

Court No.45

Case :- CRIMINAL APPEAL No. - 1093 of 1983

Appellant :- Murari

Respondent :- State

Counsel for Appellant :- Daya Shankar Mishra, Krishna Kapoor

Counsel for Respondent :- A.G.A., Chandra Bhan Kushwaha

Hon'ble Siddhartha Varma, J.

Hon'ble Ram Manohar Narayan Mishra, J.

1. This appeal has been filed against the judgment and order dated 3.5.1983 passed by the Sessions Judge, Budaun by which the appellant-Murari was convicted under section 302 I.P.C. and was sentenced to undergo imprisonment for life.

2. The brief facts of the case are that on 06.07.1982 when Phool Singh was allegedly murdered, a first information report was lodged on the same day by his brother Sheodan Singh alleging that Murari Lal, accused, son of Shankar who was serving in the Military and who was inimical to the deceased and the first informant and who had on earlier occasions also attempted to pick up fights with them, had killed Phool Singh when the latter was going from his village to Wazeerganj. Sheodan Singh has further stated in the first information report that he had got the first information report lodged when information was given to him by Ram Autar Singh and Dhanpal Singh at around 04:30 PM that Murari Lal with his licensed gun had fired upon the brother of Sheodan Singh namely the deceased

Phool Singh and that the dead-body of Phool Singh was lying in the field of Dheemar. Upon hearing this, the first informant Sheodan Singh had gone to the spot and thereafter had gone to get the first information report lodged. Upon the first information report being lodged, investigation commenced and the Investigating Officer had prepared a recovery memo of the bloodstained soil and the plain soil and had marked it as Exhibit Ka-6. Thereafter, the five empty cartridges of 12 bore were also recovered from the spot and the memo was numbered as Exhibit Ka-7. Exhibit Ka-14 was a list of the articles which were recovered when the accused-Murari was being searched for. A Panchayatnama was prepared which was exhibited as Exhibit Ka-8 and the other documents were exhibited as Exhibits Ka-9; Ka-10 and Ka-11 and they accompanied the dead-body to the postmortem house. Upon the conclusion of the investigation, the police report was sent and the charges were framed against the accused-Murari under Section 302 of Indian Penal Code and thereafter when he had denied the charges, the trial had commenced and when the trial Court by its judgment and order dated 03.05.1983 had found the accused-Murari guilty for the offence under Section 302 I.P.C., the instant Criminal Appeal was filed.

3. The prosecution from its side had produced as many as six prosecution witnesses.

4. Sheodan Singh, brother of the deceased and the first informant, was produced as PW-1. He had stated in his statement before the Court that because of certain enmity with regard to keeping of pigs, the accused-Murari on 06.07.1982 at 04:00 PM had killed Phool Singh and this information was given to the PW-1 by Dhanpal Singh and Ram Autar Singh. He had proved the first information report. In his cross-examination, he had stated that he had not stated in his statement under Section 161 of Cr.P.C. that at 04:00 PM the deceased had started for Wazeerganj from his village. He had stated that when he had reached the spot, he had found the five empty cartridges lying on the spot and that the place of incident was around one kilometer from the place of his residence. He had thereafter stated that after getting the first information report lodged, he had gone back to the place of incident. The Investigating Officer had come on his jeep. The dead-body thereafter was sealed and taken to the police station and the dead-body was thereafter lying on a dunlop outside the police station during the night. In the morning, the dead-body was taken to Budaun. Upon a question being asked that the report was ante timed, he denied. He had also denied the fact that the names of Ram Autar and Dhanpal were mentioned subsequently as an afterthought and he had specifically stated that Dhanpal and Ram Autar alone had come to give the information to him.

