

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

Neutral Citation No. - 2024:AHC-LKO:2652-DB

Reserved on 11.10.2023

Delivered on 10.01.2024

Court No.9

Case :- CRIMINAL APPEAL No. - 206 of 1983

Appellant :- Ved Nath And Others

Respondent :- State of U.P.

Counsel for Appellant :- S.S. Chauhan, Ram Naresh Singh Chauhan

Counsel for Respondent :- Govt. Advocate

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per : Hon'ble Ajai Kumar Srivastava-I, J)

1. Heard learned counsel for the appellant, learned A.G.A. for the State and perused the entire record.

2. This appeal has been filed by the appellants, namely, Ram Swaroop, Munni Lal and Ved Nath to assail the judgment and order dated 14.03.1983, passed by Third Additional Sessions Judge, Unnao in Sessions Trial Nos.169 of 1980 & 170 of 1980, arising out of Crime No.56 of 1977, under Section 302 I.P.C. and Section 25 Arms Act, Police Station Safipur, District Unnao, whereby in Sessions Trial No.169 of 1980, appellant, Ram Swaroop has been convicted and sentenced to undergo life imprisonment under Section 302 I.P.C. and appellants, Ved

Nath @ Veda and Munni Lal have been convicted and sentenced to undergo life imprisonment under Section 302/34 I.P.C. and in Sessions Trial No.170 of 1980, appellant no.1 Ved Nath @ Veda has been convicted and sentenced to undergo six months' rigorous imprisonment under Section 25 of Arms Act.

3. From the perusal of record, it transpires that the appellant nos.2 & 3, namely, Ram Swaroop and Munni Lal, respectively, have died and the appeal has been abated in respect of appellant nos.2 & 3 vide order dated 16.08.2022, therefore, the appeal survives only with regard to the appellant no.1, namely, Ved Nath @ Veda.

4. The prosecution story, in brief, is that Kirti Kumar Mishra, P.W.3 and Ramanand Trivedi were posted as constable at P.S. Safipur, District Unnao in March, 1977. They had gone for patrolling to various villages. In this process, they stayed at the door of Prithvi Pal Singh, PW-1 in village, Sakhan Rajputana. They kept their guns, sat and were talking to Chhedi Lodh, Hira Lodh & Ram Shankar Awasthi. In the meantime, three persons came from the east side of corridor (galiyara), who were criminal type of persons. They were Ram Swaroop Lodh, Ved Nath @ Veda and Munni Lal as identified by the constables. On being questioned, present surviving appellant, Ved Nath @ Veda threw his handbag which fell near them and the appellants ran towards the West direction. The first informant, Kirti Kumar Misra, Ram Shankar Awasthi, Ramanand Trivedi, Prithivi Pal singh and Chhedi Lodh ran to chase them. When they reached at

Nanhoo Dhanuk's house and when they were about to arrest the appellants, Munni Lal and Ved Nath @ Veda exhorted Ram Swaroop to shoot them. Upon this, Ram Swaroop fired from his countrymade pistol at Ramanand Trivedi, which hit him. On alarm being raised and on hearing the sound of firing, Kumar Singh, Jagroop Singh, Babu Khan, Khalil, Donna Athar, Gaffar and others also came running. The surviving appellant, Ved Nath @ Veda was caught on the spot, however, other appellants succeeded in running away. Ramanand Trivedi died. Two countrymade pistols and 10 live cartridges were found in the handbag, which was thrown by the present sole surviving appellant. They reached P.S. Saifipur with the dead body of Ramanand Trivedi, accused Ved Nath @ Veda, recovered goods and handed over by them to Jageshwar Munshi of P.S. Saifipur, PW-5.

5. On the basis of aforesaid oral information given by PW-3, Kirti Kumar Misra, First Information Report, Ext. Ka-1 was registered as Crime No.56 of 1977, under Section 302 I.P.C. and Section 25 Arms Act, Police Station Safipur, District Unnao on 24.03.1977 at 8.05 P.M.

