

Neutral Citation No. - 2024:AHC-LKO:61954-DB

Reserved

Court No. - 1

Case :- CRIMINAL APPEAL No. - 2275 of 2004

Appellant :- Babloo Singh And Another

Respondent :- State of U.P.

Counsel for Appellant :- Nagendra Mohan, Krishna Kumar Singh, Rajesh Pandey, S.C. Shukla, Sanjai Singh, Shailendra Kumar Singh, Umesh Shukla, Ved Prakash Shukla

Counsel for Respondent :- Govt. Advocate, Atul Kumar Singh, Pradeep Kumar Singh

Connected with

1. Case :- CRIMINAL APPEAL No. - 2341 of 2004

Appellant :- Chandra Shekhar Pandey

Respondent :- State of U.P.

Counsel for Appellant :- R.P.Mishra, Rajesh Pandey, S.C. Sitapuri, Ved Prakash Shukla

Counsel for Respondent :- Govt. Advocate, Akhilesh Pratap Singh, Atul Kumar Singh

2. Case :- CRIMINAL APPEAL No. - 2374 of 2004

Appellant :- Shailendra Singh

Respondent :- State of U.P.

Counsel for Appellant :- I.B.Singh, Ashish Raman Mishra, Rajesh Pandey, S.C. Sitapuri, Ved Prakash Shukla

Counsel for Respondent :- Govt. Advocate, Akhilesh Pratap Singh, Atul Kumar Singh

3. Case :- CRIMINAL APPEAL No. - 2622 of 2004

Appellant :- Ram Roop Chauhan

Respondent :- State of U.P.

Counsel for Appellant :- T.N.Singh, Chandresh Mani Shukla, Pawan Kr. Singh

Counsel for Respondent :- Govt. Advocate, Akhilesh Pratap Singh, Atul Kumar Singh, S.C. Sitapuri, Ved Prakash Shukla

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

[Per Attau Rahman Masoodi, J.]

1. All these appeals have been preferred against the judgment and order dated 18.10.2004 passed by the learned Additional Sessions

Babloo Singh and another v. State of U.P.

Judge/Fast Track Court III, Gonda in Sessions Trial No. 240 of 1999 arising out of Case Crime No. 151 of 1998. The accused-appellants, namely, Shailendra Singh, Babloo Singh and Chandrashekhar Pandey have been convicted under Section 302/149 I.P.C. and sentenced to undergo imprisonment for life with a stipulation of fine of Rs. 10,000/- each, whereas the accused-appellants, namely, Ramrup Loniya and Vinod Singh have been convicted under Section 302 I.P.C. and sentenced to undergo imprisonment for life coupled with a fine of Rs. 10,000/- each. Besides, all the appellants have been convicted under Section 148 I.P.C. and sentenced to undergo three years rigorous imprisonment. In default of payment of fine, all the accused appellants have to undergo further six months rigorous imprisonment. The sentence is made to run concurrently for all the offences.

Introductory Facts

2. Brief facts of the case are that an F.I.R. in this case was registered by the complainant (P.W. 1) Kashi Prasad Shukla, father of the deceased alleging that his son Madan Shukla, aged about 20 years, on 9.7.1998 at about 5.30 p.m. was going to his home from Babhnan Railway Station via Mal Godown. Enraged due to long standing enmity, the accused, namely, Shailendra Singh, Babloo Singh and Ramrup Loniya armed with country-made pistols chased the deceased. The accused appellants, namely, Chandra Shekhar and Vinod Singh being armed with country-made pistols

caught-hold of the deceased from front side and the other accused, namely, Vinod Singh and Ramrup fired upon Madan Shukla (deceased). The incident is stated to have occurred at the shop of Verma Puncture. The complainant has stated that at the relevant time, he along-with Jamuna Prasad and Ram Raksha were standing on the road and they ran to save Madan Shukla (deceased) who was severely injured. They took the deceased to the Primary Health Centre, Maskanwa where the doctor declared him dead. The complainant thereafter took the dead body of Madan Shukla (deceased) to the Police Station and gave a written report (Exhibit-1) to lodge the F.I.R. The written report was registered as Case Crime No. 151 of 1998 under Sections 147, 148, 149, and 302 I.P.C., Police Station Chhapiya, district Gonda. The same was registered in the original G.D. (Exhibit-14) by the Court Witness No. 1 Shesh Mani Tiwari.

