



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.313-314/2020

INDRAPAL SINGH AND OTHERSAPPELLANT(S)

VS.

STATE OF U.P.RESPONDENT(S)

J U D G M E N T

NAGARATHNA J.

These appeals have been preferred by the three appellants-accused being aggrieved by the impugned judgment and order dated 31.07.2018 passed by the High Court of Judicature at Allahabad in Criminal Appeal Nos.2095 of 1998 and Criminal Appeal No.2177 of 1998. The High court dismissed the aforesaid appeals, and confirmed the judgment and order dated 28.09.1998 in Sessions Trial No. 10/96 passed by the Second Additional Sessions Judge, Jalaun at Orai, by which, the accused-appellants were convicted for the offence under section 302 of the Indian Penal Code, 1860 (for short, the 'IPC') against Atar Singh, Shivpal Singh and Keshbhan Singh and have been sentenced to undergo life imprisonment. They

have also been convicted under Section 302 read with Section 34 of IPC.

2. The case of the Prosecution is that Exb. Ka-1 is the written report made by the complainant Yashwant Singh to the Police Station Jalaun. According to the complainant on 22.10.1995, at about 11:00 a.m., complainant's brothers, viz., Atar Singh and his two nephews Keshbhan Singh and Shivpal Singh were carrying water from the drain (*Gul*) below the Babool tree to their field known as "7 Bhigas of land" through a pump set and tractor for irrigation of the aforesaid land. The incident took place near the drain (*Gul*) under the Babool tree adjacent to complainant's field when Raj Bahadur Singh, Inder Pal and Surender Pal Singh and Ram Pal Singh alias Raja Beta came to the complainant's field from the village. Inder Pal Singh was armed with his licensed rifle and Ram Pal alias Raja Beta and Surender Pal Singh were armed with their half gun (*Addhi guns*) of 315 bore. As soon as they came there, Raj Bahadur Singh exhorted his sons, "there is a good opportunity today, kill them". Thereupon, Inder Pal Singh fired gunshots at Atar Singh and Shivpal Singh, as a result of which, both died instantly. On hearing the sound of the gunshots, the complainant's nephew namely, Keshbhan Singh came running towards the field and

Ram Pal Singh alias Raja Beta fired gunshot towards him and as a result, he fell down and died on the spot.

3. According to the complainant, at the time of the incident, he and his nephews Narendar Pal Singh and Shiv Sagar Singh and a servant Jawahar Lal S/o Chhadami and Babu Singh S/o Mukut Singh were standing near the pump set and tractor and they all witnessed the incident. The Complainant and all the witnesses were standing in fear as the gun shots were fired to threaten them. After killing the aforesaid three individuals, all the accused went away towards the village saying, "they had settled the score of their personal and electoral enmity". According to the complainant, the dead bodies of the three deceased viz., Atar Singh, Keshbhan Singh and Shivpal Singh, were lying on the spot. Therefore, the complainant requested that the report be lodged and appropriate action be taken on receipt of the Complainant's First Information Report (FIR).

4. Report of the incident (FIR) (Exb. Ka-1) was lodged at Police Station Kotwali at Orai, District Jalaun, as Case Crime No. 817/95 under Sections 302 and 302/34 IPC against the four accused on the same day.

5. Sri C.B. Singh, Station House Officer (PW-8) was entrusted with the investigation and he proceeded to the spot and prepared Punchnama of the three dead bodies i.e. exhibits Ka-37, Ka-38 and Ka-39. On completion of the requisite formalities including sealing of blood stained soil, empty cartridges, preparing the Inventory etc., Investigating Officer (IO) sent all the three dead bodies to the District Hospital for post-mortem. Autopsy on the dead bodies of the deceased was conducted by PW4 Dr. M.C. Mittal, on 23.10.1995 and he submitted the post-mortem report. Thereafter, statements of the witnesses were recorded by the IO (PW8). On receipt of the post-mortem report, forensic report and recording of statements of witnesses and collecting evidence, the IO submitted charge-sheet against the accused-appellants under Section 302 read with Section 34 of the IPC before the Court of the Chief Judicial Magistrate, Jalaun, Orai. The concerned Magistrate committed the case to the Court of Sessions.