5. PW-2 Ram Autar Singh is the person who, it has been stated, had seen the incident and in his statement-in-chief he had

stated that on the fateful day at 04:30 PM, he alongwith Dhanpal was coming from Wazeerganj to their village and Murari, the accused, was going ahead of them and was carrying a gun. At that point of time, Phool Singh was coming from the side of the village and as soon as Phool Singh reached near Murari-the accused, Murari fired from his gun 3-4 times and thereafter the accused, Murari ran away from the Eastern side. Upon a hue and cry being raised by the PW-2 and Dhanpal, a lot many villagers came on the spot. However, Dhanpal and Ram Autar went to the house of Sheodan to inform him about the incident. He has also stated that on that date, Gram Panchayat Elections were going on in Wazeerganj and counting was also going on and they had gone to Wazeerganj in connection with the counting of votes of their village. He has very categorically stated that Dhanpal had refused to come in the witness box. In his cross-examination, he has stated that Murari was not seen before a particular *bhatta* (brick kiln) and he was visible only after they had crossed that *bhatta* (brick kiln). When he saw the accused, Murari and the deceased, Phool Singh for the first time, they were just 3-4 steps away from each other and when Murari had attacked Phool Singh, the latter had fallen down and thereafter Murari had fired 3-4 shots and these fire shots were made from a very close distance. He has also stated that Murari had fired standing on the left side. He has stated that the village was around 250 meter from the place of incident and he has stated that when he reached near Phool Singh

then he was lying on his left side in the West-East direction. When they had gone to inform Sheodan Singh, he was there in the village and after having given the information, the PW-2 has categorically stated that he came back to the spot. The Police had come on the spot at around 07:00 PM. The Police had not taken the evidence of PW-2 on that date i.e. on 06.07.1982. Sheodan Singh had reached the spot and thereafter the Investigating Officer had also reached the spot. He had, however, left for his house from the place of incident. He, therefore, states that he did not know how the dead-body was removed from the spot. The next day, the Investigating Officer had recorded his evidence. He has stated that on the date of incident at around 09:00 to 10:00 AM, he had reached the spot where the counting of the ballot paper was going on and that after the counting of their village which had started at around 11:00 AM, he had returned and upon a question being asked as to whether the news of the incident had reached the place when the counting was going on, he had denied the same. He has very categorically stated that when he reached the spot he had found the five empty cartridges lying on the spot.

6. PW-3 is the doctor who had conducted the postmortem and has proved the postmortem report. He has spoken about the ante mortem injuries as were there on the dead-body.

7. PW-4 Head Constable Ramanand was the chick writer. He had stated that after the case was registered, the investigation was handed over to the Sub-Inspector Virendra Singh. In his cross-

examination he has stated that on 06.07.1982 the dead-body was not lying on the police station and that D.C. Sharma, who allegedly as per the PW-5 was the Investigating Officer, was not present at the time when the panchayatnama was being prepared. He had come on the spot on 07.07.1982 at around 11:00 AM. He has also stated that the special report was sent at 12.05 hours on the same day when the first information report was lodged.

8. PW-5 is the Investigating Officer Virendra Singh. He has stated that when he had reached the spot, he had taken the statements of Sheodan Singh and had also prepared the site map on reaching the spot. He has stated that he had taken from the place of incident the bloodstained soil and the plain soil. He had also taken and kept in his custody the five empty cartridges of 12 bore from the spot in question. He has stated that Sub-Inspector D.C. Sharma had prepared the Panchayatnama on his instructions and in the presence of the Investigating Officer, the Panchayatnama which was exhibited as Exhibit Ka-8, the photo of the dead-body and the Challan with regard to the dead-body was prepared and exhibited as Exhibit Ka-9. The letter of Chief Medical Officer was exhibited as Exhibit Ka-11 and the document by which the dead-body was to be taken for post mortem was exhibited as Ka-12. The seal was exhibited as Exhibit Ka-13 and he had very categorically stated that all the exhibits Ka-8 to Ka-13 were signed by the Sub-Inspector D.C. Sharma in his presence. After having given the instructions for

the preparation of the Panchayatnama, he had gone out for search of the accused. In his cross-examination, PW-5 has stated that where the dead-body was lying, there was also blood present. He has stated that in the site plan, he had given out as to where the dead-body was lying. However, he has not stated as to where the blood was found in the site plan. He has very categorically stated that the site plan was prepared at the pointing of PW-1. He has also stated that he had not shown the place where the firing had taken place. He has thereafter stated that in the night of 06.07.1982 he had not recorded the statements of PW-2, Ram Autar and in fact he has very categorically stated that when he had reached the spot, Ram Autar was not present there.

9. PW-6 is the Sub-Inspector Roshan Lal who has stated that he had arrested the accused and he has also very categorically stated that apart from arresting the accused, he had not done any investigation. He has also stated that the firearm which was used in the incident was never sent for expert opinion. No report was called for and also no application was given before the Court for the examination of the firearm.

