accepted that the FIR was genuine and not *ante*-dated, recorded after the dictation of the Deceased at around 8:30 p.m. upon reaching the police station. The FIR was treated as the Deceased's first dying declaration. The Trial Court accepted that the place of occurrence was the passage in front of the verandah of Deceased's office and observed that the accused could not suggest or prove an alternative place of occurrence of the crime. The submission concerning the lack of motive was rejected on the basis of the FIR being treated as the first

dying declaration, in which the Deceased stated that as he was a witness in a case against A-2, and hence motive was adequately proved against A-2. However, the same conclusion could not be drawn against A-1 and A-3. The Trial Court further discarded the contradictions that surfaced by the improvements in the statements of eye-witnesses PW-1 and PW-6 during cross-examination, noting that they were a result of intimidation by the accused persons who were on bail at the time of recording of evidence. It held that these improvements did not vitiate the story of the prosecution. The Trial Court disbelieved the statement of the Deceased recorded by PW-5 on 25.08.1979, also referred to as the second dying declaration, as it was recorded more than 16 hours after the incident, and was possibly a result of prior consultation and deliberation. As indicated, the Trial Court finally convicted all the accused under Sections 302 and 307, each read with Section 34 of the IPC. The accused persons were sentenced to life imprisonment for offences under Section 302 read with Section 34 IPC, and for offences under Section 307 read with Section 34 IPC, to rigorous imprisonment for four years.

8. ***High Court:*** In the criminal appeals filed by the accused, the High Court affirmed the convictions and the sentences without any variation. It noted that the motive against A-1 and A-3 pivoted on their association with A-2, whose motive for committing the crime was adequately proved. On the question of contradictions in the testimonies of the eye-witnesses PW-1 and PW-6, the High Court noted that despite the inconsistencies, both witnesses were consistent about specific facts, such as the number of accused persons present at the site of the crime, firing of gunshots, and the murder weapon. The Court concluded that the contradictions resulted from apprehension of consequences, as the eye-witnesses resided in the same locality as the accused. Further, the High Court also disbelieved the statement of the Deceased recorded as the second dying declaration, apart from noticing that the dying declaration recorded prior in point of time must be given preference, and its corroboration by the subsequent such declaration is only a rule of prudence, which does not vitiate the contents of the first dying declaration. We may note here that during the pendency of the appeal before the High Court, A-2 had

passed away, and accordingly the present appeals only concern the conviction and sentences against A-1 and A-3.

9. ***Submissions at the bar****:* We heard Shri Venkita Subramoniam T.R, AOR at length, and his submissions were later supplemented by Shri R Basant, Sr. Advocate, assisted by Shri Likhi Chand Bonsle and Shri Rahat Bansal, Advocates. We also heard, Shri Sanjay Kumar Tyagi, AOR on behalf of the State of Uttar Pradesh assisted by Shri Prabhat Kumar Rai and Shri Ajay Kumar Pandey, Advocates.

10. At the outset, Shri Venkita Subramoniam T.R has submitted that the FIR itself is false and fabricated and that the subsequent events concerning the delay of the FIR in reaching the Court also casts grave doubts about the occurrence of the incident. They further submitted that there is doubt as to the place of occurrence, and contradictions surface in the testimonies of the eye-witnesses PW-1 and PW-6. He submits that the conduct of PW-1 and PW-6 is rather suspicious and very unnatural. If these eye-witnesses are discarded, there are no independent witnesses to support the story of the prosecution, particularly when there are no recoveries of

weapons in the case. On the other hand, Sh. Sanjay Kumar Tyagi, has submitted that the findings of the Trail Court as well as the High Court are based on credible and reliable evidence, particularly from eye-witnesses who had no interest in securing the conviction and arrest of the accused. He further submitted that the Trial Court examined the entire evidence and has given good and valid reasons for coming to its conclusions, and therefore, the High Court was right in upholding the decision of the Trial Court.

11. ***Analysis:*** Having heard the arguments, we notice some glaring inconsistencies in the evidence put forth by the prosecution. We will take note of some such crucial lapses.

12. At the outset, we are not impressed by the submission of Shri Venkita Subramoniam T.R that the FIR was signed by the Deceased vertically, in different ink in the FIR, while the contents of the FIR itself were written horizontally, thereby giving an impression that FIR was written after the signature which was obtained at a prior point of time. However, there are certain glaring contradictions that cannot be ignored. First, there is doubt as to whether the Deceased authored the FIR and handed it over to the police, as stated in the

cross-examination of PW-1, or it was orally dictated by the Deceased and scribed by PW-4, as stated by PW-6 in his chief-examination. The other connected fact casting doubt on the way FIR was registered, is the delay caused in its receipt in the Court. An endorsement contained in the original FIR states that it reached the concerned Court on 27.08.1979, i.e., three days after the date of the registration of the FIR. This endorsement is evident from the original FIR document and reads "*Sambandith Nyayalay Beja.*"