6. The accused appeared before the Sessions Court and they were charged under Section 302 read with Section 34 of the IPC for committing murder of Atar Singh, Shivpal Singh and Keshbhan Singh. Accused-appellant Ram Pal Singh alias Raja

Beta was charged under Section 302/34 of IPC for committing the offence against Keshbhan Singh. He was further charged under Section 302 read with Section 34 IPC for committing the offence against Atar Singh and Shivpal Singh. The other accused-appellant Inder Pal Singh was charged under Section 302 IPC for committing the offence against Atar Singh and Shiv Pal Singh. Further, in relation to Keshbhan Singh, he was charged under Section 302 read with Section 34 of the IPC. All the accused-appellants pleaded 'not guilty' and claimed to be tried.

7. The prosecution examined eight witnesses as PW1 to PW8. PW1 Yashwant Singh and PW2 Narendra Pal Singh were eye-witnesses of the incident. Thereafter statement under Section 313 of the Code of Criminal Procedure, 1973 (for short, the 'Cr.P.C') was recorded. Accused-appellant Raj Bahadur claimed the prosecution story was false and he had been falsely implicated due to enmity since the father of the complainant-Yashwant Singh had deprived his son (Yashwant Singh) of property by making a 'Will' in favour of deceased Atar Singh. Also, the accused Raj Bahadur Singh was a witness against Yashwant Singh in a case filed by him. Similarly, Surender Pal Singh, Chander Pal Singh and Ram Pal Singh alias Raja

Beta also stated that the prosecution story was only to implicate them on account of the 'Will' executed by the father of the complainant.

8. The Trial Court, on the basis of oral evidence and upon perusal of the material on record, convicted and sentenced the accused-appellants as stated above. The trial court found that date, time and place of the incident, the manner in which the incident had taken place and implication of the accused persons in respect of charges leveled against them had been duly proved by the prosecution. Accordingly, they were found guilty and sentenced.

9. Being aggrieved by their conviction and sentence the appellants accused filed their appeals before the High Court. Criminal Appeal No. 2095/1998 was preferred by the accused-appellants viz., Inder Pal Singh and Ram Pal Singh alias Raja Beta. Criminal Appeal No. 2177 of 1998 was preferred by the accused Raj Bahadur Singh and Surender Pal Singh. The High Court of Allahabad on considering the arguments of the respective counsel and the material on record, dismissed the appeals. Being aggrieved, the accused-appellants except the accused Raj Bahadur Singh, have approached this Court.

10. We have heard Sri Divyesh Pratap Singh, learned counsel appearing for the appellants and Sri Dharendra Singh Parmar, learned counsel appearing for the respondent-State. We have perused the material on record as well as the Original Record.

11. Learned counsel for the appellants at the outset contended that the post mortem reports at Exbs. Ka-2, Ka12 and Ka-22 do not have the FIR number on them. In fact, there was no FIR registered until the post mortem was conducted on the dead bodies. Initially, the case was registered only against Jaswant Singh who is not the accused at all. It was next contended that there is inconsistency in the testimony of PW1 and PW2 who are examined as the eye witnesses by the prosecution. Also, the complainant (PW1) has tried to make improvements in the case of prosecution. It was contended that the impugned judgment of the High Court and that of the Sessions Court may be set aside and the accused may be acquitted of all the charges against them.

12. Learned Counsel for the appellant placed reliance on three judgments of this Court in the case of *Parvat Singh Vs. the State of Madhya Pradesh - (2020) 4 SCC 33 (Parvat Singh); Chet*

Ram Vs. the State of Uttarakhand - (2014) 13 SCC 105 (Chet Ram); and Suresh & Anr. Vs. the State of UP - (2001) 3 SCC 673 (Suresh).

13. This Court in *Parvat Singh* held that there cannot be a conviction when the evidence and the deposition of the sole eye-witness was found full of material contradictions, omissions and improvements and therefore the accused were given the benefit of doubt. Relying on the aforesaid decision, it was contended that the evidence of PW1 and PW2 stated to be the eye-witnesses is not consistent and that there are attempts made for improvement in the case of the prosecution when compared to the material on record in the form of complainant's statement, etc., recorded prior to the commencement of the trial, under Section 161 Cr.P.C.

