

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2023:AHC-LKO:82535-DB

Judgment Reserved on: 18.10.2023

Judgment Delivered on: 15.12.2023

Reserved

Case :- CRIMINAL APPEAL No. - 62 of 1984

Appellant :- Balkar Singh

Respondent :- State of U.P.

Counsel for Appellant :- S.B. Mathur, Prachish Pandey

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per: Rajan Roy, J.)

1. Heard Sri Prachish Pandey, learned Amicus appearing for the appellant as well as Sri Umesh Chandra Verma, learned A.G.A. for the State and perused the record including the lower Court record.

2. This is an appeal challenging the judgment dated 23.01.1984 passed by the Special Judge, Lakhimpur Kheri in Sessions Trial No. 292 of 1983 arising out of Case Crime No. 316 of 1983 under Section 302, 34 IPC by which the appellant has been convicted of the offence of murder of deceased, Nazir Singh and sentenced to undergo life imprisonment.

3. The prosecution case in a nutshell is that on 26.03.1983 at about 03:00 P.M., father of the informant i.e. the deceased, Sardar Nazir Singh who had a dispute with co-accused Kundan Singh, father of the appellant herein, with regard to a land which was, as alleged, being forcibly cultivated by Kundan Singh and on the said fateful day, the deceased asked Kundan Singh to cut his wheat crop and thereafter, he would not allow Kundan Singh to cultivate the said land. This led to an altercation between them. The appellant, Balkar Singh, who was standing by the side carrying a Spade, hit Sardar Nazir Singh, with the spade. Kundan Singh also started delivering Lathi blows on Sardar Nazir Singh, upon which he fell down. The informant and his sister ran to save their father. PW - 5, Bachan Singh and Sulakhan Singh, who were working in a nearby field, rushed on seeing the incident but the assailants ran away extending threats. Accordingly, an FIR was lodged at about 05:40 P.M. on the same day.

4. Initially, investigation was conducted by PW - 13, Shri R.B. Singh, thereafter, it was conducted by PW - 14, Vijay Kumar Upadhyay. Statement of witnesses was recorded, evidence was collected and charge sheet was filed against the appellant - Balkar Singh and his father, Kundan Singh under

Section 302, 34 IPC. Charge was framed against them under Section 302, 34 IPC. The appellant denied the charges and demanded trial, he was accordingly put to trial. The case of the defence is one of denial but no evidence was led by the defence.

5. The prosecution examined 14 witnesses in support of its case which are as follows:-

PW- 1, i.e. Dr. R.K. Gaur is the autopsy surgeon. PW-2 is the witness of deceased items being deposited in the office of Superintendent, District Hospital and the same being sealed and sent to the chemical examiner at Agra. PW- 3 is Police Constable and witness of the same fact. PW- 3, i.e. Ram Chandra Verma is a police constable. PW- 4, i.e. Jageer Singh is the informant and an eye witness of the incident. PW- 5, i.e. Bachan Singh is also an eye witness of the incident. PW- 6 is the Constable who had made requisite entries in the police records regarding the first information. PW- 7 is the witness of the sealed recovered items being sent to Sadar Malkhana, Lakhimpur. PW- 8 is the Constable who had taken sealed recovered items to the office of Superintendent, District Jail, Kheri. PW- 9, i.e. Dara Singh, is an witness of recovery of Spade but has turned hostile. PW- 10 is the Constable who

had taken the sealed recovered items to the Sadar Malkhana, Lakhimpur and deposited the same there. PW- 11, i.e. Surat Singh is the other independent witness of recovery of spade who has supported the prosecution case. PW- 12 is the Constable who had accompanied the investigating officer to the scene of crime on 26.03.1983 and had taken the body for postmortem on the next day. PW- 13 is the first Investigating Officer who recorded the statement of the informant at the scene of crime and visited the scene of crime on the same day and prepared the site map who had collected the blood soaked soil and plain soil and got prepared the recovery memo. He had recovered the spade from the Jhaala of accused Kundan Singh, in the night. He has stated that the investigation was taken over by S.H.O., V.K. Upadhyay on 27.03.1983. He had not recorded the statement of any other witness except the informant. PW- 14 is the Investigating Officer who recorded the statement of the other witnesses.

Exhibit Ka-3 is the First Information Report and Exhibit Ka-1 is the postmortem report. Exhibit Ka-17 and Ka-18 are the forensic reports pertaining to the spade, blood stained soil, plain soil and clothes of the deceased.

Exhibit Ka-8 is the inquest report. Inquest started at 05:40 on 26.03.1983 and ended on the same day at 18:40.

Exhibit Ka- 15 is the site plan relating to the scene of crime, as also, recovery of the weapon of crime.