6. As per postmortem report of the deceased, Ram Nand Trivedi, Ext. Ka-2, which has been proved by Dr. H.M. Saxena, PW-4, following injuries were reported on the person of the deceased:-

1	Circular Gun Shot wound 1" diameter with blackening & tattooing around (3/4") on left side of upper back on interscapular region (left side) thoracic cavity deep inverted margins wound of entrance of gun shot.
	Abrasion 1/2" x 1/2" left elbow prominence.

2	
3	Abrasion 3/4" x 3/4" right elbow prominence.

According to postmortem report of the deceased, Ram Nand Trivedi, Ext. Ka-2, the cause of death is reported to be shock and hemorrhage as a result of antemortem firearm injuries.

7. After registration of the case, the Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C., prepared the site plan, Ext. Ka-21 and upon completion of investigation, charge-sheet was also submitted against accused-appellants.

8. There were two investigating officers of this case i.e. PW-6, Ram Ashrey and PW-7, Kripal Singh. Initially, this case was investigated by PW-7, Kripal Singh and after his transfer, the investigation was concluded by PW-6, Ram Ashrey.

9. The accused-appellants were charged for the offences under Sections 302/34 I.P.C., which were read over and explained to them, to which, they pleaded not guilty and claimed to be tried. The accused-appellant, Ved Nath was also charged for the offence under Section 25 Arms Act.

10. To bring home guilt of accused-appellants, the prosecution has examined as many as seven prosecution witnesses i.e. PW-1, Prithvi Pal Singh, PW-2, Chedi, PW-3, Kirti Kumar Misra, PW-4, Dr. H.M. Saxena, PW-5, S.I.

Jageshwar Singh, PW-6, Ram Ashrey and PW-7, Kripal Singh.

11. After conclusion of prosecution evidence, statements of accused-appellants were recorded under Section 313 Cr.P.C. The accused-appellants have stated the prosecution case to be false, claimed themselves to be innocent and also stated to have been falsely implicated.

12. No witness in defence was adduced by the accused-appellants.

13. The trial Court concerned, after appreciating the evidence available on record, passed the impugned judgment and order dated 14.03.1983, whereby the accused-appellants came to be convicted as aforesaid.

14. Aggrieved by the impugned judgment and order dated 14.03.1983, the accused-appellants have preferred the instant criminal appeals.

15. Learned counsel for the accused-appellants has submitted that infact the deceased, Ramanand Trivedi died elsewhere. The appellants were falsely implicated in this case due to their criminal antecedents only. It is also contended that PW-1, Prathvi Pal Singh is a pocket witness of police and there were several cases against him; rather he used to be a witness in various police cases. Therefore, learned counsel for the appellants submits that reliance could not have been placed by the learned trial Court on the testimony of such witness. His further submission is that all the witnesses of fact, whose names have been mentioned in the first information report, have not been

examined. It is also submitted that prosecution has been unable to prove the place of occurrence and the manner of its commission, therefore, also the conviction and sentence awarded to the appellants deserves to be set aside. His further submission is that learned trial Court also failed to appreciate the fact that there were major contradictions in the testimonies of prosecution witnesses which render their testimonies to be unreliable. He, therefore, prays that the conviction and sentence awarded by the impugned judgment and order dated 14.03.1983 be set aside.

16. Per contra, learned A.G.A. has opposed the submissions made by learned counsel for the appellants. He submits that the presence of witnesses PW-1, Prithvi Pal Singh, PW-2, Chedi and PW-3, Kirti Kumar Misra is very natural as the place of occurrence is shown to be the door of one, Prithvi Pal Singh, PW-1. He, therefore, submits that only because witness, Prathvi Pal Singh was also a witness in various criminal cases cannot be sole basis to discredit his otherwise reliable testimony. His further submission is that the prosecution is not bound to examine all the witnesses of fact; rather it is the prerogative of the prosecution to adduce only those witnesses whom they like in order to prove their case beyond reasonable doubt. His further submission is that the prosecution case is duly supported and corroborated by the postmortem report, Ext. Ka-2. He, therefore, submits that the accused-appellants have been convicted by the learned trial Court after proper appreciation of evidence available against them.

