

A.F.R.

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Reserved on: 6.5.2024

Delivered on: 5.11.2024

Court No. - 45

Case :- CRIMINAL APPEAL No. - 748 of 1983

Appellant :- Ram Krishna

Respondent :- State of U.P.

Counsel for Appellant :- N.K. Saxena, Ashok Kumar Dwivedi, Ram Kishor Gupta

Counsel for Respondent :- K.P. Shukla, A.G.A

Hon'ble Siddhartha Varma, J.

Hon'ble Vinod Diwakar, J.

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri Ram Kishor Gupta, learned counsel for the appellant, Shri Amit Sinha, learned A.G.A. assisted by Ms. Mayuri Mehrotra, learned brief holder for the State-respondent, and perused the record.

2. Upon completing the investigation in Case Crime No.49 of 1981, u/s 302 IPC and in Case Crime No.51 of 1981, u/s 25 of Arms Act, both registered at P.S. Kharela, District Hamirpur, the police filed the charge-sheet against the accused-appellant Ram Krishna and he was charged u/s 302 IPC and section 25 of Arms Act respectively, wherein, he denied the prosecution case and claimed trial.

3. The learned trial court vide impugned judgment and order dated 8.3.1983 convicted the accused-appellant Ram Krishna, and sentenced him to undergo life imprisonment for the offenses under Sections 302 IPC and section 25 of the Arms Act. Aggrieved by the impugned judgment of conviction and order of sentence, the accused-appellant preferred the instant appeal before this Court.

4. The prosecution case, in brief, is that a written complaint was lodged at Police Station Kharela, District Hamirpur, on 11.8.1981 at 17:30 p.m. regarding an incident took place in broad day light in Mohalla Manik Kasba Kharela, by one Siddha- father of the deceased- Bahadur with the allegation that the accused Ram Krishun Singh called his son Bahadur at gate and when his son reached at the gate of his house, he shot dead his son with a double barrel gun. On hearing the rescue cry by the complainant, Murli s/o Bhannu Teli, Ram Asrey s/o Daya Ram Teli, Ram Ratan s/o Buddh Kori also reached at the place of incident. The deceased died on spot. For clarity the contents of *tehrir* are reproduced herein below:

“श्रीमान थानेदार साहब थाना खरेला जिला हमीरपुर सेवा में निवेदन है मैं और मेरा लड़का बहादुर अपने घर के आंगन में बैठकर गोहूँ बीन रहे थे कि दिन लटकत की वेंरा राम किशुन सिंह वल्द राम सहाय सिंह साकिन मुहल्ला मानिक कस्बा खरेला जो अपने हाथ में दुनाली बन्दूक लिये था मेरे दरवाजे पर आया और मेरे लड़के बहादुर को दरवाजे से बुलाया जैसे ही मेरा लड़का दरवाजे पर गया कि राम किशुन ने मेरे लड़के पर बन्दूक से फायर कर दिया फायर की आवाज सुनकर मे दरवाजे पर गया और चिल्लाया कि मुरली पुत्र भन्नू तेली साकिन मुहल्ला मानिक राम आसरे पुत्र दयाराम तेली मुहल्ला सादराम व राम रतन पुत्र बुद्ध कोरी मुहल्ला बरूआ कस्बा खरेला मौके पर आ गये कि राम किशुन ने दुबारा मेरे लड़के पर फायर करके भाग गया मेरा लड़का तड़प तड़प कर दरवाजे पर गिर कर मर गया। राम किशुन सिंह ने मेरे लड़के को कई बार मना किया कि तुम भगवान सिंह के यहाँ जिन से मेरा जमीन के सम्बन्ध में झगड़ा चला आ रहा है। नौकरी मत करो मेरा लड़का नहीं माना इसी वजय पर राम किशुन सिंह ने मेरे लड़के को जान से मार दिया रिपोर्ट लिखकर उचित कार्यवाही की जावे। प्रार्थी सिद्धा पुत्र हल्कू बेहना साकिन मुहल्ला सादराय कस्बा खरेला थाना खरेला ता० 11.8.81 नि०अ० सिद्धा लेखक बाबू खौ पुत्र नवी बक्स मुहाल सादराय कस्बा व थाना खरेला जिला हमीरपुर ता० 11.8.81”

5. The motive assigned in the *tehrir* is that the deceased- son of the complainant was working with one Bhagwan Singh, who had a land dispute with the accused and the accused has reprimanded the complainant's son not to work with one Bhagwan Singh or else he would be killed.