6. The Trial Court after a consideration of the evidence acquitted Kundan Singh on the ground that the three contusions on the body of the deceased could have been caused due to his fall and, as, the role of Kundan Singh was of wielding and inflicting Lathi blows and there were no such injuries. It has convicted the appellant-Balkar Singh, his son who was assigned the role of striking the deceased with the spade.

7. The case of the prosecution is based on direct evidence, medical evidence in the form of postmortem report and the testimony of autopsy surgeon.

8. As per the postmortem report, the deceased had following ante-mortem injuries on his body:-

1.) Incised wound 15 cms * 3 cms * cranial cavity deep on Rt. side head, 4 cm above & behind Rt. Ear. Brain matter coming out of wound. On Dissection. Rt. temporal bone & occipital bone on Rt. Side found cut through & through along with membranes & gray matter.

- 2.) Incised wound 4 cm * 1 cm * muscle deep & Pinna of Rt. Ear through & through on middle of Rt. Ear & behind Rt. ear.
- 3.) Two incised wounds parallel to each other 2 cms apart on the back of Rt. shoulder. Wound measuring 5 cm * 0.5 cm * muscle deep and other being 3 cm * 1 cm * muscle deep.
- 4.) Two contusion on the back of the Rt. Scapular region 2.5 cm apart measuring 10 cm * 2.5 cm & other being 11 cm * 2 cm.
- 5.) Contusion 30 cm * 2.5 cm on outer aspect of Rt. side chest & abdomen, oblique 12 cm below Rt. outer axillary fold.
- 6.) Contusion 8 cm * 2.5 cm on outer & upper part of Rt. thigh.

The cause of death is mentioned as shock and hemorrhage, as a result of ante-mortem injuries.

9. The autopsy surgeon i.e. PW-1 has proved the postmortem report, as also, the injuries mentioned therein. He has stated in his testimony that death was the result of shock and excessive bleeding from ante-mortem injuries sustained by the deceased. He has stated that the injuries could have been caused on 26.03.1983 at 03:00 PM. The three incise wounds could have been caused by spade and contusions could have been caused by Lathi. In cross-examination, he

has stated that parietal injury could not be fabricated, contusions could be caused by falling.

10. From the aforesaid evidence, it is proved that the death of the deceased was a homicide. The only question is whether it was a murder committed by the appellant or not?

11. The contention of learned Amicus, Shri Prachish Pandey who argued the appeal on behalf of the appellant was that recovery of spade, the alleged weapon used in the commission of crime, is not on the pointing of the appellant but from his premises. The place from where the said recovery has been allegedly made is an open space which could be accessed by any person, therefore, for this reason also, the recovery is not reliable, more so, as, one of the two independent witnesses was declared hostile and did not support the recovery. He thereafter submitted that father of the appellant, Kundan Singh, was acquitted of the charge under Section 302, 34 IPC based on the same evidence, therefore, the appellant could not have been convicted. In this context, he relied upon a decision of Hon'ble the Supreme Court of India rendered in the case of ***Javed Shaukat Ali Qureshi Vs. State of Gujarat; 2023 SCC Online SC 1155.***

The FIR was delayed. The incident is said to have occurred on

26.03.1983 at 03:00 PM but the FIR was lodged at 05:50 PM, although the police station was only about 6 - 7 Kms. away and there is no explanation for this delay. According to him, this delay gave scope for deliberation and consultation to falsely implicate the appellant with whom the deceased had a prior enmity and a land dispute. Apart from these three incise wounds, the deceased had also suffered three contusions and there is no allegation against the appellant of having used any such weapon resulting in such contusion and as the other accused, Kundan Singh, has been acquitted, it was not possible for the Trial Court to ascertain as to which of the injuries had caused death of the deceased. Accordingly, conviction of the appellant under Section 302, 34 IPC could not be sustained. The findings of the Trial Court in this regard are based on conjectures, surmises and presumptions, ignoring the evidence on record and without appreciating it properly. The statement of PW-5, Bachan Singh, was recorded more than a month after the incident which goes to show that he was tutored and planted as witness on account of prior enmity.

12. Learned A.G.A. on the other hand submitted that motive is proved which was land dispute between the parties. The

incident occurred on the agricultural field of Kundan Singh, the co-accused, and father of the appellant, who was subsequently acquitted by the Trial Court. There are two eye witnesses, PW- 4, the son of the deceased, and PW- 5 an independent public witness whose agricultural field was nearby and his presence at the scene of crime was also quite natural and normal. The spade used by the appellant for committing the crime has been recovered from his premises about which no explanation has been offered by him in his statement under Section 313 Cr.P.C. PW- 11 and an independent public witness of such recovery has proved it, therefore, in these circumstances irresistible conclusion is that it is the appellant who has committed the crime and the Trial Court has rightly convicted him of the offence under Section 302, 34 IPC.