13. ***Re: ocular witnesses:*** There are doubts about the conduct and testimony of the eye-witnesses. The first such contradiction in the testimony of PW-1 fundamentally challenges the premise that PW-1 was an eye-witness. In his testimony, PW-1 initially denied being a witness to the actual commission of the crime, stating that:

> "*The shot was fired, when I had gone inside. When I brought an empty bottle, I saw accused Vimal Kumar, Munua and Gullu fleeing. These persons were fleeing southwards. When I saw accused persons fleeing, I had reached in verandah of the office.*"

14. Later, in his cross-examination, PW-1 stated that: -

> *"It is not so that as soon as I reached near stairs of the verandah carrying an empty bottle, the*

> *accused persons fired shots. <u>And after firing shots in my presence, the accused persons fled northwards</u>"*

15. The aforementioned contradictions in the evidence of PW-1 and significant improvements in the testimony, cast doubts about his presence at the alleged place of occurrence of the crime. At least one thing is clear, he has not witnessed the accused firing at the Deceased.

16. The other concern relates to his presence at the police station. PW-1 deposed that his thumb impression was taken on the FIR. However, there is no such thumb impression at all on the document. In addressing this contradiction, the Trial Court concluded that,

> *"The statements referred to above were made with a view to support the defence and I am unable to place any reliance on the same."*

17. Another observation made on perusal of the evidence is that PW-1 stated that he reached the Aliganj police station on foot, remained there for about 25-30 minutes, and after that returned to the village Giani by 8-9 p.m. This statement is curious, as the FIR

itself was registered at 8:30 p.m. It is surprising then that PW-1, who walked the distance of 3 km to the police station, reached there well in time and observed the Deceased write the FIR, allegedly signed it himself, had his statement recorded by the S.I., and after that, concluded the return journey as well, all by 8-9 p.m. It is also curious that he did not accompany the Deceased to the railway station and eventually the hospital when he was in a critical condition, given that he resided with the Deceased within the campus and had been working there for 10-12 years.

18. Cumulatively, the abovementioned contradictions give rise to suspicions about the eye-witness testimony of PW-1. Whether he was present at the place of occurrence or accompanied the Deceased to the police station at all, are in doubt as his statements relating to the circumstances surrounding the place of occurrence and the recording of the FIR have been found to be untrue, and his conduct unnatural.

19. In similar vein, we notice unnatural conduct on part of the eye-witness PW-6. PW-11 who examined PW-6 at the General Hospital Bareilly, stated that the injuries on PW-6 were simple in

nature. Despite this, immediately after the incident, PW-6, a doctor who admittedly maintained close relations with the Deceased, instead of being with the Deceased, went to his own house and rested. Later, he accompanied the Deceased to the police station to report the crime instead of escorting the Deceased to a hospital to administer proper treatment, even when it has been admitted that the Deceased was in a very serious condition, having suffered seven gunshot injuries and oozing blood.

20. ***Re: place of occurrence:*** There is a great amount of uncertainty about the place of occurrence of the crime. As per the FIR, as well as the evidence of PW-1 and PW-6, the incident took place in the passage in front of the verandah where the Deceased and PW-6 were sitting in two chairs facing each other. It is at this place that the accused are alleged to have fired at the Deceased causing as many as seven gunshot injuries on his body. Inspector Chob Singh (PW-7) who was cross-examined about the place of occurrence has stated that he has not found blood spots on the chair or the floor around the chair. This contrasts with the testimony of PW-1, who, in his cross-examination, stated that when

the Deceased was lying on the bullock cart in a cot, blood was oozing out from him, which is relatable to the injuries sustained at the place of occurrence.

21. It is unnatural that not even single drop of blood could be traced or recovered from the chair or the floor where the Deceased and PW-6 were sitting, casting a serious doubt about the veracity of the prosecution's story regarding the place of the incident. It is common knowledge that a place where a severe bodily injury occurs, it naturally leaves a trail of the incident[9]. It is also common for the prosecution to collect proof of blood-stained earth, clothes, or other materials, from where the incident would have occurred.

22. On this aspect there is only a tangential observation in evidence of PW-6, who stated that the Deceased's "*injured body part*

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[9] In *Meghraj Singh* v. *State of U.P.* [(1994) 5 SCC 188], this Court held, "13. …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…".
A similar view was taken in the case of *Ram Sewak and Ors.* v. *State of M.P.* [(2004) 11 SCC 259], wherein it was held, "14…We also notice that there is considerable doubt in regard to the place of incident also. From the medical evidence we notice that the deceased suffered 3 major incised wounds leading to the severance of the blood vessels and amputation of his hand near the wrist and the body in question was lying at the spot till the police came which was nearly 4 to 5 hours later but still the investigating agency was unable to find any blood on the spot. Of course, the prosecution has given an explanation that after the incident in question it had rained <u>but even then it is difficult to believe that even traces of blood could not have been found on the soil in spite of the rain. The absence of any such material also supports the prosecution case that the incident in question might not have happened at the place of incident</u>…" (emphasis supplied)

had been wrapped with tehmand". This statement fails to explain the lack of any blood stains at the crime scene. This does not explain why the said cloth, *tehmand*, was not produced by the prosecution. Accordingly, we find that the prosecution's failure to explain recovery of blood on the chair or the place where the Deceased was sitting when he was fired at seven times is fatal. The non-production of blood-stained clothes is equally fatal.