3. After lodging the F.I.R., the police investigated the matter, who recovered two live cartridges and one desi bomb. Recovery memo was prepared (Exhibit-4). On the same date of incident, i.e., 09.07.1998 after preparation of inquest report (Exhibit-3), the body was sent for postmortem.
4. Dr.R. N. Gupta, who conducted the post-mortem of Madan Shukla (deceased) has found the following injuries on the dead body:-

- (i) **Oval 1 cm x 1/2 cm inverted clot present cavity deep just below Right Mid clavicle.**
- (ii) In Multiple area 4 cm x 1 cm x 1½ cm medial to right nipple.
- (iii) **1/2 cm x 1/2 cm x cavity deep 4½ cm lateral to right nipple.**
- (iv) 1 cm x 1/2 cm x skin deep on Right Hypochondrium 17 cm below Right nipple.
- (v) 1/2 cm x 1/2 cm x skin deep on Mid of Right upper arm 16 cm below Right shoulder.
- (vi) Everted wound 1 cm x 1 cm below 5½ cm from right axilla.
- (vii) 1/4 cm x 1/4 cm on left hypochondrium 12 cm lateral to umbilicus.
- (viii) Multiple wound in area 40 cm x 7 cmx on back of left wrist, left forearm and left upper arm.
- (ix) Multiple wound in 16 cm x 6 cm area on left buttock including left iliac crest skin deep.
- (x) Everted wound 1 c m x 1 cm on Right side of back of chest 14 cm below first cervical vertebra.
- (xi) Multiple wound everted on left side of back 19 cm x 7 cm area just below left scapula.
- (xii) Small pellets four in number found in Thoracic cavity & (sic.) small pellets found in skin of above injuries.

In the opinion of the doctor, the cause of death is due to shock and hemorrhage due to injury nos. (3) and (1).

5. On the next day, i.e., 10.7.1998, the Investigating Officer recorded the statement of Kashi Prasad Shukla (P.W.1) and on his pointing out, the Investigating Officer inspected the site and prepared site map (Exhibit-5). After investigation, charge-sheet was submitted against all the appellants under Sections 147, 148, 149, and 302 I.P.C.

6. After taking cognizance on the charge-sheet, the case was committed to the Court of Sessions where charges were framed against the appellants, namely, Shailendra Singh, Babloo and Chandra Shekar Pandey under Sections 148, 302/149 I.P.C. whereas against the appellants Ramrup Chauhan and Vinod Singh charges under Section 148 and 302 I.P.C. were framed. In the statement recorded under Section 313 Cr.P.C., the accused appellants pleaded that they are innocent; the prosecution story is false; and that they have been implicated on account of previous enmity.
7. In the trial, the prosecution examined P.W. 1 Kashi Prasad Shukla, father of the deceased; P.W. 2 Ram Darsh, who is the witness of the chik report marked as Exhibit-2; P.W. 3 Sri Girjesh Shahi, Investigating Officer; and P.W. 4 Dr. R.N. Gupta, who conducted the postmortem of the deceased; C.W.1 Shesh Mani Tiwari who was produced with the permission of the Court and D.W.1 Chandra Shekhar Pandey; inquest proceedings; recovery memo and postmortem report. After considering the submissions made by the learned counsel for the parties and perusing the available material on record, the Trial Court convicted and sentenced all appellants under Sections 147, 148, 149 and 302 I.P.C.