13. The fact that Kundan Singh, father of the appellant has been acquitted has no bearing so far as guilt of the appellant is concerned, as, the role assigned to the father is different from that of the appellant. The father was assigned role of striking blows with Lathi while the appellant was assigned the role of striking with spade resulting in injuries on the head and other vital parts which were the cause of the death, as, it is these

injuries which resulted in hemorrhage, blood loss and shock. The Trial Court gave the benefit of doubt to the appellant's father, Kundan Singh, on the ground that contusions could have been caused by fall, as opined by the Doctor, therefore, no benefit of his acquittal can be extended to the appellant and the decision relied upon by him rendered in the case of Javed Shauqat Ali (Supra) is of no avail.

14. The case is based on direct evidence of PW-4, Jageer Singh, and PW-5, Bachan Singh. Although, PW-4, Jageer Singh, is son of the deceased, his presence with the deceased at the scene of crime which is agricultural field of Kundan Singh with whom the deceased had a land dispute, is quite normal. Having gone through his testimony, we are of the opinion that narration of events and details mentioned regarding commission of the crime, as also, situation of the agricultural plot where the incident occurred, inspires confidence in us. The narration of events is natural and there are no major contradictions so as to materially affect the prosecution case. No such contradiction has been brought forth in cross examination. It has been clearly stated that there was land dispute between the deceased Nazir Singh and the accused Kundan Singh. This disputed land was situated north

of the road towards north of his house. Kundan Singh had forcibly cultivated the said disputed land. Wheat crop was standing on the said land at the time of murder of his father. His father wanted to gain possession of the said land but Kundan Singh was not ready to give up. He has stated that on the fateful day at about 03:00 p.m., he was present towards north-east of his 'Jhaala'. His father Nazir Singh was talking to the accused Kundan Singh & Balkar Singh in connection with the disputed land. His father asked the accused to give up possession of the said land but the accused declined. Appellant, Balkar Singh, hit his father three or four times with the spade and Kundan Singh struck three or four Lathi blows on him. They hit him under the mango tree. The witnesses Bachan Singh (PW-5) and Sulakhan Singh came rushing from nearby. On an alarm being raised, accused ran away. When he went near his father, he saw that he had suffered grievous injuries and had died. This witness identified the spade used for commission of the crime.

15. In cross-examination, he has stated that the accused had been cultivating the disputed land for the past two and a half years. Prior to it, his father used to cultivate it. A dispute had arisen in this regard and a Panchayat had also been held,

though, no report was lodged. In the Panchayat, accused had refused to hand over possession of the said land to his father. Panchayat had taken place two months prior to the incident, though he was not present in it. As the accused were not ready to give up possession, therefore, the dispute had arisen. He has reiterated that at the time of commission of crime, appellant, Balkar Singh, was standing with a spade. He was not doing anything while Kundan Singh had a Lathi. His father had come to his field near his house. The disputed land is situated near it. The accused and his father talked with each other for about 1 or 2 minutes, thereafter, the accused killed his father. First of all, Balkar Singh struck blows upon his father, thereafter, Kundan Singh struck Lathi blows. He has also stated that he left for the police station 20 minutes after the incident. It has come in his cross-examination that midway he got the Tehrir written which took about 20 or 25 minutes, thereafter, report was lodged by the police. He has also stated that Police reached the scene of crime in the night itself at about 7:00 or 7:30 PM along with him and stayed there for a little more than one hour. The Daroga had talked to PW-5 Bachan Singh at the same time.

16. In cross-examination, the defence could not bring out any contradiction or inconsistency in his statement nor could they create any doubt about its credibility. There is no reason as to why we should disbelieve the testimony of PW- 4, merely because he is the son of the deceased. His testimony is corroborated by the ocular testimony of PW- 5 Bachan Singh who is also an eye witness and also by the medical evidence i.e. the injuries mentioned in postmortem report and as mentioned by the autopsy surgeon PW-1.