23. ***Re: lack of material recoveries:*** In the present case, the accused are alleged to have attacked the Deceased with the aid of firearms, and the Deceased is supposed to have seven gunshot wounds, yet the prosecution has failed to make material recoveries from the place of the occurrence of the crime. The prosecution has neither produced the empty cartridges from the scene of the crime, nor the pellets from the Deceased's body. The prosecution has not been able to recover any weapons alleged to have been used in the incident. Further, it was incumbent upon the prosecution to examine the ballistic experts to prove whether the gunshots came from one or different guns. The prosecution however, failed to examine ballistic experts or even produce the empty cartridges.

Perhaps it is in the circumstance of lack of any recovery of empty cartridges that the prosecution found it convenient not to examine a ballistic expert. Lack of such material recoveries compounds doubts about the story of the prosecution in the manner that they have set out.

24. ***Re: inconsistencies in the two dying declarations:*** Finally, as noted above, there are inconsistencies in the two dying declarations of the Deceased, as to the motive of the crime, the place of the incident, and the presence of other persons at such place. The first dying declaration, the FIR, was recorded by the Deceased at the police station on 24.08.1979. It states that at 6:30 p.m., the three accused came and fired at him and PW-6 with a pistol because he was a witness in a case against A-2. The second dying declaration, recorded by PW-5 after medical certification from PW-9 on 25.08.1979, states that the incident took place in front of the gate of his quarters, in front of which, A-3's flour mill is located. The three accused came from the flour mill, and A-1 and A-2 fired a shot with a revolver while A-3 held him fastened. It also states that, at the relevant time and place, his peon Sakhar Ali Beg and

5-6 other persons were also present. Notably, he stated that he had rusticated A-2 from college after he failed in the 11th standard, and this motivated the crime.

25. The Trial Court rejected the statement made on 27.08.1979 as a dying declaration, noting that:

> *"The new facts introduced by Iqbal Bahadur Saxena create a suspicion that this dying declaration was a result of consultation and as such I do not consider it safe to place reliance on it."*

26. Without reversing this finding about the later dying declaration, the High Court proceeded on the premise that in the event of two dying declarations, the court may accept the one which is recorded prior in point of time, and the corroboration of the first dying declaration by the later declaration is only a rule of prudence.

27. In our opinion, the second dying declaration comprising far too many additions and improvements, was correctly rejected by the Trial and the High Court. The first declaration was recorded in the police station, right before the Deceased left for the hospital in a critical condition, without any certification of whether the Deceased was medically fit to make a dying declaration. In fact, this

is corroborated by the testimony of PW-8 who stated that the Deceased was in a semi-conscious condition on his way to the hospital. Further, PW-11 who examined the Deceased also stated that his condition was serious. The dubitable circumstances in which the FIR was recorded, sought to be treated as the first dying declaration, have already been considered by us in the initial part of our analysis. For all these reasons, we are of the opinion that it is not safe to consider the FIR as a dying declaration as well.

28. In *Mehiboobsab Abbasabi Nadaf* v. *State of Karnataka*[10], this Court had similarly refrained from accepting any of the multiple dying declarations in light of their manifest inconsistencies:

> "*7. Conviction can indisputably be based on a dying declaration. But, before it can be acted upon, the same must be held to have been rendered voluntarily and truthfully. Consistency in the dying declaration is the relevant factor for placing full reliance thereupon. In this case, the deceased herself had taken contradictory and inconsistent stand in different dying declarations. They, therefore, should not be accepted on their face value. Caution, in this behalf, is required to be applied.*"

[10] (2007) 13 SCC 112.

29. ***Conclusions:*** Having considered the matter in detail, and having noted that the prosecution failed to recover blood-stained materials from the place of occurrence, empty cartridges, pellets, or any other weapon used for commission of the crime, coupled with the contradictions and unnatural conduct of the eye witnesses PW-1 and PW-6, and the inconsistencies in the two dying declarations, we believe that the prosecution has not proved the case beyond a reasonable doubt, and the accused are entitled to be given the benefit of doubt.

30. Accordingly, in the event of failure of the prosecution to prove the case against the accused beyond the reasonable doubt, the accused will be entitled to be acquitted from all the charges. In the result, we pass the following order: -

i. Criminal Appeal Nos. 2224-2225 of 2010 is allowed.

ii. The judgment passed by the High Court of judicature at Allahabad in Criminal Appeal Nos. 290 and 587 of 1981 dated 10.02.2010 and the judgment of the Sessions Judge, Bareilly in Sessions Trial No. 420 of 1979 dated 31.01.1981 are quashed and set aside.

iii. The appellants are acquitted of all the charges, and their bail bonds stand discharged. Pending interlocutory applications, if any, stand disposed of in terms of the above.

.....J.
[B.R. GAVAI]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI;
AUGUST 26, 2022