17. Learned A.G.A. has further submitted that the prosecution has proved its case against the appellants on the basis of cogent testimonies of prosecution witnesses. The appellants have been convicted by the impugned judgment and order dated 14.03.1983 which is well discussed and reasoned, wherein no interference by this Court is warranted.

18. Having heard learned counsel for parties and upon perusal of the record, we find that the date of incident is 24.03.1977 at 6:15 P.M., in respect of which, first information report, Ext. Ka-1 came to be lodged on 24.03.1977 at 8:05 P.M. on the basis of information given by Kirti Kumar Misra, PW-3. The place of occurrence was at a distance of two and half miles from the police station. Therefore, it can safely be said that the first information report, Ext. Ka-1, which has duly been proved by PW-5, S.I. Jageshwar Singh, was promptly lodged in this case, which prima facie rules out the possibility of consultation for false implication.

19. The first informant, Kirti Kumar Misra, PW-3 in his testimony has supported the prosecution case as contained in first information report, Ext. Ka-1. This witness has stated that on the date of incident, he was sitting at the door of Prithvi Pal Singh, PW-1 along with deceased, Ramanand Trivedi, who were on patrolling duty. According to this witness when the appellants, who were coming from east side of corridor (galiyara), were interrupted by them, appellant, Ved Nath @ Veda threw his handbag which fell near them. The appellants tried to

run away, who were chased by this witness, PW-1, Prithvi Pal Singh, PW-2, Chedi and the deceased, Ramanand Trivedi. When they reached at Nanhoo Dhanuk's house, this witness along with his colleagues were about to arrest them, Munni Lal and present surviving appellant, Ved Nath @ Veda exhorted Ram Swaroop to shoot them. Upon this, the appellant, Ram Swaroop fired from his countrymade pistol at Ramanand Trivedi, which hit Ramanand Trivedi and he died.

20. PW-1, Prithvi Pal Singh has also supported the prosecution case and has stated that on the date of incident he along with Kirti Kumar Mishra, P.W.3 and Ramanand Trivedi were sitting at his door. In the meantime, three persons came from the east side of corridor (galiyara), who were criminal type of persons, namely, Ram Swaroop Lodh, Ved Nath @ Veda and Munni Lal. On being questioned, present surviving appellant, Ved Nath @ Veda threw his handbag which fell near them and ran towards the West. This witness, PW-3, Kirti Kumar Misra, Ram Shankar Awasthi and PW-2, Chhedi ran to chase them and upon reaching at Nanhoo Dhanuk's house when they were about to catching of them, Munni Lal and present appellant, Ved Nath @ Veda exhorted Ram Swaroop to shoot them. Upon this, Ram Swaroop fired from his countrymade pistol at Ramanand Trivedi, which hit him. On alarm and hearing the sound of firing, Kumar Singh, Jagroop Singh, Babu Khan, Khalil, Donna Athar, Gaffar and others came running. The present surviving appellant, Ved Nath @ Veda was caught on the spot,

however, other appellants succeeded in running away. Ramanand Trivedi had died.