14. It was contended that in the aforesaid case it was found that there were material contradictions and improvement in the statement of the informant as well as the depositions before the court below qua the accused therein and that there was a prior enmity and no other independent witness has supported the case of the prosecution. Therefore, the accused were entitled to be given the benefit of doubt. The same approach may be adopted in the instant case also.

15. It was further urged that in the case of *Chetram* Section 302 read with Section 34 of the IPC were invoked, against the appellant therein viz. Chetram. This court found that in the complaint, no role was assigned to the Accused No.2 Chetram in the attack made on Udairaj during the occurrence. In the said case, PW1 Dharam Singh was examined by the Investigation Officer and in the statement also PW1 Dharam Singh had not stated that Accused No.2 Chetram had caught hold of his brother Udairaj. In fact, during the cross-examination PW1 Dharam Singh had admitted the same. In the said case, this Court found that the solitary eye-witness to the occurrence of the incident, PW1 therein in his testimony to the occurrence was an improvement given by him in the FIR which attributed an overt act to the accused-Chetram in the incident. Further no role was assigned to Chetram in the statement by PW1 under Section 161 of Cr.P.C before the Investigating Officer. But for the first time, in his deposition before the court, he had stated that Chetram also had a role in the incident. In the circumstances, this court had a suspicion about the overt act of Chetram in the said case. Therefore, reliance was not placed on the testimony of PW1 Dharam Singh as regards the

involvement of Chetram in the incident in the said case. Even though the same was a case of homicidal death, the involvement of appellant Chetram in the said case being doubtful, the benefit of doubt was given to him. It was contended that the aforesaid judgment would squarely apply in the case of accused Surendra Pal Singh.

16. *Suresh*, is also a case under Section 302 read with Section 34 of the IPC. This court relied upon the judgments of the Privy Council in *Barendra Kumar Ghose AIR 1925 PC1* and *Mahbub Shah vs. Emperor AIR 1945 PC118* and also a three Judge Bench decision of this Court in the case of *Pandurang vs. State of Hyderabad (AIR 1955 SCC 216)* in the said case. This Court opined that to attract the applicability of section 34 of the IPC the prosecution is under an obligation to establish that there existed a common intention which requires a prearranged plan. That before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of all. In the absence of a prearranged plan and thus a common intention, even if several persons simultaneously attack the man each one of them would be individually liable for whatever injury

he caused and none could be vicariously convicted for the act of any or the other. Thus, it is necessary either to have direct proof of prior concert or proof of circumstances which necessarily lead to that inference and incriminating facts must be incompatible with the innocence of the accused and incapable of explanation or any other reasonable hypothesis.

17. Learned counsel for the appellants towards the end of his argument restricted his submissions to the case of the appellant Surender Pal Singh by contending that if this Court comes to the conclusion that there was no common intention between the accused even then the appeal may be considered favorably in so far as the accused Surender Pal is concerned as no overt act has been attributed to him in the complaint.

18. Per contra, Sri Dharendra Singh Parmar, learned counsel appearing for the respondent-State, supported the case of the prosecution as well as the judgment impugned in these appeals and contended that the complaint has been filed not only on the basis of Section 302 but also on the basis of Section 34 of the IPC. Hence, the case of the accused Surender Pal Singh cannot be segregated and considered separately for acquittal.

19. He further emphasised the fact that the accused were carrying weapons and there is no other reason which has been brought out by the accused so as to explain that they were not carrying the weapons for any other purpose except with a common intention to commit the offences for which they were rightly charged. It was, further, submitted that the evidence of PW1 and PW2 the eye-witnesses, is consistent and therefore it cannot be said that PW1 has tried to improve the case of the prosecution than what was stated in the complaint by him. It was also pointed out from the original record that the FIR No.817/1995 was found on the post mortem reports.

20. Learned counsel for the respondent-State contended that the case of the prosecution was found trustworthy and reliable and there are no material contradictions and no improvement in the case of the prosecution.

21. Learned counsel for the respondent-State drew our attention to the relevant portions of the judgment of the High Court to contend that there has been no error in confirming the judgment of conviction and order of punishment awarded by the Sessions Court in the instant case.