6. On receipt of the information, after registration of the FIR, the police conducted the investigation and recorded the statement of the witnesses under section 161 Cr.P.C. and filed the charge-sheet against the accused-appellant.

7. The Chief Judicial Magistrate took the cognizance and after complying with the provisions of section 207 Cr.P.C. committed the case to the court of sessions for its trial. The trial court framed the charge under section 302 IPC against the accused-appellant and a separate charge was framed under section 25(1)(a) and 25(1)(b) of the Arms Act and the same was read over and explained to the accused, who pleaded not guilty and claimed trial.

8. The prosecution has produced the following documentary evidence to prove its case:

- “(i) Written Report dated 11.8.1981 marked as exhibited as Ex.Ka-1*
- (ii) First Information Report dated 11.8.1981, marked and exhibited as Ex.Ka-2*
- (iii) First Information Report dated 25.8.1981, marked and exhibited as Ex.Ka-18*
- (iv) Recovery memo of 12 bore pistol dated 25.8.1981, marked as exhibited at Ex.Ka-18*
- (v) Recovery memo of blood stained vest & ‘Gamchha’ dated 11.8.1981 marked and exhibited as Ex.Ka-10*
- (vi) Recovery memo of one pellet dated 11.8.1981 marked and exhibited as Ex.Ka-11*
- (vii) Recovery memo of plain and blood stained soil dated 11.8.1981 marked and exhibited as Ex.Ka-14*
- (viii) Recovery memo of 12 bore pistol dated 25.8.1981, marked as exhibited at Ex.Ka-4*
- (ix) Post-mortem report dated 12.8.1981 marked and exhibited as Ex.Ka-6*
- (x) Report of Vidhi Vigyan Prayogshala marked and exhibited as Ex.Ka-24*
- (xi) Letter to chemical examiner dated 12.8.1981*
- (xii) Report of Chemical examiner marked and exhibited as Ex.Ka-26*
- (xiii) Panchayatnama dated 11.8.1981 marked and exhibited as Ex.Ka-7*
- (xiv) Charge-sheet ‘mool’ dated 11.10.1981 marked and exhibited as Ex.Ka-17*
- (xv) Charge-sheet ‘mool’ dated 23.9.1981 marked and exhibited as Ex.Ka-20”*

9. Besides the above documentary evidence, the prosecution has examined the complainant- Siddha as PW-1; Ram Asrey who had

reached the place of incident after hearing the rescue call as PW-2; Kumari Chaman, an eye-witness as PW-3; Ct. Moharrir Mohan Swaroop Pachauriya as PW-4; Kamta Prasad, witness to the recovery of gun as PW-5; Dr. Ghanshyam Pandey, who conducted the post-mortem of the deceased as PW-6; Inspector Satya Narayan, the 1st I.O. as PW-7; H/Ct. Ram Vilas Chaturvedi as PW-8; Kewal Singh, the 2nd I.O. as PW-9.

10. Complainant Siddha - the deceased's father- was examined as PW-1. In his examination-in-chief, he reiterated the facts mentioned in the impugned FIR and stated that accused Ram Kishun present in the court had committed his son's murder, who was working with one Bhagwan Singh. Accused Ram Kishun had enmity with Bhagwan Singh. The witness states that he and complainant's son was at home when the accused Ram Kishun reached at his door and called the deceased Bahadur and as the complainant's son reached at the Dehri (door step) of his house, accused – appellant - Ram Kishun fired at him and because of gun shot injury his son died on spot. The accused-appellant threatened the witness to leave the place failing which he would shot the complainant as well. The said incident was also seen by Babu Khan, Ram Asrey, Murlidhar and Ram Ratan and witness Babu Khan scribed the *tehrir* at his instance, the witness also identified the gun by whom his son was killed.

11. As per the impugned judgment, the complainant supported the prosecution case. PW-2 & PW-3, the eye witness had also seen the incident, they have supported the prosecution case. The rest of the witnesses are police witnesses and their testimony shall be examined in the subsequent paragraphs. PW-6 Ghanshyam Pandey conducted the post-mortem and opined that death was caused due to shock and haemorrhage as a result of ante-mortem injuries.

12. The incriminating material produced by the prosecution during the trial was then confronted by the accused persons, who recording his statement u/s 313 Cr.P.C. He said that he has been falsely implicated by one Bhagwan Singh as he is a witness in the case of murder committed by said Bhagwan Singh and he wanted to save real culprits. The trial court discussed the evidence adduced by the prosecution and relied upon the testimony of PW-1, PW-2 & PW-3 and convicted accused-appellant Ram Kishun.