10. Heard Sri Daya Shankar Mishra, learned Senior Counsel assisted by Sri Chandrakesh Mishra and Sri Abhishek Mishra, learned counsel appearing for the appellant; Sri Arvind Kumar, learned AGA and Sri Chandra Bhan Kushwaha, learned counsel appearing for the first informant.

11. Sri Daya Shankar Mishra, learned Senior Counsel has submitted that the entire evidence if is taken in its totality, it would go to prove that a false case had been lodged against the accused and without looking to the evidence, the order of conviction had been passed. In effect, learned counsel for the appellant has made the following arguments :-

- (i) Learned counsel for the appellant has stated that the PW-2, the alleged eye-witness, in fact was never there on the spot. He has submitted that if the statement of PW-2 is seen, then it becomes clear that he was accompanied by one Dhanpal but Dhanpal never appeared in the witness box. He has further submitted that PW-2 since had never arrived, his assistance was not taken while the site plan was being prepared. In the site plan neither the place from where the firing had taken place nor the place from where the blood-stained soil had been taken into custody was shown. Also, he has stated that nowhere had it been shown in the site plan where exactly the empty cartridges were recovered from. Learned counsel for the appellant states that the PW-2 had stated that he was there on the spot but his statement was never recorded. Further, learned counsel has invited the attention of the Court to the statement of PW-5 who has stated that in fact the PW-2 was never there on the spot. Further, learned counsel for the appellant has submitted that the PW-2 had stated that the deceased and

the accused were face to face when the incident had occurred and, therefore, he has submitted that the Injury No.1 as was described in the post-mortem report i.e. the entry wound of the gun-shot which was from behind the right arm, was never explained. Learned counsel for the appellant states that when the PW-2 had not seen the incident, he could not also graphically tell as to how the incident had occurred and, therefore, he could not explain the injury no.1 as was given in the post-mortem report which was that the entry wounds were from behind the right arm. Learned counsel submits that when the accused and the deceased were face to face and when the direct firing was done, then under no circumstances could the firearm injuries as have been shown as Injury No.1 could have occurred. Learned counsel for the appellant further states that probably the incident had occurred somewhere else and the injuries had taken place in some other manner but the dead body was brought to the place of incident and thereafter the story had been weaved around it. He states that if the deceased and the accused were 3-4 steps away then all the injuries would have had blackening and tattooing and in the instant case, he states that only Injury No.3 had blackening and tattooing and, therefore, the entire evidence of PW-2 becomes falsified. Learned Senior Counsel for the appellant further states that the presence of

PW-2 is further falsified inasmuch as he has stated that the dead-body was lying on its side and that it was lying in the east-west direction whereas, it has been pointed out, that the PW-5 had stated that in fact the dead-body was lying on its back.

- (ii) Learned Senior Counsel for the appellant further stated that when now the presence of PW-2 had been dislodged, he has submitted that even the motive was not so strong as to make the accused commit an offence as heinous as murder. He submits that motive is a double edged weapon and that there was a possibility that because there was some kind of enmity, the accused had also been implicated in the case.
- (iii) Learned counsel for the appellant further laid stress upon the tardy investigation and has submitted that neither the Investigating Officer nor the prosecution and also even the Court did not make any attempt to connect the empty cartridges with the gun by which, it was alleged, the fire-shots were made. The gun was lying in the malkhana of the military as the appellant-accused was a military personnel and no effort was made to get the gun examined so that the empty cartridges would be matched with the gun. Learned counsel has invited the attention of the Court to the evidence as was led by PW-5 and PW-6 wherein it was stated that no effort was made to produce the gun before the Court or before any expert.