8. We have heard Sri Nagendra Mohan, Sri R.P. Mishra, Shri Ashish Raman Mishra & Sri Chandresh Mani Shukla, learned counsel appearing for the respective appellants, Sri Umesh Chandra Verma, learned Additional Government Advocate for the State and Sri Akhilesh Pratap Singh & Sri Pradeep Kumar Singh, learned counsel for the complainant and perused the material available on record.

Submissions on behalf of the Appellants

9. Learned counsel for the appellants has pointed out number of lacunae in the investigation which are as under:-
- (i) Though the distance from residence of the complainant to the place of occurrence was 1½ km. but the F.I.R. was lodged after three hours of the incident for which the explanation offered by the prosecution is not convincing.
 - (ii) The Trial Court has itself given a finding that Kashi Prasad Shukla (P.W.1) is a chance witness and he cannot be stated to be an eyewitness of the incident.
 - (iii) The conviction of the appellants is based only on the solitary statement of the complainant-Kashi Prasad Shukla (PW1), who is admittedly the father of Madan Shukla (deceased).
 - (iv) Madan Shukla (deceased) was a hardcore criminal and was involved in number of cases at the time of his death and had number of enemies to his credit.
 - (v) The place of occurrence is also not established as no blood was found near the place of occurrence.
 - (vi) Recovery of hand-grenade and empty cartridges near the dead body of Madan Shukla (deceased) is indicative of the fact that the occurrence took place in some other manner and not in the manner as claimed by the prosecution.

- (vii) Kashi Prasad Shukla (P.W.1) admitted before the Trial Court that he does not know the scribe of the F.I.R. which indicates that the F.I.R. has not been lodged by the complainant.
 - (viii) There is no evidence on record that Madan Shukla (deceased) was brought to the Primary Health Centre as neither the Doctor was produced nor any injury report or any declaration was produced by the prosecution. Further, neither the blood was found on the clothes of the informant nor the same were deposited at the Police Station.
 - (ix) The prosecution has withheld the eye-witnesses cited in the F.I.R. and only formal witnesses were produced by the prosecution.
 - (x) No person from the vicinity of the occurrence has been produced by the prosecution and the medical report does not corroborate the ocular version of the prosecution.
10. Apart from above, learned Counsel for the appellants submitted that the prosecution failed to prove its case beyond reasonable doubt and conviction of the appellants is based on the solitary statement of Kashi Prasad Shukla (P.W.1), who is father of Madan Shukla (deceased).
11. He further submitted that the incident is stated to have occurred on 9.7.1998 at 5.30 p.m. in the open market, whereas the F.I.R. of the present case was lodged at about 8.45 p.m. i.e. after more than 3 hours. The injured deceased was said to have been brought to the Primary Health Centre, Maskanwa where the doctor declared him dead but there is no documentary evidence on record to corroborate this fact and the prosecution failed to explain the delay in lodging the F.I.R.

12. Learned counsel also submitted that though the deceased received several fire-arm injuries but the police failed to collect any bloodstained material from the place of occurrence, as such, the alleged place of occurrence from where no traces of evidence regarding commission of offence were collected was itself imaginary and doubtful.
13. Learned counsel for the appellants has further submitted that long standing enmity exists between the deceased and the appellants. As per the version of Kashi Prasad Shukla (P.W. 1) as stated in the F.I.R., there is extreme probability that the appellants were implicated due to previous enmity. Kashi Prasad Shukla (P.W. 1) has projected himself to be a chance eye-witness in this case but his presence at the time of occurrence has not been proved by any witness produced by the prosecution.
14. Learned counsel for the appellants submitted that the police has recovered two live cartridges and one desi bomb from the spot, but Kashi Prasad Shukla (P.W. 1) has not stated anything about the desi bomb or the appellant who was carrying the bomb.
15. Next learned counsel for the appellants submitted that the prosecution failed to prove its case beyond reasonable doubt as no independent witnesses was produced in support of the prosecution story. More over, Kashi Prasad Shukla (P.W. 1) is an interested witness being father of Madan Shukla (deceased).