13. *Per contra*, learned A.G.A. for the State vehemently espoused the case of complainant and argued that the order passed by the trial court is just and reasonable and sustainable in the eyes of law. The testimony of eye witness PW-1 & PW-3 cannot be brushed aside. The statement of eye witness are coherent, consistent and cogent and fully corroborates by the medical evidence; thus, prosecution has proved the charges beyond reasonable doubt. The conviction and sentence of the accused-appellant do not impart interference. The court below was justified in relying the testimony of PW-1, which is wholly proved and corroborated by the testimony of PW-3 and PW-6 Dr. Ghanshyam Pandey, who conducted the post-mortem of the deceased. There are no material contradictions in the evidence adduced on behalf of the prosecution. PW-1 Siddha being the father of the deceased, would be the most reluctant to spare the actual assailants and falsely mentioned the name of other person, who is not responsible for the death of his son.

14. Learned A.G.A. further contends that merely because of minor contradiction and inconsistent brought by the witness cannot be a ground to discard of the testimony of PW-1. He further submits that there is no reason to disbelieve the testimony of PW-1 & PW-3, who are co-villagers and had reached the place of incident soon after hearing the rescue call.

15. Learned counsel for the appellant primarily assailed the impugned order on the ground that ocular testimony does not corroborate with the medical and scientific evidence, therefore, the testimony of PW-1 needs appreciation with great caution. The testimony of eye witness PW-1 & PW-3 cannot be relied upon because it contains material contradictions and improvements. PW-1's statement was contrary to the statement recorded by police u/s 161 Cr.P.C. and no explanation was given as to why the Investigating Officer did not record certain material facts which were necessary to establish the prosecution case beyond reasonable doubt and he also resiled from the prosecution's case. The motive of offence is absurd and prosecution has failed to prove the motive beyond reasonable doubt. Prosecution has not produced witness Murlidhar and Ram Ratan whose names are figured in the FIR for reasons best known to the prosecution. The person with whom the accused had enmity i.e. Bhagwan Singh has not been produced by the prosecution as prosecution's witness for the reasons best known to them. The prosecution has miserably failed to connect the accused with the commission of offence. The testimony of PW-1 and PW-3 is full of contradictions and embellishment and cannot be relied upon. Further the prosecution has failed to prove the corroboration. The deposition of PW-1 & PW-3 should be disbelieved as it ought to be in view of the evidence surfaced during the trial. Other material on record, do not show the accused's complicity in the offence; thus, the appellant is liable to be acquitted of the charges. The prosecution could not establish any link between the accused and one Bhagwan Singh. The sole motive for the commission of offence is absurd and non-conclusive. It is not safe to rely upon the testimony of the interested witness, which are full of contradictions and embellishment without corroboration.

16. The scientific evidence do not corroborate with the medical evidence. The ballistic report does not support the commission of offence in the way as it has been presented by the prosecution. The witness to the inquest report are not produced before the trial court to the reason best known to the prosecution, in fact name of one Bhagwan Singh is shown in the inquest report as witness no.3, but he was not produced as witness. Ram Swaroop, Murlidhar, Chaman Lal, Ram Ratan, Mohan Lal, Rameshwar, Rafiq Ahmad are all police witnesses, but none of them has been brought to the witness box. Kamta Prasad and Bhagwan Singh were also seen their names as witness nos.12 & 13 of the charge-sheet, but the prosecution could not produce them.

17. A perusal of the trial court judgment would reveal the conviction is based on the testimony of PW-1 & PW-3 while recording the finding of conviction against accused-appellant, the trial court believed that there was no question to disbelieve the testimony of PW-1 Siddha, who is father of the deceased and was present at the time of incident. The learned trial court found the statement of Kumari Chaman (PW-3), wholly reliable but not marred in material discrepancy or contradiction even though she was subjected to a nagging cross examination at the hands of experienced lawyers. Kumari Chaman is innocent child and having no seeds of animosity in her heart.

18. In the light of the finding of trial court its becomes imperative to examine the witness on two aspects; firstly, the motive and secondly, the act performed by the accused in the commission of the crime. It is an admitted case of the prosecution that the accused called the deceased from his house and when he reached at this door step he was shot at and died on spot. The sole motive behind the commission of murder was that despite reprimand the deceased kept working with Bhagwan Singh with whom he had animosity.

19. The cumulative effect of both oral testimony and documentary evidence is paramount, to assess the sterling quality and admissibility of the evidence presented during the trial. The court must weigh the credibility and reliability of both oral and documentary evidence to determine their overall probative value. To assess evidence as of sterling quality, the court should consider various factors, including consistency, corroboration, relevancy, and authenticity. Additionally, the court should evaluate the demeanor of the witnesses, the clarity and coherence of the testimony, and veracity of the documentary evidence.