21. PW-2, Chedi is also an eye witness to the incident, who has also supported the prosecution case and has stated in his testimony that that 5 years ago while he was sitting at the door of PW-1, Prithvi Pal Singh along with PW-3, Kirti Kumar Misra, PW-1, Prithvi Pal Singh, he saw Ved Nath @ Veda, Munni Lal Sharma & Ram Swaroop coming from the East side of corridor (galiyara). On being questioned by the constables, they ran towards the West and Ved Nath @ Veda threw the handbag towards them. When they were about to arrest them at Nanha Dhanuk's house, Ved Nath @ Veda and Munni Lal exhorted Ram Swaroop to shoot Ramanand Trivedi. As Ramanand Trivedi turned back, on the exhortation of Munni Lal and present surviving appellant, Ved Nath @ Veda, appellant, Ram Swaroop shot the deceased, Ramanand Trivedi, who fell down in the corridor (galiyara). Alarmed by the noise of gunshot, many other persons also came to the spot, where present surviving appellant, Ved Nath @ Veda was caught and by that time, Ramanand Trivedi had died. His dead body was kept on a cot by the villagers and they came to the police station with the dead body of deceased, Ramanand Trivedi, appellant, Ved Nath @ Veda, who was caught on the spot and the recovered goods.

22. If we examine the postmortem report, Ext. Ka2 which has been proved by Dr. H.M. Saxena, PW-4, we find that apart from one firearm injury, there were two abrasions on the body of the deceased. The cause of death

is reported to be shock and hemorrhage as a result of antemortem firearm injuries. The seat of injury is left side of upper back on interscapular region (left side) thoracic cavity deep, which also corroborates the manner of incident as narrated by PW-1, Prithvi Pal Singh, PW-2, Chedi and PW-3, Kirti Kumar Misra.

23. While scrutinizing the testimonies of the aforementioned three witnesses of fact, namely, PW-1, Prithvi Pal Singh; PW-2, Chedi; and PW-3, Kirti Kumar Misra, we are conscious of the fact that PW-3, Kirti Kumar Misra, the first informant, is a police personnel who, according to the prosecution story, was accompanying the deceased and was also engaged in patrolling duty along with him. We find his presence on the date and at the time of the incident, along with the deceased, Ramanand Trivedi, to be natural. According to prosecution story, initially the police personnel including the deceased, Ramanand Trivedi and PW-3, Kirti Kumar Misra sat at the door of PW-1, Prithvi Pal Singh from where they saw the culprits comming. Therefore, the presence of PW-1, Prithvi Pal Singh at his door also appears to us to be natural. The fact that there is nothing on record to show at what time deceased, Ramanand Trivedi and PW-3, Kirti Kumar Misra left their police station for patrolling duty and the non-production of G.D. thereof would be of no consequence, as the fact of presence of PW-3, Kirti Kumar Misra and deceased, Ramanand Trivedi at the door of PW-1, Prithvi Pal Singh on the date of incident has been supported by PW-1, Prithvi Pal Singh himself in his testimony. PW-2, Chhedi has also supported the prosecution story, who was

present with PW-3, Kirti Kumar Misra, PW-1, Prithvi Pal Singh and the deceased, Ramanand Trivedi during the entire episode.

24. We have also taken note of the fact that PW-1, Prithvi Pal Singh admittedly has been witness in various cases and has also some criminal cases against him. However, these facts, per se, does not cast any doubt on the truthfulness of his testimony because according to prosecution story, police personnel were sitting at his door on the date of incident, therefore, he was a natural witness of this incident. Even otherwise, this witness along with other witnesses of fact i.e. PW-1, Prithvi Pal Singh; PW-2, Chedi withstood rigorous cross examination conducted on behalf of the appellants and their testimonies, in our considered opinion, remained unshaken. Therefore, we do not find any plausible reason to disbelieve consistent and cogent testimonies of such witnesses of fact.

25. We also find it necessary to point out that the sole surviving appellant, Ved Nath @ Veda was caught on the spot while he was trying to flee away. While fleeing away, he had thrown away a handbag, Ext.1 which he was carrying. This handbag, Ext.1 was recovered from the spot, which contained two countrymade pistols, Ext.2 & 3 and 10 live cartridges, Ext.4. It is this appellant, Ved Nath @ Veda, who, along with another co-convict, Munni Lal, exhorted the other co-convict Ram Swaroop to kill the police personnel and other witnesses i.e. PW-1, Prithvi Pal Singh and PW-2, Chedi, who were chasing the appellants.