16. Learned counsel for the appellants also stated that the sons of complainant bore criminal history and enmity with other persons, as such there is high probability that the son of the complainant might have been murdered by some unknown persons.

Submissions on behalf of the State

17. *Per contra*, learned Additional Government Advocate contended that from the testimony of Kashi Prasad Shukla (P.W. 1), it is proved that the appellants committed the murder of Madan Shukla (deceased). He submitted that there are no material contradictions between the contents of F.I.R. and the statement of the prosecution witnesses. From the statement of Kashi Prasad Shukla (P.W. 1), it is clear that he witnessed the incident and saw the appellants committing the offence in question. He also submitted that there is no conflict between the medical evidence and ocular evidence. Thus, the conviction of the appellants in the present case is justified and the appeals are liable to be dismissed.
18. Having considered the rival contentions and perusing the evidence on record before analyzing the prosecution evidence, it is necessary to briefly discuss the prosecution evidence adduced during trial.

Gist of Prosecution Witnesses

19. Kashi Prasad Shukla (P.W. 1) in his examination-in-chief has stated that on 9.7.1998 at about 5.30 p.m. when he was standing with Jamuna Prasad Pandey and Ram Raksha Tewari near the house of Ashok Shukla, Madan Shukla (deceased) was coming from the side of Mal godown, the accused, namely, Shailendra Singh, Babloo singh and Ramrup armed with county-made pistols chased the deceased while firing gunshot upon him, whereas the accused, namely, Vinod Singh and Chandra Shekhar Pandey caught hold of the deceased from front side and the accused, namely, Ramrup and Vinod Singh fired upon the deceased. The complainant has stated that he along-with Jamuna Prasad and Ram Raksha Tewari while standing on the road ran to save the deceased. They took the deceased to the Primary Health Centre, Maskanwa where the doctor declared him dead. Thereafter, Kashi Prasad Shukla (P.W. 1) brought the dead body of Madan Shukla (deceased) to the Police Station. The report was scribed by one person in Chhapiya Bazar on his dictation.
20. Kashi Prasad Shukla (P.W. 1) in his cross-examination has not disputed criminal history of his deceased son Madan Shukla. He stated that he alone went to the Police Station at 8.45 p.m. to lodge the F.I.R. The witnesses, Jamuna Prasad Pandey, Ram Raksha Tewri, Kuldeep Tewari and Rambahal Mishra had chosen not to go to the Police Station. The report was scribed by one person in Chhapiya Bazar on his dictation. Kashi Prasad Shukla

(P.W. 1) has stated that he was not aware of the preparation of the inquest. He also did not know whether the police inspected the spot or not. Kashi Prasad Shukla (P.W. 1) returned home from the Police Station at 9.00 p.m. and thereafter neither he went to the Police Station nor Gonda where postmortem was conducted. On the next day i.e. 10.7.1998 at 12.00-1.00 p.m. police reached the place of occurrence and recorded his statement. He has stated that the deceased sustained 6-7 fire-arm injuries on the chest & hand and he has no knowledge about the rest of the injuries. P.W. 1 has stated that on the date of the incident he had not seen his son coming from his house. He stated that he had not seen the accused carrying desi bomb. The house of Jamuna Prasad is also stated to be situated towards the east-south of the place of occurrence. He also stated that he took the deceased to the hospital on a Jeep but he has no knowledge about the particulars of the Jeep. Kashi Prasad Shukla (P.W. 1) was unable to recollect as to whether the wounds were bleeding or there were any bloodstains on the cloth of the deceased.

21. Ram Darsh (P.W.2) is the witness of the chik report marked as Exhibit-2, who lodged the F.I.R. on the written report given by Kashi Prasad Shukla (P.W. 1).
22. S.I. Girijesh Shahi (P.W.3) is the Investigating Officer who on the pointing out of Kashi Prasad Shukla (P.W. 1) inspected the spot and recovered two live cartridges and one desi bomb.