22. We have given our anxious consideration to the arguments of the respective counsel and perused the material on record as well as the original record.

23. It is in light of aforesaid decisions relied upon, the case of the appellants-accused shall be considered as per the contentions raised at the Bar. We have re-appreciated the evidence on record vis-a-vis the issue regarding the common intention.

24. Prior to deliberating on contentions advanced at the Bar, it will be useful to note that Dr. M.C. Mittal (PW4), who conducted the autopsy on the three dead-bodies, had noted gunshot injuries on various parts of the bodies of the deceased, namely, Atar Singh, Shiv Pal Singh and Keshbhan Singh. The details of the ante mortem injuries as reflected in Exbs. Ka-2, Ka12 and Ka-22 have been noted by the High Court during the course of its judgment. It is only after the receipt of the post mortem reports of the three deceased that the IO (PW8) submitted the charge-sheet against the appellants accused under Section 302 read with section 302/34 of the IPC.

25. The High Court has narrated in detail the relationship between the parties and found that the deceased Atar Singh was the brother of Yashwant Singh (PW1) and two other deceased namely, Keshbhan Singh and Shiv Pal Singh were nephews of PW1. PW2 is the brother of deceased Keshbhan Singh and Shiv Pal Singh. Further, Shiv Pal Singh is the son of deceased Atar Singh. In other words, Keshbhan Singh and Shiv Pal Singh were the children of Atar Singh, all three of whom died in the incident. Yashwant Singh (PW1) is the complainant while Narender Pal Singh (PW2) is the another son of Atar Singh. That the complainant and the deceased had a common ancestor named Raghubir Singh. Raj Bahadur Singh (Accused No. 1) was the father of Inder Pal Singh (Accused no. 2) and Surender pal Singh (Accused no.3) and grand uncle of Ram Pal Singh (Accused no.4).

26. We have re-examined the matter in the backdrop of the contentions urged and material on record in the context of inconsistencies and improvements said to have been made by the prosecution during the course of evidence. Exb. Ka 1 is the complaint given by Yashwant Singh (PW1) stating that on 22.10.1995 at about 11 AM, he and his brother Atar Singh and two nephews

Keshbhan Singh and Shiv Pal Singh were taking water from the drain (*Gul*) to their field comprising of seven bighas of land by way of pump set for irrigation. At that time Rajbahadur Singh (A-1), Inder Pal Singh (A-2), Surender Pal Singh (A-3) and Ram Pal Singh alias Raja Beta (A-4) reached complainant's field and Inder Pal was armed with licensed rifle and Rampal Singh alias Raja Beta and Surender Pal Singh were armed with their *Addhi* guns of 315 bore. Raj Bahadur Singh (A-1) exhorted his sons Inder Pal Singh (A-2) and Surender Pal Singh (A-3) that there was a good opportunity on that day to kill them. Thereupon, Inder Pal Singh fired gunshots at Atar Singh and Shiv Pal Singh as a result of which they died instantly. On hearing the gunshots, complainant's nephew Keshbhan Singh came running towards the field. Ram Pal Singh alias Raja Beta (A-4) fired gunshots at him too and as a result, he fell down and died on the spot itself. It is further stated that at the time of the incident, the complainant and his nephews Narender Pal Singh and Shiv Sagar Singh were standing near the pump set and tractor and they witnessed the incident; that they were in fear on account of firing of gunshots to threaten them. The complainant further states that after killing the three individuals, the four accused went away towards the village

saying, "they had settled the scores of the personal and electoral enmity against deceased Atar Singh, Keshbhan Singh and Shiv Pal Singh".