17. PW- 5 is an independent witness who has his agricultural field near the scene of crime. He has stated that his fields are situated near the latter's Jhaala. 'Paidi Ganna' was sown in his fields when Nazir Singh was murdered. Nazir Singh was murdered about eight months ago at 03:00 PM (His statement was recorded on 26.11.1983 and the incident is of 26.03.1983). He has stated that he was peeling sugarcane in his southern field along with Sulakhan Singh. He heard the talk between Nazir Singh and Kundan Singh. Both had a land dispute. He went to the scene from his agricultural land and saw that appellant Balkar Singh struck the deceased with his spade and Kundan Singh hit him with Lathi. Nazir Singh fell down and died. There was blood on the ground. In cross-

examination, he has stated that Daroga had called him in the night of the incident and inquired about the same. Whatever he had told him, the Daroga noted it down. Thereafter, he has stated that the Daroga had recorded his statement one and a quarter months after the incident at the scene of crime. He has denied the suggestion that the Daroga had not inquired about the incident from him in the night of the incident and had recorded his statement after one and a quarter month. He has further stated in cross-examination that deceased was murdered near the mango tree towards north of the disputed land at a distance of 2-3 paces. Wheat crop was sown at the time of the incident on the disputed land which tallies with the testimony of PW- 4. He has stated in cross-examination that first of all he saw the accused hitting the deceased. When he moved 4-5 steps further, he saw the accused running. He has also stated that he was brought to the area by Kundan Singh, accused. There is no reason to disbelieve the testimony of PW- 5 who is an independent witness and his presence at the scene of crime is also natural, as, his agricultural field is situated nearby. As regards, the delay in recording of his statement by the police, that is not material in view of his testimony before the Court and, even otherwise, it has come in

the testimony of PW- 15 that initially there was some dispute as to territorial jurisdiction of the police station when he was asked to continue with the investigation and it appears that the same was resolved, then he got the statement of PW- 5 recorded. Moreover, it is the testimony before the Court which is substantive evidence and there are no major contradictions in the testimony of PW- 5 nor has any been pointed out so as to materially affect the prosecution case.

18. The spade allegedly used for commission of crime by the appellant, Balkar Singh, was recovered on 26.03.1983 in the night itself from the Jhaala of the appellant. The spade was sent for forensic examination and human blood was found thereon, just as human blood was found on the blood soaked soil collected from the scene of crime. There were two independent public witnesses of such recovery, one of whom, Dara Singh (PW- 9) has been declared hostile while the other witness, Surat Singh (PW-11) has supported the prosecution case and has stated that recovery was made in his presence. PW- 11 who is also a signatory to the inquest report has stated that at about 10:00 PM in the night the spade was recovered from the Jhaala of the appellant Balkar Singh, in his presence. Of course, he has also stated that the spade was recovered

from under the Jhaala which could be accessed by any person after removing the 'Thatiya', so has, PW- 15, but this does not materially affect the prosecution case, as, even if there was no recovery, there are two eye witnesses to the incident and both their testimonies are reliable.

19. In view of the above discussion, we find that the ocular testimony of PW- 4 and PW- 5 is reliable and it is corroborated by medical evidence. The fact that the co-accused, Kundan Singh father of the appellant- Balkar Singh has been acquitted by the Trial Court does not help the appellant herein for the reason the role assigned to Kundan Singh was of striking blows upon the deceased with Lathi whereas the role assigned to the appellant herein is of striking on vital parts of the deceased with a spade. No doubt, there are three contusion injuries but the Doctor has opined that this could be caused by a fall. In these circumstances, the Trial Court has given the benefit of doubt to Kundan Singh and has acquitted him. However, so far as the appellant before us is concerned, injury no. 1, 2 and 3 are incise wounds, one of which is on the head and such injuries could be caused by use of spade, as has also been opined by Doctor, PW- 1. These injuries could not be fabricated. Therefore, the decision relied upon by the

learned Amicus is not applicable to the facts of the case. Moreover, we find that the name of Bachan Singh as a witness to the crime is mentioned in the FIR itself which has been lodged promptly, therefore, it is not a case where he has been introduced as a witness for the first time after one and a quarter months. The delay in recording the statement by Police has been explained by the Investigating Officer. Even otherwise, it is his statement before the Court which is substantive evidence, and, we do not find any contradictions or inconsistencies therein to disbelieve it. We have no doubt that the prosecution has proved the charge against the appellant under Section 302, 34 IPC beyond reasonable doubt. The Trial Court has not committed any error in convicting the appellant and sentencing him to life imprisonment. We do not find any merit in the appeal and accordingly **dismiss it.**

20. The appellant is on bail. His bail bonds are cancelled. Sureties are discharged. The accused/ appellant is directed to surrender before the court concerned within two weeks from today to serve out the remaining sentence, failing which, learned trial court concerned shall issue warrant for his arrest for serving out the sentence.

21. Sri Prachish Pandey, learned Amicus shall be paid Rs. 25,000/- for his services by the High Court.

22. Let the lower court record along with a copy of this judgment be transmitted forthwith to the learned trial court concerned for information and necessary compliance.

[Ajai Kumar Srivastava-I, J.] [Rajan Roy, J.]

Order Date:- 15.12.2023
Lokesh Kumar