20. Certainly the prosecution case would have been at a better footing if the Investigating Officer (PW-5) had sent the pellets recovered from the deceased and blood-soaked soil to the Forensic Science Laboratory and had made efforts to recover the weapon of offence, i.e. gun for comparison. However, the report of the ballistic expert and F.S.L. report would have, in any case, been of the nature of an expert opinion, and the same is not conclusive evidence, but the failure of the Investigating Officer in sending the blood-soaked soil and pellets recovered from the deceased cannot be said to fatal for prosecution, if the same is fully established from the testimony of the sole eyewitness (PW-1), in whose presence the fire was shot at on the deceased, and because of the firearm injury, the deceased died.

21. It is the responsibility not only of the investigating agency but also of the courts to ensure that the investigation is conducted fairly and does not infringe upon an individual's freedom except as prescribed by the law. Equally integral to criminal law is the principle that the investigating agency bears a significant responsibility to conduct an investigation without bias and/or fairness. The investigation should not, at first glance, suggest a prejudiced mindset, and every endeavor should be made to hold the guilty accountable

under the law, as no one is above it, irrespective of their societal status or influence.

22. The Supreme Court in **Vadivelu Thevar v. State of Madras**¹ has carved out three categories of witnesses; (i) *wholly reliable*, (ii) *wholly unreliable*, and (iii) *neither wholly reliable nor wholly unreliable*, and thus held:

"In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact." The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's I Law of Evidence -9th Edition, at pp. 1 100 and 1 101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well-recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well- established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for, proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

¹ AIR 1957 SC 614

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.”

23. The Supreme Court in **Harchand Singh & Anr. v. State of Haryana**², held that (i) the function of the court in a criminal trial is to find whether the person arrayed before it as the accused is guilty of the offense with which he is charged. For this purpose, the court scans the material on record to find whether there is any reliable and trustworthy evidence upon the basis of which it is possible to found the conviction of the accused and to hold that he is guilty of the offense with which he is charged; (ii) the court can base the conviction of the accused on a charge of murder upon the testimony of a single witness if the same was found to be convincing and reliable. If in a case the prosecution leads two acts of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably, the accused would have the benefit of such a situation.

24. Based on the foregoing discussions, we conclude that PW-1 Siddha stated in his statement that the incident was witnessed/seen by Murlidhar, Ram Ratan, Ram Asrey, Chaman, Rafiq, but failed to justify except Ram Asrey (PW-2) as to why the police witness Rafiq Ahmad, Rameshwar, Mohan, Babu Khan, Chaman Lal, Murlidhar, Ram Ratan, Ram Swaroop, Kamta Prasad and Bhagwan Singh are not produced by the prosecution. This fact assumes significance that witness Bhagwan Singh police witness has been figured in the FIR, had animosity with accused, therefore, non production of witness Bhagwan Singh casts serious doubt on the prosecution story, moreso when suggestion was given to the PW-1 that his son's name was arrayed as an accused in the murder of Phool Singh and Sheo Nath

² (1974) 3 SCC 397

Singh, he showed ignorance which also cast doubt on the truthfulness of the witness deposition. Witness PW-2 has denied his knowledge about the murder of Bhagwan Singh's father in which Siddha (PW-1), Babu Singh, Prithvi Singh were arrayed as accused.

25. Therefore, applying the law held in **Vadivelu Thevar (supra)** and **Harchand Singh (supra)**, we conclude that the PW-1's testimony is neither wholly reliable nor wholly unreliable and conviction based on testimony of PW-1 would be unsafe.

26. In the given facts-circumstances, the appellant is entitled for the benefit of doubt as suspicion so raised can not take the place of evidence.

27. As a result, the conviction and sentence passed against the appellant vide impugned judgment of conviction and order of sentence dated 8.3.1983, passed by 3rd Additional Sessions Judge, Hamirpur in Sessions Trial No.51 of 1982 titled State v. Ram Krishna, u/s 302 IPC and Sessions Trial No.16 of 1983 titled State v. Ram Krishna, u/s 25 of Arms Act, registered at Police Station Kharela, District Hamirpur, is hereby set aside and the appellant is acquitted of all the charges. Thus, the appeal is **allowed**.

28. Office is directed to send back the record of this appeal to the trial court concerned along with a copy of this order for compliance of section 437-A Cr.P.C.

Order Date :- 5.11.2024

Anil K. Sharma

(Vinod Diwakar, J.) (Siddhartha Varma, J.)