27. The complainant Yashwant Singh (PW1) has stated in his deposition that on the relevant date, he was sitting on the trolley of the tractor and Raj Bahadur Singh was armed with the *Danda* (Stick), Inder Pal Singh was armed with 315 rifle of bore, Surender Pal Singh was armed with *Addhi* rifle 315 bore, Ram Pal Singh alias Raja Beta was armed with *Addhi* rifle 315 bore and when they were coming towards him and on being accosted, they fired shots with a weapon and killed Atar Singh and Shiv Pal Singh. On hearing the sound of gunshot, Keshbhan Singh came to the spot and at the distance of 8 to 10 steps, Ram Pal Singh alias Raja Beta fired from his weapon at him and killed him. The accused then fled towards their village; that there was an ensuing election of Pradhanship and there was a rivalry between Birender Singh and Inder Pal Singh that the deceased had fielded Birender Singh in the elections and when Inder Pal Singh had told them to withdraw Birender Singh from contesting the elections, they denied to do so. In the elections, Inder Pal Singh and Birender Singh lost and Niranjana had won and thus there was

animosity between the deceased and the accused. There was also a property dispute with regard to a house and a field as well as a rivalry in the transport business between them. We do not find anything contradictory in the case of the prosecution elicited in the cross-examination of PW1.

28. Similarly, PW2 Narender Pal Singh has stated that on the relevant day at around 11 AM he was getting "Seven Bigha field" irrigated and at that time, apart from him his father Atar Singh, brothers Shiv Pal Singh, Keshbhan Singh, Shiv Sagar Singh, and his uncles Yashwant Singh and Babu Singh were sitting beneath the *Babool* tree and watching. Keshbhan Singh had gone to *Bambi* (Small Channel). Narender Pal Singh has stated that he was monitoring the irrigation process standing near the tractor trolley. Just at that time, Rajbahadur Singh armed with danda, Inder Pal Singh armed with 315 bore licensed rifle and Surender Pal Singh armed with 315 bore *Addhi* rifle came from the village. Ram Pal Singh alias Raja beta was also armed with 315 bore semi barrel gun. When they reached near Rameshwar's field, Raj Bahadur Singh stated what they were waiting for, enemy was there and to kill them. On this, Inder Pal Singh and Surender Pal Singh

began to fire at Atar Singh and Shiv Pal Singh with their rifle, namely, 315 bore rifle semi barrel gun. They fell down on being fired at them. At that time brother Keshbhan Singh came running from the *Bambi* on hearing the sound of firing and Ram Pal Singh alias Rajabeta shot 315 bore semi barrel gun on Keshbhan Singh and he also fell down in Rameshwar's field and died. It is further stated that when they challenged the accused, Inder Pal Singh fired one gunshot at them and warned that if they came towards them they would also be killed. Accused Inder Pal Singh also stated that "we have realized our enmity". Atar Singh, Shiv Pal Singh and Keshbhan Singh had died after a few minutes and Yashwant Singh (PW1) headed to the police station.

29. The deposition of PW1 and PW2 in our view is consistent and coherent. They have withstood the cross-examination of the defence and we do not find anything contrary or incriminating which has been elicited against the case of the prosecution.

30. Learned Counsel for the appellants attempted to point out that there were some discrepancies with regard to the recording of the statement of PW1, in that he had not written that Surender Pal Singh had opened fire and therefore there was an

improvement sought to be made in the case of the prosecution, through the evidence of PW1 inasmuch as he has stated that Surender Pal also fired gunshots along with Inder Pal Singh which was not so. However, PW1 has stated in his cross-examination that he had mentioned the said fact to the police who recorded the complaint. Hence, we do not find any substance in the contention of the learned counsel for the appellants-accused that there was an attempt to improve the case of the prosecution than what had been actually mentioned in the complaint Exb.ka1 and the FIR Exb. Ka-34.

31. In fact, a cumulative reading of the evidence of PW1 and PW2 along with other material evidence on record would clearly point to the fact that Section 34 of the IPC was rightly invoked along with Section 302 vis-a-vis the accused. This is particularly so on account of there being no contra evidence on behalf of the defence to explain as to why they all went together to the spot with fire-arms and shot at the deceased. On the other hand, the antecedent enmity between the accused and the victims as narrated in detail by PW-1 clearly brings out the fact that there existed a common intention on the part of the accused inasmuch as they went

together armed with guns in broad day light to the land where the victims were engaged in irrigation. Also the manner in which the crime was executed clearly establishes a concerted action on part of the accused. Hence, we find that the contention raised by the learned counsel for the accused-appellants is without substance and in fact, it is contrary to the evidence on record.