Accordingly, he prepared the recovery memo marked as Exhibit-4.

23. Dr. R.N. Gupta (P.W.4) has conducted the postmortem of Madan Shukla (deceased) and found 12 ante-mortem injuries on the body of the deceased. During postmortem, seven pellets were found on the body of the deceased and it was observed that the deceased was shot from a distance of one foot.

Analysis

24. Kashi Prasad Shukla (P.W. 1) in his statement has stated that at the place of occurrence, he, Jamuna Prasad and Ram Raksha Tewari were present. They claim to be eyewitnesses of the occurrence. He has further stated that one of the eye-witnesses, namely, Jamuna Prasad was murdered by the accused although the same has not been proved, whereas the other eye-witness, namely, Ram Raksha Tewari was not examined by the prosecution. Now, the whole prosecution story revolves around the statement of complainant-Kashi Prasad Shukla (P.W. 1) who claims to be an eyewitness of the occurrence.
25. Before we examine the credibility of the testimony of Kashi Prasad Shukla (P.W. 1), it would be useful to discuss the law in a situation where the conviction is based on the testimony of sole eye-witness.

26. The Apex Court in case of **Bhimapa Chandapa Hosamani and others Vs. State of Karnataka (2006) 11 SCC 323** observed as follows:-

"This Court has repeatedly observed that on the basis of the testimony of a single eye witness a conviction may be recorded, but it has also cautioned that while doing so the Court must be satisfied that the testimony of the solitary eye witness is of such sterling quality that the Court finds it safe to base a conviction solely on the testimony of that witness. In doing so the Court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the Court as wholly truthful, must appear to be natural and so convincing that the Court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness."

27. Again, the Apex Court in case of **Parvat Singh and others Vs. State of Madhya Pradesh (2020) 4 SCC 33** observed as follows:-

"However, at the same time, the evidence/deposition of the sole witness can be relied upon, provided it is found to be trustworthy and reliable and there are no material contradictions and/or omissions and/or improvements in the case of the prosecution."

28. Yet in another case, the Apex Court in case of **Amar Singh Vs. State (NCT of Delhi) AIR 2020 SC 4894** observed in paragraph 16 as follows:-

"Thus the finding of guilt of the two accused appellants recorded by the two Courts below is based on sole testimony of eye witness PW-1. As a general rule the Court can and may act on the testimony of single eye witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony

Courts will insist on corroboration. It is not the number, the quantity but quality that is material. The time honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise (see Sunil Kumar V/s State Government of NCT of Delhi)"

29. Thus, the law as it stands is that conviction on the basis of testimony of the sole eyewitness is permissible provided his evidence is free of any blemish or suspicion and impresses the Court as wholly truthful, reliable and natural.
30. The complainant-Kashi Prasad Shukla (P.W. 1) at the scene of occurrence is a chance eye-witness. The question that arises for our consideration is whether at the time of the incident Kashi Prasad Shukla (P.W. 1) was present at the spot or not; and whether his testimony is at all reliable and truthful.
31. Before giving reply to the aforesaid two questions, it is necessary to delve into the annals of the incident, which occurred on 9.7.1998 at 5.30 p.m. whereas the F.I.R. was lodged on the same day at 8.45 p.m. i.e. a litter after hours. Kashi Prasad Shukla (P.W. 1) has stated that he along-with some persons took the deceased to the hospital and after the deceased was declared dead by the doctor, he took the dead body of the deceased to the Police Station. He has further stated that he alone went to the Police Station to lodge the F.I.R. The story set-up by the complainant is highly doubtful once it was stated that he took Madan Shukla

(deceased) to the hospital with some persons on a jeep regarding which he knew nothing, whereas he alone brought the dead body of Madan Shukla (deceased) to the Police Station. During the interregnum period, the report was scribed by one person in Chhapiya Bazar on his dictation, which creates doubt suggestive of the F.I.R. being afterthought.