- (iv) Learned counsel for the appellant has further stated that even the empty cartridges were not examined in any forensic laboratory.
- (v) Learned counsel for the appellant has further invited the attention of the Court to the statement of the PW-5 wherein he had stated that Exhibits Ka-8 to Ka-13 i.e. the panchayatnama and all the other documents which were required to accompany the panchayatnama when the body of the deceased was to proceed for the post-mortem were got prepared by one Sub-Inspector D.C. Sharma. However, he has invited the Court's attention to the Exhibit Ka-8 wherein he has shown that even though in the body of the panchayatnama it was mentioned that the Sub-Inspector D.C. Sharma was present at the time of the preparation of the panchayatnama but the signature of the Sub-Inspector D.C. Sharma was not present on the Exhibit Ka-8. Learned counsel has submitted that it was signed by PW-6 Roshan Lal who is a witness named in the charge-sheet. Learned counsel for the appellant, therefore, has stated that the entire case of the prosecution was a sham case. While the PW-2 definitely was not present, he has stated that the other investigation was also done in a manner which did not inspire any confidence. He has submitted that when the blank spaces were being filled up, the Sub-Inspector D.C. Sharma had put in his signature on Exhibit Ka-8. Learned

counsel has, after having invited the attention of the Court to the fact that D.C. Sharma was not present on the spot, drew the attention of the Court to the statement of PW-4 at page 20 of the paper-book wherein PW-4, who was the chik writer, had stated that in fact D.C. Sharma came back to the police station only on 7.7.1982 at 11.00 AM. He, therefore, submitted that the Sub-Inspector D.C. Sharma was in fact never present at the spot and was elsewhere while the inquest was being carried out.

- (vi) Learned counsel for the appellant has also invited the attention of the Court to the contradictions in the statements of prosecution witnesses wherein the PW-1 had stated that the dead body was taken to the police station from the place of occurrence but the PW-4 at page 20 of the paper-book had stated that on 6.7.1982 the dead body of the deceased was not there at the police station.
- (vii) Learned counsel for the appellant has submitted that the incident is of the year 1982 and the appeal was filed in the year 1983. More than 41 years have elapsed and if the Court confirms the judgment of the trial Court then it may consider the imposition of the penalty, leniently.
- (viii) Learned counsel for the appellant has further submitted that the PW-2 was the sole eye-witness and his evidence when was not corroborated by any other evidence and in fact was a shaky evidence then it was absolutely necessary

that the Court should proceed with caution. In this regard, he has relied upon a judgment of the Supreme Court in **Jagdish & Anr. vs. State of Haryana** reported in (2019) 7 SCC 711. Since, learned counsel for the appellant has relied upon paragraph 8 of the judgment, the same is being reproduced here as under :-

"8. The question that arises to our mind is that in the mob assault by 13 persons who had surrounded the deceased at night, PW-1 was the sole eye-witness. Even if a light was burning some of them undoubtedly must have had their back to PW-1 making identification improbable if not impossible. The witness has been severely doubted both by the trial court and the High Court to grant acquittal to the other accused. Can the evidence of a solitary doubtful eye witness be sufficient for conviction? We may have a word of caution here. Conviction on basis of a solitary eye witness is undoubtedly sustainable if there is reliable evidence cogent and convincing in nature along with surrounding circumstances. The evidence of a solitary witness will therefore call for heightened scrutiny. But in the nature of materials available against the appellants on the sole testimony of PW-1 which is common to all the accused in so far as assault is concerned, we do not consider it safe to accept her statement as a gospel truth in the facts and circumstances of the present case. If PW-1 could have gone to the police station alone with her sister-in-law at an unearthly hour, there had to be an explanation why it was delayed by six hours. Given the harsh realities of our times we find it virtually impossible that two women folk went to a police station at that hour of the night unaccompanied by any male. These become crucial in the background of the pre-existing enmity between the parties leading to earlier police cases between them also. The possibility of false implication therefore cannot be ruled out completely in the facts of the case."

Learned counsel for the appellant has also relied upon a judgment of the Supreme Court in **Anand Ramachandra Chougale vs. Sidarai Laxman Chougala & Ors.** reported in (2019) 8 SCC 50, wherein it has been held that even if a

certain case had not been taken up by the accused under section 313 Cr.P.C. then also the prosecution had to prove its case beyond all reasonable doubts. Learned counsel, therefore, submits that even if the appellant in his statement under section 313 Cr.P.C. had at one place stated that there was no enmity between the parties and at other place he had stated that he was implicated because of enmity then also the prosecution in fact had to prove its case on its own strength.