32. As far as the submission of learned counsel for the accused-appellant vis-a-vis Surender Pal Singh is concerned, we do not think that though in the complaint no overt act has been expressly attributed to Surender Pal Singh as such, it cannot be ignored that PW1 as well as PW2 have categorically stated in their evidence that Inder Pal Singh and Surender Pal Singh fired shots with their weapons and killed Atar Singh and Shiv Pal Singh. PW2, another eye-witness, has also stated that Inder Pal Singh and Surender Pal Singh began firing at Atar Singh and Shiv Pal Singh with bore 315 rifle and semi barrel gun respectively. It is also established that Surendra Pal Singh was also carrying a half gun (*Addhi* gun). This consistent testimony of PW1 and PW2 demolishes the case sought to be made out against Surender Pal Singh. It is also noted that the FIR clearly mentioned

that Rajbahadur Singh accompanied by the three appellants who were carrying fire arms, came to the field of Informant-PW1 and on the exhortation of Rajbahadur Singh (Accused no. 1), the other accused fired from the respective fire arms (Rifles). In the circumstances, we are not persuaded to take a different view of the matter vis-a-vis Surender Pal Singh than what has been taken by the High Court. Hence, it cannot be said that no overt act could have been attributed vis-a-vis Surender Pal Singh.

33. It is further observed that the accused have not taken any plea of alibi under Section 313 Cr.P.C. Statement except denying every question put to them. They only explained that there was an enmity on account of a succession dispute in respect of property of Raghubir Singh, father of PW1 who, through a "Will", had given the entire property to deceased Atar Singh and therefore, Yashwant Singh (PW1) had falsely implicated the accused, as per the statement given by Rajbahadur Singh.

34. The evidence on record, particularly, the ocular testimony of PW1 and PW2 made it clear that the three victims sustained injuries on account of the use of the fire arms against them which was on the exhortation of the fourth

accused Rajbahadur Singh. The High Court has also found that Surender Pal Singh did not have any separate defence so as to make a dent in the case of the prosecution as far as he was concerned.

35. There is no explanation by the defence as to why all the four assailants came together and three of them were with fire-arms and Rajbahadur Singh had a *Danda* (Stick) with him. The incident occurred in broad-day light and the complaint given by PW1 within two hours of the incident could not be an exact narration of the incident with minute details, but the FIR contained ingredients so as to register an FIR under section 302 and Section 302 read with Section 34 against all the accused. The fact that PW1 and PW2 were related would not in any way discredit their evidence as the same is consistent.

36. The High Court also found that as per "GD", the IO along with police personnel had visited the site of the incident at about 12.40 PM and had collected blood-stained cloth, empty cartridges and prepared the Punchnama as per Exb. Ka-37, Ka-38 and Ka-39 that there is no discrepancy with regard to the date, time and place of the incident which occurred on 22.10.1995 and all the accused were arrested on 22.10.1995 and that a licensed rifle with five

live cartridges were also recovered from the possession of the accused Inder Pal Singh.

37. We also do not find any substance in the contentions raised by learned counsel for the appellants-accused vis-a-vis the evidence of IO (PW8).

38. We do not think that the aforesaid judgments are applicable to the case at hand for the reasons we have assigned above.

39. In the result, we do not find any merit in these appeals and we uphold the conviction of the appellants. These appeals are dismissed accordingly.

40. However, Inder Pal Singh (A-1) was granted remission by the Governor of Uttar Pradesh vide order dated 19.11.2013. Vide order dated 07.01.2019 passed by this Court, he was also granted exemption from surrendering.

41. By Order dated 16.03.2020, the appellant Ram Pal Singh was granted bail.

42. Application from exemption from surrendering on behalf of Surender Pal Singh (A-3) was rejected by this Court on 07.01.2019.

43. We direct the appellant Ram Pal Singh to surrender before the concerned jail authority forthwith to serve the remainder of the sentence. The bail bond stands cancelled.

44. Since, the appellant, Inder Pal Singh (A-1) was granted remission, he need not surrender before the concerned jail authority and his sentence is reduced to the period already undergone.

45. In view of the dismissal of the above appeals, all pending interlocutory applications, if any, stand disposed.

.....J
[L. NAGESWARA RAO]

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

.....J
[B.V. NAGARATHNA]

NEW DELHI;
SEPTEMBER 21, 2021.