32. The complainant-Kashi Prasad Shukla (P.W. 1) in the F.I.R. has stated that the appellants, namely, Shailendra Singh, Babloo Singh and Ramrup Loniya chased the deceased while threatening him, but in examination-in-chief, he has stated that the said appellants chased the deceased while firing upon him is self-contradictory which creates doubt and does not inspire confidence on the prosecution story.
33. More over, in the impugned judgment, it has been held that Kashi Prasad Shukla (P.W.1) is a chance eye-witness who as regards his own presence has made a contradictory statement regarding his own location at the time when the alleged offence was started to have been committed by the appellants.
34. Further, the complainant has stated that he along-with some persons ran towards Madan Shukla (deceased) to save him and they all took the deceased to the hospital on the jeep. In his cross-examination, he has stated that he has no knowledge about the particulars of the Jeep. Further, he has stated that he has no

specific knowledge as to whether the wound was bleeding or not despite being present with the deceased.

35. According to the prosecution, the police recovered two live cartridges and one desi bomb from the spot. Though the complainant (P.W. 1) claimed to be an eye-witness but he has not stated anything about desi bomb and the person carrying the same which renders the prosecution story suspicious.
36. P.W. 1 is the father of the deceased. He stated that he took the deceased to the Police Station and returned to his house at 9.00 a.m and thereafter he did not go to the Police Station and at the time of inquest, he was not present. It is highly improbable that P.W. 1 being father would not go to the Police Station to enquire about the status of the proceedings in respect of his own son who was murdered. The police has also acted in a casual manner and inspected the spot on the next day and recorded the statement of P.W. 1.
37. The apex court in the case of **Jarnail Singh versus State of Punjab (2009) 9 SCC 719** observed that the evidence of a chance witness requires a very cautious and close scrutiny and the chance witness must explain his presence at the place of occurrence.
38. When we analyze the testimony of P.W. 1, who is a chance eye-witness, we find that his testimony does not inspire confidence

for the reason that he evaded the questions put to him. More over he admitted his criminal history as well as his son. Although he tried to explain his presence at the spot by stating that he was standing on the road along-with one Jamuna Prasad and Ram Raksha Tewari but the prosecution failed to produce Ram Raksha Tewari or any other witness to strengthen its case.

39. The upshot of the discussions made above is that Madan Shukla (deceased) bore criminal history and enmity with the accused, therefore the appellants were implicated out of vengeance. It is trite that merely on the ground of enmity, the testimony of an eyewitness cannot be discarded, if there is the ring of truth but in the present case, the entire prosecution case rests solely on the testimony of Kashi Prasad Shukla (P.W. 1) which is not supported by any tangible evidence and therefore cannot be believed to be true beyond a reasonable doubt.

40. For all the reasons stated above, we are of the considered view that the prosecution has miserably failed to prove its case beyond reasonable doubt and, therefore, the appellants are entitled to be afforded the benefit of doubt.

41. In the result, we pass the following order:

- (i) All four Criminal Appeals are **allowed**;
- (ii) The judgment and order dated 18.10.2004 passed by the learned Additional Sessions Judge/Fast Track Court III, Gonda in Sessions Trial No. 240 of 1999 is set aside;

- (iii) The appellants, **Babloo Singh, Vinod, Shailendra Singh, Ram Roop Chauhan and Chandra Shekhar Pandey** are acquitted of all the charges they were charged with; and
 - (iv) All the appellants are reported to be on bail. Hence their bonds shall stand discharged, subject to compliance of the provisions of Section 437-A Cr.P.C. to the satisfaction of the Trial Court.
42. Let a certified copy of this order be sent to the Trial Court along-with the record for information and compliance.

[Ajai Kumar Srivastava-I, J.] [Attai Rahman Masoodi, J.]

Order Date :- 09.09.2024

kanhaiya/Fahim

Babloo Singh and another v. State of U.P.