12. Sri Chandra Bhan Kushwaha, learned counsel for the first informant and learned AGA Sri Arvind Kumar have on the other hand tried to support the judgment and order dated 3.5.1983 which was assailed in the instant appeal. Learned counsel for the first informant has tried to explain the injuries on the back side of the right arm and he has drawn the attention of the Court to the site plan and has stated that in fact the deceased as also the PW-2 were coming from side of Wazeerganj and that in fact the accused had followed the deceased. Learned AGA as also learned counsel for the first informant has further submitted that the PW-2 had given the eye-witness account and this eye-witness account could not have been lightly done away with and disbelieved.

13. Having heard learned counsel for the parties, we are definitely of the view that the investigation was done in the most shoddy manner possible. The PW-2 who allegedly was an eye-witness had, in his statement, stated that he was accompanied by

one Dhanpal but Dhanpal was never produced in the witness box. Also, the Court finds that the PW-2 when was an eye-witness then his assistance ought to have been taken while preparing the site plan and that when that was not done, a doubt arises in the mind of the Court that PW-2 in fact had not seen the incident. Even the site plan which was prepared did not show as to where exactly from, the empty cartridges were recovered. Another aspect of the matter troubles the Court is that when PW-2 was throughout present on that very date then why his statement was not recorded by the police on that very day but was recorded on the next day. In fact, PW-5-the Investigating Officer Virendra Singh in his statement had stated that the PW-2 was never there on the spot. Also, we find that when the PW-2 describes the incident, he had stated that the deceased and the accused were face to face but upon looking at injury no.1, it cannot be said that the accused had fired the deceased while they were face to face. The gun shot injury was from behind the right arm. Also, when the PW-2 was stating that the firing was done from 3-4 steps distance then definitely all the injuries ought to have had blackening and tattooing. In the instant case, only Injury No.3 had blackening and tattooing. We are, thus, definitely of the view that the PW-2 was a planted witness and in fact was never there on the spot.

14. Also, we find that the motive as was alleged by the PW-1 was being misused for the purposes of implicating the accused as

the motive which the PW-1 gives was a weak one and on the basis of that the conviction could not take place. The Court also finds that no effort was made to get the gun matched with the empty cartridges. The gun of the accused was lying in the military malkhana but no effort was made to get it and the empty cartridges forensically examined.

15. We also find that a very doubtful case had been taken by the prosecution by mentioning in the panchayatnama that the Sub-Inspector D.C. Sharma was throughout there in the preparation of the panchayatnama. The Court went through the original of the panchayatnama and found that D.C. Sharma had never signed on the panchayatnama. In fact the panchayatnama was always signed by Roshal Lal. D.C. Sharma only had signed on certain blank spaces which definitely shows that he had signed the panchayatnama subsequently. The absence of D.C. Sharma on the date of preparation of the inquest further gets established upon the perusal of the statement of PW-4 - the chik writer who had stated that D.C. Sharma in fact had come to the police station only on the next day i.e. on 7.7.1982 at 11.00 AM.

16. The contradiction in the statements of the prosecutions witnesses were also very glaring. The PW-1 had stated that the dead body was taken to the police station from the place of occurrence but the PW-4 had stated that the dead body was not there at the police station ever. What is more, the Court is of the view that when PW-2 was the sole eye-witness and his statements

had not been corroborated by the other witnesses present then the evidence of the sole eye-witness had to be examined properly and with caution. The argument of the learned counsel for the first informant that the site plan showed that the deceased was being followed by the accused and that the PW-2 was following them was evident from the site plan that the argument was fallacious. If the statement of PW-2 is looked into, it becomes evident that the deceased was coming from the side of the village and the accused was coming from outside the village and that they were face to face when the incident had occurred and, therefore, there is no substance in the argument made by learned counsel for the first informant. Also, we find that when the statement of PW-2 became unbelievable, it cannot be said that the Court had to rely compulsorily on the evidence of the PW-2.

17. Under such circumstances, the appeal stands allowed. The judgment and order dated 3.5.1983 is quashed and set-aside. The appellant is acquitted of the charges under section 302 IPC. Since the appellant is on bail, he need not surrender. His bail bonds and sureties are, therefore, discharge. The appellant is, however, directed to comply with the provisions of section 437(1) Cr.P.C. within a period of ten days from the date when the judgment is uploaded on the website of the High Court.

Order Date :- 14.08.2024

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(R.M.N. Mishra, J.)

(Siddhartha Varma, J.)