Upon this exhortation, the co-convict Ram Swaroop opened fire, which hit Ramanand Trivedi, who was ahead of all other persons chasing the appellants. Therefore, it can safely be held that the present surviving appellant, Ved Nath @ Veda, formed the intention to kill the police personnel, including the deceased Ramanand Trivedi while they were likely to be apprehended. In furtherance whereof, the other co-convict, Ram Swaroop, shot Ramanand Trivedi dead at the spot. The sole surviving appellant, Ved Nath @ Veda was caught on the spot and was brought to police station by PW-3, Kirti Kumar Misra, first informant and other persons. The injury report of this appellant, Ext. Ka-25 reveals that two injuries were found on the body of the appellant including one lacerated wound and a contusion. This fact also lends support to the prosecution story that the present surviving appellant was caught on the spot by PW-1, Prithvi Pal Singh; PW-2, Chedi; and PW-3, Kirti Kumar Misra while he was trying to run away. Therefore, the finding of guilt of the present surviving appellant, Ved Nath @ Veda, under Sections 302/34 I.P.C. and Section 25 of the Arms Act appears to us to be based on the proper appreciation of evidence adduced by the prosecution before the learned trial Court.

26. In view of the above, we do not find any substance in the argument advanced by learned counsel for the appellants that the appellants were falsely implicated by police. We find that this aspect has also been discussed by learned trial Court in detail and has been found to be unacceptable by the learned trial Court. We also do not find any plausible reason as to why the

first informant, PW-3, Kirti Kumar Misra or other police personnel would wait for one of the police personnel to be killed for false implication of the appellants.

27. Hon'ble the Supreme Court in the case of **Rohtash Kumar v. State of Haryana, (2013) 14 SCC 434** has held that keeping in view the provisions contained in Sections 231 and 311 of Cr.P.C. and Sections 114 and 134 of Evidence Act, the prosecution need not examine all its witnesses. The discretion lies with the prosecution whether to tender or not all witnesses to prove its case. Adverse inferences against the prosecution can be drawn if the withdrawal of a witness was with oblique motive.

28. It is also pertinent to mention that Hon'ble the Supreme Court in the case of **State of U.P. vs. Krishna Master & Ors., 2010 CRI. L. J. 3889** has held that minor discrepancies in the testimonies of witnesses not touching core of the case cannot be a ground of rejection of evidence in its entirety. Existence of minor discrepancies is a normal feature which should not be blown out of proportion.

29. Therefore, we do not find any substance in the submission advanced by learned counsel for the appellants to disbelieve the prosecution story for the reason that all the witnesses of fact have not been examined as also because of minor contradictions which we do not find to be material in nature.

30. In view of the aforesaid overall discussion, we are of the considered opinion that the prosecution has been able to prove its case against the sole surviving appellant, Ved Nath @ Veda beyond reasonable doubt. As a result, we do not find any infirmity or perversity in the impugned judgment and order dated 14.03.1983, whereby the sole surviving appellant, Ved Nath @ Veda has been convicted under Sections 302/34 I.P.C. and Section 25 of Arms Act.

31. In view of the aforesaid, we do not find any merit in the instant appeal, which deserves to be dismissed and is, accordingly, **dismissed**.

32. The surviving appellant, Ved Nath @ Veda is on bail. His bail bonds are cancelled. Sureties are discharged. The surviving appellant, Ved Nath @ Veda is directed to surrender before the concerned Court to serve out the remaining sentence within eight weeks from today, failing which, learned trial Court concerned shall issue warrant for his arrest for serving out the sentence.

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

Order Date :- 10.01.2024

A.Dewal

(Ajai Kumar Srivastava-I, J)

(Rajan Roy, J)